



CITY OF MERCER ISLAND

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(206) 275-7605 • FAX (206) 275-7726

www.mercergov.org

October 26, 2017

Andrew Wisdom
Studio 19 Architects
207½ 1st Ave S #300
Seattle WA 98104
Via Email

RE: CAO17-007 (Critical Area Determination for 4634 E Mercer Way)

Dear Andrew,

The City of Mercer Island Development Services Group has completed its first review of this application for compliance with Title 19 of the Mercer Island City Code (MICC). Additional information on the following issues need to be addressed for processing of the application to continue:

1. Public comment, including a report by a geotechnical engineer (attached—please see the October 10, 2017 letter from Edward J. Heavey, P.E.), has raised concerns about potential impacts to the private street that accesses the subject property due to construction traffic necessitated by construction of the proposed single family residence. Please investigate the topography and soils in vicinity of the private street and provide information from a qualified professional (i.e. geotechnical engineer or engineering geologist) on the expected impacts of the anticipated construction traffic on the street, which is on a steep slope that constitutes a geologic hazard area under the MICC. Please also verify whether these impacts would constitute alteration of a steep slope as defined in Chapter 19.16 MICC. If the expected impacts do constitute alteration of a steep slope, please include an analysis of the proposed impacts in the scope of work under review for CAO17-007.
2. Sheet A1.01 shows watercourse delineation flags. Sheet 3 of 6 of the civil plan set submitted for permit 1507-166REV proposes drainage infrastructure in what appears to be the same area as the watercourse (in the southeast corner of the site). In your resubmittal, please provide a sheet showing the location of the proposed drainage infrastructure in relation to the delineated watercourse.
 - a. Based upon a review of the current plan set, it appears that work is proposed within the watercourse channel (on lands covered by water) and consequently a SEPA review is required. Please either apply for a SEPA review, or modify the proposed design to avoid work on lands covered by water.
 - b. Note that if development is proposed within the watercourse or associated buffer, the scope of review under CAO 17-007 will need to be expanded to include review the proposed scope of work for compliance with MICC 19.07.030(7). Please either modify

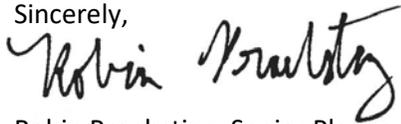
the proposed design to avoid work within the watercourse buffer, or provide a critical areas study that addresses the proposed work within the watercourse buffer (e.g. identifies the scope of the impact, addresses minimizing impacts, and proposed mitigation).

- c. Lastly, note that a shoreline permit may be needed for the drainage facilities proposed along Lake Washington, unless the scope of work falls within one of the exemptions in WAC 173-27-040.

3. Public comment submitted for this project is attached for your review.

The Planning Division's review of this project is on hold until these issues are resolved. Given the complexity of this project, I recommend a meeting between staff and members of your team prior to resubmittal. Please do not hesitate to contact me if you have any questions.

Sincerely,



Robin Proebsting, Senior Planner
City of Mercer Island Development Services Group
robin.proebsting@mercergov.org
(206) 275-7717

October 10, 2017

Mr. Mark Petrie
4640 East Mercer Way
Mercer Island, Washington 98040

Transmitted via email to: *mpetri@copiersnw* and *rita.latsinova@stoel.com*

**Re: Geotechnical Review
Proposed Single-Family Residence Development
4634 East Mercer Way, Mercer Island, Washington
City of Mercer Island Permit No. 1507-166**

Dear Mr. Petrie:

At your request, I have reviewed the documents pertaining to the proposed development at 4634 East Mercer Way in Mercer Island, Washington. Documents reviewed were submitted in support of City of Mercer Island (City) Permit No. 1507-166 which was initially approved by the City on August 23, 2016, but is currently under additional review by the City. The proposed project consists of constructing a single-family residence (SFR) on a heavily-treed, vacant lot located at 4634 East Mercer Way in Mercer Island, Washington (subject property). My comments are based on review of the following documents:

- *Watercourse Determination Report for 4634 East Mercer Way (King County Parcel 7558700008), Located in the City of Mercer Island, Washington, dated August 15, 2017, prepared by Wetland Resources, Inc.*
- *Geotechnical Report Addendum; Evaluation of Surcharge Load on Soldier Pile Wall; Proposed Development; 4634 E Mercer Way, Mercer Island, WA, dated August 12, 2016, prepared for Barcelo Homes, LLC by PanGeo*
- *Statement of Risk; Proposed Development; 4634 E Mercer Way, Mercer Island, WA, dated July 19, 2016, prepared for Barcelo Homes, LLC by PanGeo*
- *Response to Correction Notice #5, dated July 18, 2016, prepared by Andrew Wisdom of Studio 19 Architects*
- Approved Building Permit Submittal Drawings, including City of Mercer Island Cover Sheet dated August 23, 2016:
 - *Sheets G0.01 and G0.02, prepared by Studio 19 Architects*
 - *Site Survey: Sheets 1 and 2, prepared by APS Surveying and Mapping*
 - *Civil Drawings: Sheets C1 through C6, prepared by Litchfield Engineering*
 - *Architectural Drawings: Sheets A1.01 through A9.04, prepared by Studio 19 Architects.*
 - *Structural Drawings: Sheets S1 through S-10, prepared by Tecinstruct LLC*

In addition, I have made several visits to the area to observe conditions as they relate to the proposed development.

GEOLOGIC HAZARD AREAS

Mercer Island City Code (MICC) identifies the site of the proposed development as within a geologic hazard area. Geologic hazard areas are susceptible to erosion, sliding, earthquake, or other geological events. Because of their hazardous conditions, these areas pose a threat to health and safety when development is sited too closely. Geologic hazard areas are regulated mainly for these safety reasons, but they are also regulated for their habitat values. Steep slopes can be conduits for groundwater draining from hillsides to form the headwaters of wetland and streams.

Per section 19.07.060.D.1 of the MIMC, alterations of geologic hazard areas may occur if the code official concludes that such alterations:

- a) Will not adversely impact other critical areas;
- b) Will not adversely impact (e.g., landslides, earth movement, increase surface water flows, etc.) the subject property or adjacent properties;
- c) Will mitigate impacts to the geologic hazard area consistent with best available science to the maximum extent reasonably possible such that the site is determined to be safe; and
- d) Include the landscaping of all disturbed areas outside of building footprints and installation of all impervious surfaces prior to final inspection.

The City of Mercer Island public map portal

(<https://pubmaps.mercergov.org/SilverlightViewerEssential/Viewer.html?Viewer=ExternalWebGIS>)

shows that the shared community access roadway and the area surrounding the proposed development are located within erosion and landslide hazard areas and are critical areas as defined by MICC 19.16.010. Therefore, construction of the SFR at 4634 East Mercer Way in Mercer Island, Washington cannot adversely impact other critical areas and the surrounding properties.

COMMENTS

Based on my own review of the available documents submitted by the applicant and conditions observed during my several visits to the area, likely adverse impacts to the critical areas surrounding the proposed development include:

- At the top of one of the lower hairpin turn, the shared access road is constricted by a significant, large fir tree on one side and a rockery along the other side. The road width is only 14 ft at this location. It will be difficult for large construction trucks (dump trucks, logging trucks, and cement trucks) to make this turn along with concrete trucks and other large trucks. In my professional opinion, there is the potential for significant damage to the tree and/or rockery.

- Between East Mercer Way and the upper hairpin turn, the slope along the north side of shared access road descends steeply downward. I observed several indications of instability of the slope along this portion of the roadway. Several trees along the top of the roadway were observed to lean backwards, the fire hydrant is leaning outward, and two areas along the north edge of the shared access road have subsided and have several cracks parallel to the slope face. Slope instability is likely a result of creep of the surficial soil on the slope below the roadway. Soil creep generally occurs on slopes steeper than 50 percent and is defined as a slow, downslope movement of the surficial soil as a result of gravity. Observations made during a September 24, 2017 site visit indicated that the roadway has continued to subside in these two areas and the cracks have widened since my first visit in October 2015. Between the two hairpin turns, a steep slope supported by a series of landscape retaining walls is present along the eastern side of the shared access road. Several large cracks in the pavement that parallel the slope face were observed there, as well. The cracking is likely due to deflection of the landscape retaining walls and soil creep. The slopes supporting these portions of the shared access roadway are at risk of not being able to support the expected construction truck traffic. The project geotechnical engineer should have evaluated the impact of trucks on the stability of the slopes along the access roadway. In my professional opinion, the truck traffic will likely increase the potential of a slope failure involving the access roadway and represents a potential public safety hazard.
- The T.E.S.C. Plan (Sheet C4) calls for the temporary construction access roadway to be constructed of quarry spalls. Though required by Note 4 of the approved T.E.S.C. Plan, no measures are shown to prevent and/or capture runoff and sediment from the construction access road before reaching the shared access roadway. Note 2 of the T.E.S.C. only requires sweeping of the shared access roadway to remove sediment from the shared access roadway at the end of the day. Even if earthwork will likely occur between April and October of 2017, significant precipitation events can occur in the spring and summer months and uncontrolled runoff from temporary construction access roadway can adversely impact the residences down gradient from the subject property. Section 19.07.060.D.1.b of the MIMC does not allow for increased runoff from geologic hazard areas to prevent impacts to the subject property or adjacent properties. In my professional opinion, the TESC Plan contains inappropriate erosion control measures for the temporary access road, jeopardizing the down gradient property owners.
- All runoff from the shared access road downslope of the lower hairpin turn is collected by a trench drain across the driveway to the residence located at 4632 East Mercer Island Way. The trench drain may discharge directly to Lake Washington. Without adequate erosion control measures, sediment from the construction site may reach the lake. In my professional opinion, there are inappropriate erosion control measures for the temporary access road, exposing Lake Washington to construction stormwater and sediment flows.
- Sheet 3 of the Civil Drawings shows that the lower portion of the driveway is sloped in excess of 20 percent. A single catch basin is shown at the base of the driveway. In my professional opinion, during periods of intense precipitation, stormwater runoff from the driveway will likely over shoot the catch basin and flow down the shared access road. Section 1.07.060.D.1.b of the City of Mercer island Code does not allow for increased runoff from geologic hazard areas. In my professional opinion, there is insufficient analysis and design of

the stormwater collection system of the driveway, impermissibly exposing the geologic hazard area to increased runoff.

- A wood wall up to about 4½ ft in height is located about 15 to 20 ft east of the east property line. The wall supports a portion of the steep slope along the western edge of the paved parking area of the residence located at 4640 East Mercer Way. The slope rises about 13 ft vertical above the wall with an average slope of about 80 percent. The wall was observed to be in very poor condition. Given the fragility of the wall, it is my professional opinion that there is a potential for construction related vibration to damage the wall resulting in impacts to the property located at 4640 East Mercer Way.
- The August 15, 2017 wetland report requires a 35 ft setback from the watercourse located along the eastern side of the property. As shown on Watercourse Determination Map provided with the report, the southern edge of the proposed residence is along the edge 35 ft buffer, and the project drawings (Sheets 3, A1.01, and A1.02) show improvements within the proposed 35 ft buffet.
- The construction drawings indicate that the watercourse on the south side of the property will be directed into the storm drain outfall pipe that extends down to Lake Washington. Section 19.07.070.D.2 of the MIMC does not allow for Type 3 watercourses to be put into culverts, unless approved by the City of Mercer Island. When culverts are allowed, the MIMC requires that the culvert be designed to mitigate impacts to critical area functions. The outfall pipe has not been designed to mitigate impacts to the function of critical areas and the August 15, 2017 wetland report does not provide any analysis of potential impacts to the watercourse as a result of placing it into a pipe.
- With the removal of many significant trees and the increase in impervious area, the proposed development will significant change the site hydrology which will likely adversely impact the watercourse along the south side of the property. The August 15, 2017 wetland report does not provide any analysis of potential impacts to the watercourse as a result of the development.

STATEMENT OF RISK

Per section 19.07.060.D.2 of the MICC, alteration within geologic hazard areas may occur if the development conditions listed section 19.07.060.D.1 of the MIMC are satisfied **and** the geotechnical professional provides a statement of risk with supporting documentation indicating that one of the following conditions can be met:

Statement of Risk. Alteration within geologic hazard areas may occur if the development conditions listed above are satisfied **and** the geotechnical professional provides a statement of risk **with supporting documentation** indicating that one of the following conditions can be met:

- a) The geologic hazard area will be modified, or the development has been designed so that the risk to the lot and adjacent property is eliminated or mitigated such that the site is determined to be safe;
- b) Construction practices are proposed for the alteration that would render the development as safe as if it were not located in a geologic hazard area;
- c) The alteration is so minor as not to pose a threat to the public health, safety and welfare; or
- d) An evaluation of site specific subsurface conditions demonstrates that the proposed development is not located in a geologic hazard area.

MICC 19.07.060.D.2 (emphasis added).

The following specific comments are provided regarding the July 19, 2016 Statement of Risk prepared by PanGeo:

- The Statement of Risk provides no supporting documentation that the requirements of section 19.07.060.D.2 have been met.
- The Statement of Risk states that *“The overall site stability will be greatly improved for the post-construction condition after soldier pile walls are constructed.”* Section E on Sheet S10 of the Structural Drawings shows a temporary excavation in front of the soldier pile wall along the west side of the house to accommodate construction of the basement foundation. The excavation appears to be about 12 ft deep and sloped at about a 1 horizontal to 1 vertical inclination. The detail indicates that the excavation is to be backfilled after construction of the basement wall, leaving a level surface in front of the soldier pile wall. Review of the soldier pile calculations (Response to Correction Notice #5); indicate that an allowable passive lateral earth pressure of 300 pounds per cubic foot (pcf) was used in the design of the soldier pile wall. In my opinion, an allowable passive lateral earth pressure of 300 pcf would be appropriate if the ground surface in front of the soldier pile wall is level. The soldier pile wall along the west side of the house may undergo unacceptable deflection due to inadequate lateral resistance. The geotechnical engineer and structural engineer should have evaluated and revised the design as necessary. In my professional opinion, the passive lateral earth pressure inadequately accounts for the temporary excavation in front of the wall, jeopardizing the integrity of the site and presenting a potential safety hazard.
- My review of the Approved Building Permit Submittal Drawings and conditions indicates that the erosion control measures are inadequate.

- The slopes supporting portions of the shared access roadway may not be able to support the expected construction truck traffic. This will likely increase the potential of a slope failure involving the access roadway and represents a potential public safety hazard.
- Construction related vibration may result in damage to the wood wall on the property located at 4640 East Mercer Way.

In my opinion, the July 19, 2016 Statement of Risk prepared by PanGeo does not fully address the requirements of 19.07.060.D.2 of the MICC. All critical areas must be designated and their functions and values protected using the best available scientific information - known as "BAS". It does not appear as if BAS was used to evaluate the risk of the development on the surrounding properties. Though the Statement of Risk states that the development has been designed so that the risk to the subject property and adjacent properties has been eliminated or mitigated such that the site is determined to be safe, it provides no supporting documentation for that statement, as required by the code. For the reasons described above, it is my opinion there are likely significant adverse impacts as a result of inadequacy of the soldier pile wall, inadequate erosion control measures, and slope instability along the shared access road.

Based on my review of the approved plans and conditions observed during visits to the area, it is my opinion that construction of the proposed single family residence at 4634 East Mercer Way in Mercer Island, Washington will adversely impact critical areas on adjacent properties, thereby jeopardizing both public safety and property. Therefore, the project should not be allowed per Section 19.07.060.D.1 and of the MICC. In addition, the July 19, 2016 Statement of Risk prepared by PanGeo does not fully address the requirements of 19.07.060.D.2 of the MICC.

Thank you for the opportunity to be of service on this project. If you should have any questions or require clarification on any of the items discussed above, please call me at (206) 390-8742.

Sincerely,



Edward J. Heavey, P.E.
Geotechnical Engineer

EJH/ejh

[G:\BARCELO\COMMENT LTR\CRITICAL AREAS PERMIT COMMENT LTR101017.DOCX]

Cc: Ms. Rita V. Latsinova,
Stoel Rives LLP
600 University Street, Suite 3600
Seattle, Washington 98101

Joanne Thomas Blackburn
Direct: (206) 676-7540
E-mail: jblackburn@gth-law.com

October 11, 2017

VIA EMAIL AND REGULAR MAIL

Robin Proebsting, Senior Planner
Development Services Group
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040
Email: robin.proebsting@mercergov.org

RE: Comments Upon Request for Approval of A Critical Area Determination In Order to Modify A Steep Slope, Associated with Construction of a New Single Family Residence

Applicant/Owner: Paul Maksimchuk/Four Seasons Homes LLC
Location of Property: 4634 E. Mercer Way, Mercer Island, WA 98040
King County Tax Parcel: 75587008
Building Permit #: 1507-166REV

Dear Ms. Proebsting:

I write to join in my neighbor's letter to you, Mr. Bruce Edwards, about our mutual driveway that will be affected by the proposed work. My family lives at 4556 East Mercer Way, one home up from Bruce. I am writing you to provide my comments relative to the pending application by Paul Maksimchuk/Four Seasons Homes LLC ("Applicants") to receive a favorable Critical Area Determination that will permit modification of a steep slope. The subject property (4634 East Mercer Way) as well as the surrounding area and roadway access all lie in a "geologic hazard area" within the meaning Mercer Island City Code ("MICC") 19.07060.A.

The views in my letter are solely my own and do not state the views or legal position of anyone else. Further, although I am a practicing attorney duly licensed in the State of Washington, I am not providing legal representation to anyone else in this matter. I am not opposed to development of this property, or others, and a large part of my legal practice is construction litigation wherein I have represented developers, general contractors, construction companies, subcontractors and material suppliers. However, I have a concern for this property and the wear and tear on our mutual driveway.

Reply to:
Seattle Office
600 University, Suite 2100 (206) 676-7500
Seattle, WA 98101 (206) 676-7575 (fax)

Tacoma Office
1201 Pacific Ave., Suite 2100 (253) 620-6500
Tacoma, WA 98402 (253) 620-6565 (fax)

Gordon Thomas Honeywell^{LLP}

October 11, 2017

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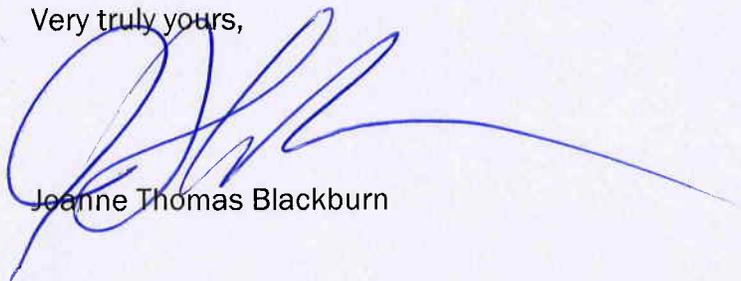
I join in Bruce's letter, his objections and proposals. I have not discussed this in great detail with my other neighbors, but want to voice my concern for the shared roadway to all of our homes. It is the only access my family and I have to our home. Should something happen to it, we will be in a difficult position. Our cars are kept in our garage at our home each night at the bottom of the roadway. We depend on our cars to get to and from our offices in Seattle. If something were to happen to the driveway, it would not only affect our work, but potentially even more. If some medical emergency were to arise, we would have no access to get help quickly or easily. Moreover, the fire hydrant for our neighborhood is located on the very access road that is at issue.

My concern is that experts hired by others have already identified that our mutual driveway cannot hold the type of traffic that is proposed for use to develop this lot. Please see the exhibits attached to Bruce's letter, especially Exhibit F, the Landau report dated October 2, 2015, page 2, Existing Access Road. Specifically the opinion that "It is likely that the existing access road will fail, necessitating total replacement."

In the event that the City decides to approve the Applicants' request for a Critical Area Determination that will permit modification of the steep slope at the subject property, I join in the requests made by Bruce that the City impose various conditions pursuant to MICC 19.07.060 upon that approval as listed in his letter. The access road will not be able to handle the proposed weight and traffic that is projected for this development.

Thank you for taking time to consider our neighborhood's concerns.

Very truly yours,



Joanne Thomas Blackburn

JTB:ck

COMMENTS
OF
BRUCE N. EDWARDS

*Concerning Request For Approval of Critical
Area Determination to Modify A Steep Slope*

Submitted October 10, 2017

Deadline

for Comments: October 11, 2017

DSG File #: CA017-007

Applicant/Owner: Paul Maksimchuk/Four Seasons
Homes LLC

Location of Property: 4634 E. Mercer Way, Mercer
Island, WA 98040

King County

Tax Parcel: 75587008

Building Permit #: 1507-166REV

LAW OFFICES OF
SORENSEN & EDWARDS, P.S.

701 FIFTH AVENUE, SUITE 3300
SEATTLE, WASHINGTON 98104

RECEIVED

OCT 10 2017

Michael R. Sorensen
Member, Washington Bar
DIRECT LINE (206)-224-8224

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CITY OF MERCER ISLAND
DEVELOPMENT SERVICES GROUP
Bruce N. Edwards
Member, Washington Bar
DIRECT LINE (206)-224-8225

October 10, 2017

VIA HAND DELIVERY

Robin Proebsting, Senior Planner
Development Services Group
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040

Re: Comments Upon Request for Approval of A Critical Area Determination In Order to Modify A Steep Slope, Associated with Construction of a New Single Family Residence

DSG File #: CA017-007
Applicant/Owner: Paul Maksimchuk/Four Seasons Homes LLC
Location of Property: 4634 E. Mercer Way, Mercer Island, WA 98040
King County Tax Parcel: 75587008
Building Permit #: 1507-166REV

Dear Senior Planner Proebsting:

I am writing you to provide my comments relative to the pending application by Paul Maksimchuk/Four Seasons Homes LLC ("Applicants") to receive a favorable Critical Area Determination that will permit modification of a steep slope. The subject property (4634 East Mercer Way) as well as the surrounding area and roadway access all lie in a "geologic hazard area" within the meaning Mercer Island City Code ("MICC") 19.07060.A.

Procedural

I begin by noting that the "Public Notice of Application" that was posted adjacent to East Mercer Way at the 4600 block road sign indicates that copies of the Project Documents may be obtained at <https://mieplan.mercergov.org/public/CA017-007/>. However, this website link is non functional, and has been for a period of time, with the result that the notice requirements of MICC 19.15.020.D.2.k ("A link to a website where additional information about the project can be found") has not been met. This requirement is mandatory. The failure to meet the public notice requirements means that the requested Critical Area Determination cannot be made at this time. I therefore request that the City of Mercer Island ("City) renounce the Critical Area Determination in a manner that complies with all applicable requirements, including those of MICC 19.15.020.D.2.k.

Relation of My Comments to the Comments of My Other Neighbors

I understand that certain of my neighbors have made their own comments requesting that the City disapprove the Applicants' request for a Critical Area Determination that will permit modification of the steep slope at the subject property. I hereby join my neighbors' comments and similarly ask that the City disapprove the Applicants' request for a Critical Area Determination that will permit modification of the steep slope at the subject property.

In the event that the City is nonetheless inclined to approve the Applicants' request for a Critical Area Determination that will permit modification of the steep slope at the subject property, I ask in the alternative that the City impose various conditions pursuant to MICC 19.07.060 upon that approval.

The views in my letter are solely my own and do not state the views or legal position of anyone else. Further, although I am a practicing attorney duly licensed in the State of Washington, I am not providing legal representation to anyone else in this matter. For perspective, I am not opposed generally to development, and have during the course of my legal practices, represented developers and construction companies. I do believe that development and construction activity must occur in a responsible manner.

Exhibits

The following Exhibits are attached to this letter and are incorporated herein by this reference:

- Exhibit A Photograph from East Mercer Way looking eastward towards "T," showing extreme slope of land on north side of Access Roadway
- Exhibit B Photograph Taken Looking From Bottom of Gully Showing Portion of Access Roadway Between "T" and East Mercer Way Looking Up To Roadway, Eastern End
- Exhibit C Photograph Taken Looking From Bottom of Gully Showing Portion of Access Roadway Between "T" and East Mercer Way Looking Up To Roadway, Western Access End
- Exhibit D Photograph Taken At Western End of Access Roadway Between "T" and East Mercer Way, showing proximity of cracks to north side of roadway and gully
- Exhibit E Photograph showing detail of cracks in Exhibit D

- Exhibit F Photograph Taken At Eastern End of Access Roadway Between “T” and East Mercer Way, showing proximity of cracks to north side of roadway and gully
- Exhibit G Photograph showing detail of cracks at eastern end of Access Roadway Between “T” and East Mercer Way, just before the “T”
- Exhibit H Showalter Expert Report (February 7, 2017) concerning Access Road, including photographs
- Exhibit I Heavey Expert Report (February 3, 2017) concerning Access Road, including photographs
- Exhibit J Rohrbach Expert Report (February 7, 2017) concerning legal requirement in a Critical Area Determination to address impact impact on other critical areas.
- Exhibit K Heavey Expert Report (October 2, 2015) concerning Access Road
- Exhibit L Conditions of Permit Approval, Permit 1507-166, as issued to Barcelo Homes, Inc. August 23, 2016
- Exhibit M Order of Dismissal on Summary Judgment, King County Cause # 15-2-26847-3 SEA

Commenter’s Personal Familiarity With The Neighborhood

My family and I reside at 4560 East Mercer Way; I have owned this single family home since 1990. For reference purposes, my property lies approximately 750 feet or so as the crow flies north of 4634 East Mercer Way (the primary property subject to the Critical Area Determination). I make all of the statements in this letter based upon my personal knowledge, except where I indicate otherwise (such as where I cite certain expert reports that are an attachment to this letter).

Description of the Neighborhood And the Access Roadway

I am thoroughly familiar with our neighborhood, including the narrow access roadway that all of us who reside within the neighborhood must share and rely upon as our sole means of ingress and egress. When I say “narrow” I mean narrow: the roadway is less than 15 feet wide and as narrow as 9 feet in some spots. Exhibit K, page 2. Like my neighbors, my legal rights to use this narrow access roadway for ingress and egress to my property ultimately derive from that certain deed granted by Burwell & Morford, a Washington corporation, to Ray U. Muffley, recorded under King County Auditor’s Number 3004748 on July 20, 1938. However, this roadway is a “public access roadway” in the sense that there is no gate at East Mercer Way, or

anywhere else for that matter, and there are no signs forbidding the public to access the roadway. Thus, members of the public (as well as those of us who reside within the neighborhood) are able to access this roadway as is desired.

This road accesses East Mercer Way at the City's 4600 block street sign on East Mercer, and then proceeds east approximately 300 feet, where the road "forks" at a T intersection. Exhibit A. Exiting the "T" to the right, the roadway accesses 4634 East Mercer Way through a series of sharp turns; exiting the "T" to the left, the roadway accesses my property at 4560 East Mercer through one long sweeping steep curve. Exhibit A. All of us who reside in the neighborhood as well as those who come into our neighborhood MUST progress through the "T" and through the 300 feet of roadway between the "T" and East Mercer Way if we are to reach East Mercer Way. There is simply no other way.

The crux of the problem that I like my neighbors face is that should either the "T" or the 300 feet of narrow roadway become impassable for any reason, including delays due to construction equipment blocking the access roadway, we are trapped. While the estimates on the precise number of trips up and down the access roadway as a part of the grading and construction activity at 4634 East Mercer Way vary, it seems reasonably certain that there will be several hundred trips over the access road with heavy construction equipment, including dump trucks, excavation equipment, and logging trucks. Exhibit H, pages 2 -3; Exhibit I, pages 2 -3; When I say the roadway is "narrow" I mean narrow: the 300 feet of roadway from the "T" to East Mercer Way is less than 15 feet wide in most spots, with a six foot high rock wall on one side and a steep gully approximately 60 feet deep on the other. See Exhibits B and C. There is no room for error in navigating this portion of the road, particularly during the wet season or the winter, when the road can become slippery. Moreover, and this is probably even more significant, the roadway is asphalt surface, not concrete, and was built years ago for light passenger vehicle use, not heavy commercial use. The roadway is built on graded native materials, not crush rock, and there are no supporting retaining walls. Exhibit K, pages 2 - 3. In two places within the 300 feet of roadway between the "T" and East Mercer Way, two major cracks have opened in the asphalt surface where the subgrade has slumped into the adjacent gully. Each of these major cracks is approximately thirty feet long, and at the widest, approximately 3/8" wide. One of these major cracks is about twenty-five feet east of East Mercer Way and at this spot the adjacent gully is at its deepest - approximately 60 feet. Exhibits D - G.

The gully that is adjacent to the 300 feet of roadway between the "T" and East Mercer Way is heavily eroded and drains directly into Lake Washington. It is a steep slope. See Exhibits B and C.

Should the portion of the roadway that lies between the "T" and East Mercer Way fail, or should a piece of construction equipment leave this portion of the roadway for any reason, the result would likely be catastrophic. Not only would all of us in the neighborhood be trapped, but

also, the possibility exists that fuel, hydrocarbons and other petrochemicals would leak or otherwise be spilled. There is no serious argument that rugged terrain with a significant difference in elevation between the access roadway and the bottom of the gully is involved, see Exhibits B and C. In the event a construction vehicle should leave the access roadway for any reason, it will roll over into this gully which would likely threaten the integrity of a vehicle's fuel tanks.

The difficulties that will attend removal of a large piece of construction equipment from the gully given the numerous trees in and around the gully pose obvious problems, as well as the slope itself. This alone could tie up the public access roadway as well as East Mercer Way for a considerable period of times, perhaps days.

An even greater problem will be the difficulties of getting containment systems immediately in place, and one must anticipate that some fuel, hydrocarbons and other petrochemicals would reach Lake Washington. The immediate portion of Lake Washington into which the gulley drains is within an area identified by the Washington State Department of Fish and Wildlife as a salmon spawning area in which no work in water is to occur (because of salmon spawning) between October and July. A significant spill of fuel, hydrocarbons and other petrochemicals that reaches Lake Washington would endanger this critical salmon habit, perhaps for years.

Given all of this, it is not surprising that the City of Mercer Island has previously determined that the area in which the roadway lies is itself a Critical Area (because it is a geologic hazard area) and thus, deserving of protection and special consideration. MICC 19.07.060.D.1. ("Alterations of geologic hazard areas may occur if the code official concludes that such alterations * * * [w]ill not adversely impact other critical areas"). See also Exhibit J, page 4. Absolutely no evidence has been submitted by Applicant that its activities upon the access roadway will not impact the roadway itself or any other portion of the geologic hazard area within which the roadway lies.

What Does All This In The Context Of The Present Request For Approval Of A Critical Area Determination In Order To Modify A Steep Slope At 4634 East Mercer Way?

First, and to repeat, I join the comments of my neighbors that the City disapprove the request for a Critical Area Determination to Modify a Steep Slope. This is the very best way to protect our roadway and the access it provides. Judge Andrus' decision in DuBrowa v. City of Mercer Island, et al., King County Cause No. 15-2-26847-3 SEA makes clear that the Critical Area determination is an open one, and one with which the City must deal because no final decision has yet been rendered by the City in accordance with the City's own ordinances (e.g., MICC 19.07.060). Exhibit M, page 9.

Second, and in the alternative, if the City does decide to approve the present Request for Approval of A Critical Area Determination In Order to Modify A Steep Slope at 4634 East Mercer Way, I believe that the City must attach conditions pursuant to MICC 19.07.060 to any Critical Slope Determination (that the steep slope at 4634 East Mercer can be modified) to protect those of us that rely daily upon our narrow roadway for ingress and egress, the Critical Area/geologically hazardous area in which our roadway lies, and the adjacent salmon spawning area of Lake Washington into which the gully that runs adjacent to the roadway drains. The conditions that I request be imposed in any Approval of a Critical Area Determination that permits modification of a Steep Slope at 4634 East Mercer Way are as follows:

- (a) That Barcelo Homes, Inc./Paul Maksimchuk/Four Seasons Homes LLC immediately post a \$50,000 cash bond in favor of those who reside in our neighborhood to provide full recompense for any damage to the roadway, its subroadway, adjacent landscaping, structures and rockeries, and/or adjacent slopes and waterways caused by the construction activity at 4634 East Mercer Way or for any economic loss suffered by any of such residents due to a denial of ingress and egress due to the construction activity at 4634 East Mercer Way protections. The \$50,000 cash bond shall be held at a commercial bank acceptable to the neighborhood residents and shall contain commercial reasonable terms for presentment of claims. Claims against the bond shall be presented to the commercial bank, with a copy to Barcelo Homes, Inc./Paul Maksimchuk/Four Seasons Homes LLC. Such claims shall be paid unless within thirty days after presentment, Barcelo Homes, Inc./Paul Maksimchuk/Four Seasons Homes LLC shall make written objection to the claim, at which point the commercial bank shall interplead the amount of the claim (or the amount of the bond, whichever is less) into the King County Superior Court. No grading or construction activity may begin at 4634 East Mercer Way until the cash bond is posted. The cash bond shall be returned to Barcelo Homes, Inc./Paul Maksimchuk/Four Seasons Homes LLC, as the case may be, 180 days after a final occupancy permit is issued for the residence to be constructed at 4634 East Mercer Way, so long as no claim has been against such bond has been presented to the commercial bank within such time period. This bond is intended to supplement and is in addition to the duty to fully repair and restore set forth in (d) below and to provide a source of funds to the extent that Barcelo Homes, Inc./Paul Maksimchuk/Four Seasons Homes LLC shall fail in such duty. At a bottom line, absent a \$50,000 cash bond, none of us have any real assurance that Barcelo Homes, Inc./Paul Maksimchuk/Four Seasons Homes LLC will have the funds to cover their obligations.

- (b) That Barcelo Homes, Inc./Paul Maksimchuk/Four Seasons Homes LLC be forbidden from parking any construction vehicles at any time at the "T" intersection or alongside East Mercer Way at any location.
- (c) That Barcelo Homes, Inc./Paul Maksimchuk/Four Seasons Homes LLC shall provide at least 72 hours advance notice to all neighborhood residents of any construction activity that is expected to close or block any portion of the roadway for more than a one-hour duration.
- (d) That Barcelo Homes, Inc./Paul Maksimchuk/Four Seasons Homes LLC are obligated to fully repair or restore any portion of the roadway, its subroadway, adjacent landscaping, structures and rockeries, and/or adjacent slopes and waterways caused by the construction activity at 4634 East Mercer Way. This requirement shall be in addition to and shall supplement the condition imposed by item 2 of "Construction Parameters," which says "[a]ll public access roadways are to be restored to the existing condition prior to project (pictures before start of work recommended). All access roads are to remain clean." Exhibit L, page 2.
- (e) That Barcelo Homes, Inc./Paul Maksimchuk/Four Seasons Homes LLC be forbidden to utilize full size dump trucks, full size logging trucks, and full size excavators and loaders, and instead that Barcelo Homes, Inc./Paul Maksimchuk/Four Seasons Homes LLC be required to utilize smaller size construction equipment and dump trucks to minimize the weight of vehicles and equipment that utilize the roadway.
- (f) That before construction or grading activity may begin at 4634 East Mercer Way, that Barcelo Homes, Inc./Paul Maksimchuk/Four Seasons Homes LLC be required to develop a spill containment and response plan by which Barcelo Homes, Inc./Paul Maksimchuk/Four Seasons Homes LLC set forth the manner in which they will respond should a spill of fuel, hydrocarbons and other petrochemicals in conjunction with construction activity at 4634 East Mercer Way, including during use of any portion of the roadway. The spill containment plan shall specifically list the equipment and materials that will be maintained onsite at 4634 East Mercer Way to contain any such spill. The draft of the spill containment plan shall be filed with the City with a copy provided to all neighborhood residents for comments. A thirty day comment period shall be provided, after which the City may finalize the spill containment and response plan. Once approved by the City, it shall be a condition of the building permit and the Critical Area Determination that Barcelo Homes, Inc./Paul Maksimchuk/Four Seasons Homes LLC abide in all

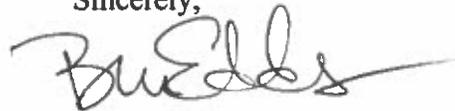
Robin Proebsting, Senior Planner
Development Services Group
City of Mercer Island
October 10, 2017
Page 8

material respects with such spill containment and response plan, and that failure to do so may result in a stop work order.

Conclusion

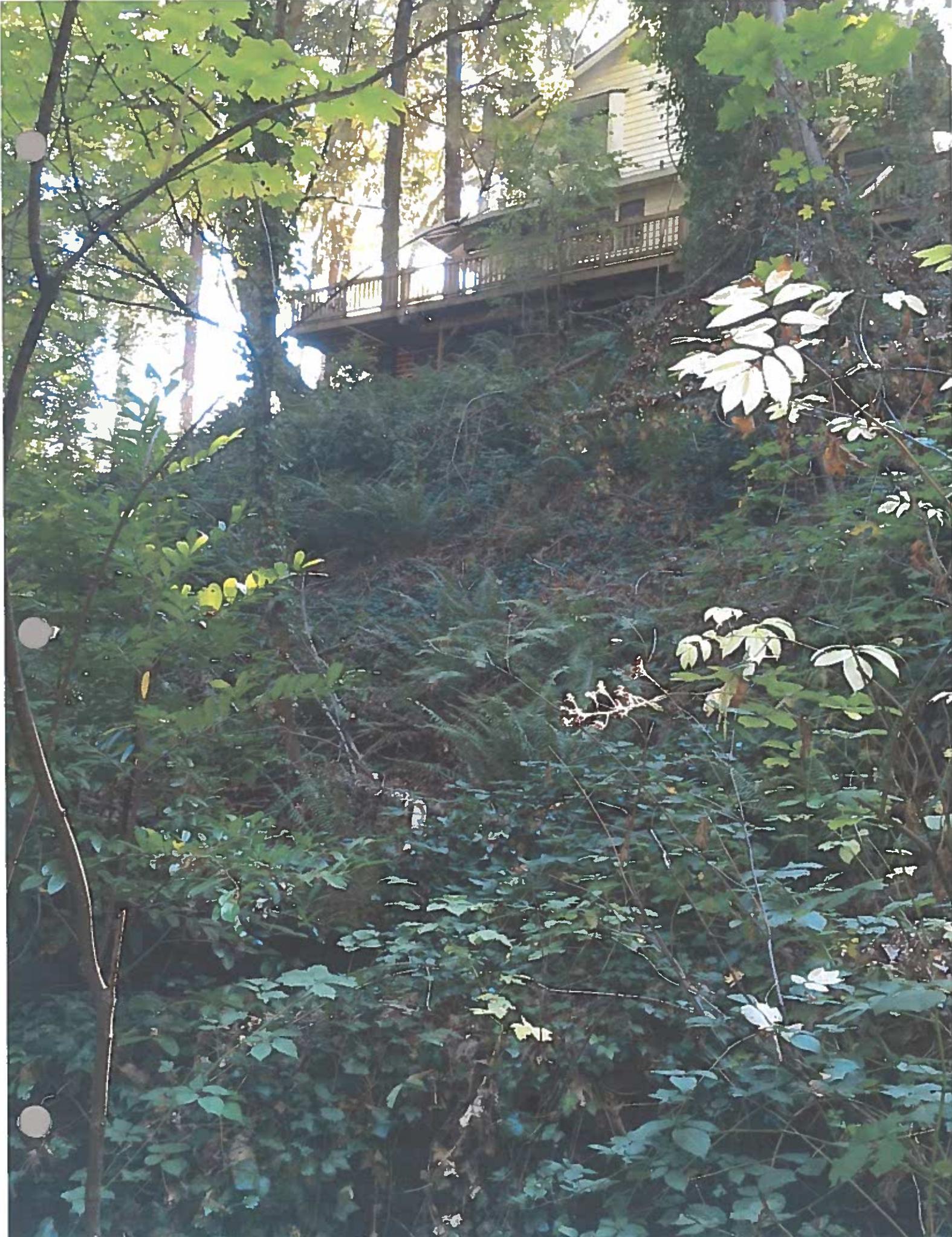
I respectfully request that the City proceed as set forth above. I hereby request a copy of the City's decision relative to Applicant's request for a Critical Area Determination that permits modification of a steep slope. Also, to the extent that the City decides to receive testimony upon Applicant's request, I hereby ask for an opportunity to testify in person. Finally, to the extent that the City desires additional materials beyond those I have submitted, please let me know so I can provide them.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce N. Edwards", with a long horizontal flourish extending to the right.

Bruce N. Edwards

















CONSTRUCTION DISPUTE RESOLUTION INC.®

February 7, 2017

Stoel Rives LLP
600 University Street, Suite 3600
Seattle, Washington 98101

via email to: rita.latsinova@stoel.com

Attn: Rita V. Latsinova

**Re: February Planning Commission
Four Seasons Homes L.L.C. Single Family Residence Development
4634 East Mercer Way
Mercer Island, Washington**

1. The asphalt access road from East Mercer Way to the subject lot is located in a critical area. It is very narrow in places and already appears to show signs of degradation at the edges. Too, besides being very steep in places it also contains numerous turns. One neighbor commented that dump trucks and even UPS trucks oftentimes have to do three and four point turns to get around some of the corners on the access road. Road access difficulty has not been addressed.
2. It is obvious that vehicular traffic has to endure tight turns and steep roadway to access from East Mercer Way to the subject lot. Mr. Heavey's calculation of "200 to 226 total truck trips to haul off the excavation spoil" would be actually only half of the trips since 200 to 200 total truck trips are what will be needed just to haul the material off. Another 200 to 226 truck trips would be trucks coming down the hill to access the subject property. In all, based on 4 Season's Homes L.L.C. submittals Mr. Heavey anticipates somewhere between 400 and 450 one-way trips on the subject driveway (200 to 226 round-trip) **just to haul off excavation spoils.**
 - a. The impact of the traffic for the removal of excavation spoils from the site described by Mr. Heavey does not take into account additional heavy equipment traffic:
 - i. excavation equipment to and from the subject property
 - ii. logging equipment and log trailers to and from the subject property
 - iii. concrete trucks to and from subject property
 - iv. concrete pump trucks to and from subject property
 - v. replacement fill delivered by truck for backfilling foundations
 - vi. lumber and construction material trucks to and from property
 - vii. construction labor and supervision traffic to and from subject property
 - b. A January 31, 2017 site visit with Mr. Heavey and a truck driver from Reliable Construction, Inc. was performed. The experienced Reliable Construction, Inc. driver was driving a Kenworth 10/12 dump truck that is typical in the excavation industry. This truck indicated a Gross tare Weight of 56,000 pounds. The reason for the site visit was to observe and photograph the truck heading down the access road [empty] and then turning around and heading back up [empty]. The following issues were observed and discussed with the truck driver:

- i. The length and width of the truck [empty] was not a major concern descending the access road as long as the parking area above the DuBrowa residence (4614 East Mercer Way) was vacant and allowed a large turning radius to get between the uphill rockery and large fir tree. Some back and forth jockeying was required to navigate the tighter turns.
 - ii. Turn around at the base of the access road was difficult and the established round circle turn was too tight for the truck to negotiate.
 - iii. Ascending the access road with the truck [empty] was met with the same challenges save for the turn between the rockery and tree above DuBrowa. The truck driver indicated a full truck the size he was driving would have a distinct probability of encountering the tree occasionally due to the circumstances. In addition if the parking area above the road was occupied with vehicle(s) the access with a large truck would be extremely difficult to negotiate.
 - iv. The truck driver suggested that due to the numerous challenges regarding access with a large truck a "fleet of 5 yard trucks" might lessen the access challenges but the road asphalt surface sub-base and would still be severely compromised due to the heavy traffic.
 1. Should the excavation and material import be performed with 5 yard trucks the number of "round trips" to remove 2200 cubic yards of material would also double from 200 to 226 (using a 10-12 yard truck) to 400 to 452 round trips (800 to 904 one way trips).
3. As for the entrance onto and off of E. Mercer Way to the south it is a rather blind corner. Consideration as to trucks pulling onto and off of the steep driveway would require traffic control during most of the project.
- a. There was no discussion as to where construction laborers, subcontractors etc. would park their vehicles during construction. Reviewing Sue Nichol's (horticulturist) review and report, preservation of the trees immediately adjacent to the construction entrance with preclude much off-street parking. According to Ms. Nichol, the following requirements must be added to the permit requirements. It is clear parking, material storage, excavation etc. cannot occur in the "Tree Protection Zone"
 - i. *5. No storage of materials, grading, construction, demolition, or other work shall occur within the tree protection zone.*

CONCLUSION

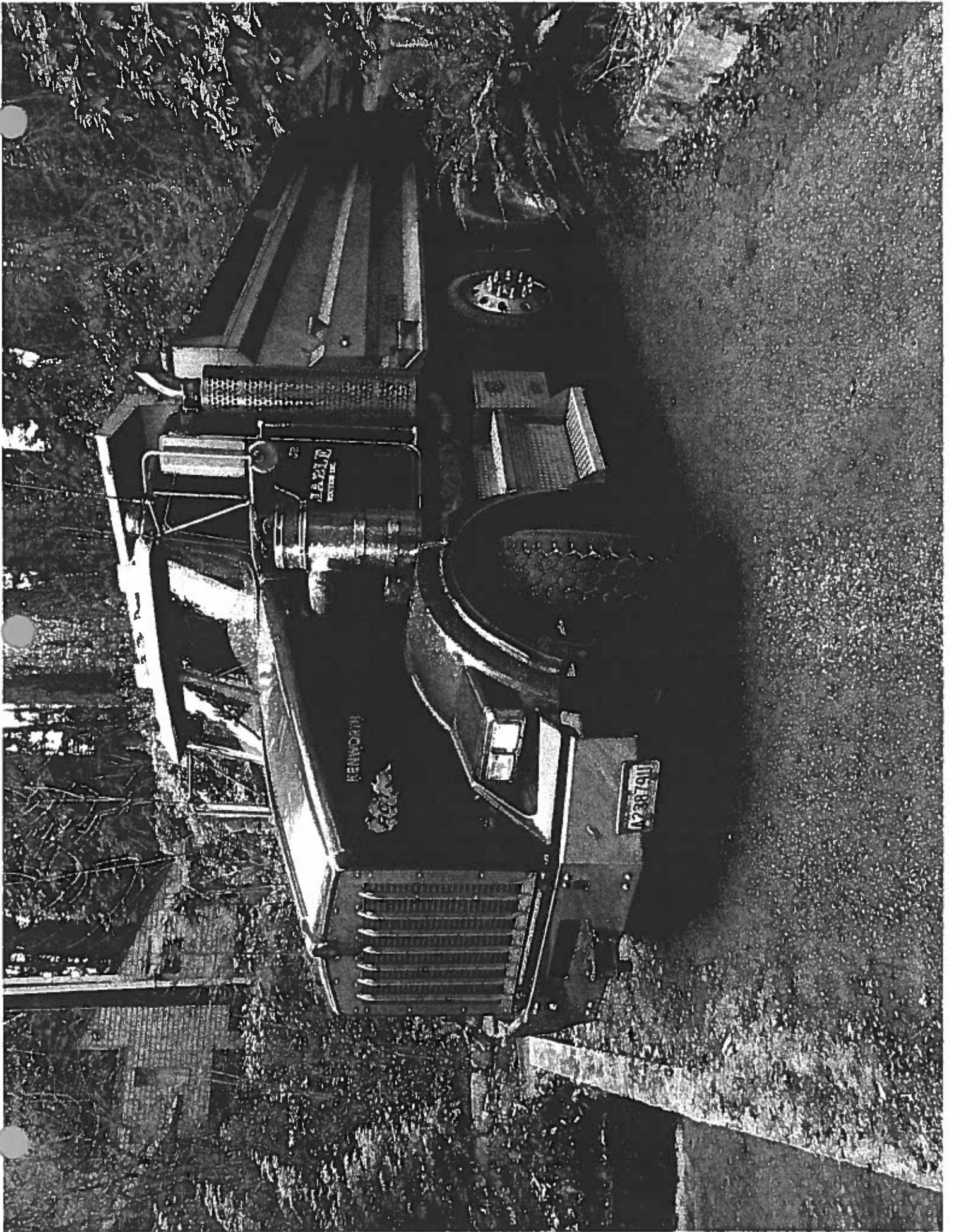
1. That there are "steep slope" areas of the subject property in excess of 40% and approaching 60% should be discussed with the geotechnical engineer and civil engineer for recommendations and/or possible restrictions for development. At least they should be accurately conveyed in the environmental checklist for the Mercer Island City Planners to accurately assess.
2. Parking for construction workers and the impact for traffic on E. Mercer Way has not been addressed
3. Large truck traffic on the access road and the ramifications have not been studied:
 - a. damage to paved surface roads
 - b. restriction of access to the homes utilizing this sole means of ingress and egress
 - c. as described above, solely for the transport of excavation spoils will require a minimum of 200 to 226 dump truck round-trips. This does not include truck access for delivery and removal of excavation equipment, concrete trucks, concrete pump trucks, construction material delivery or import of suitable soils for backfill. In fact,

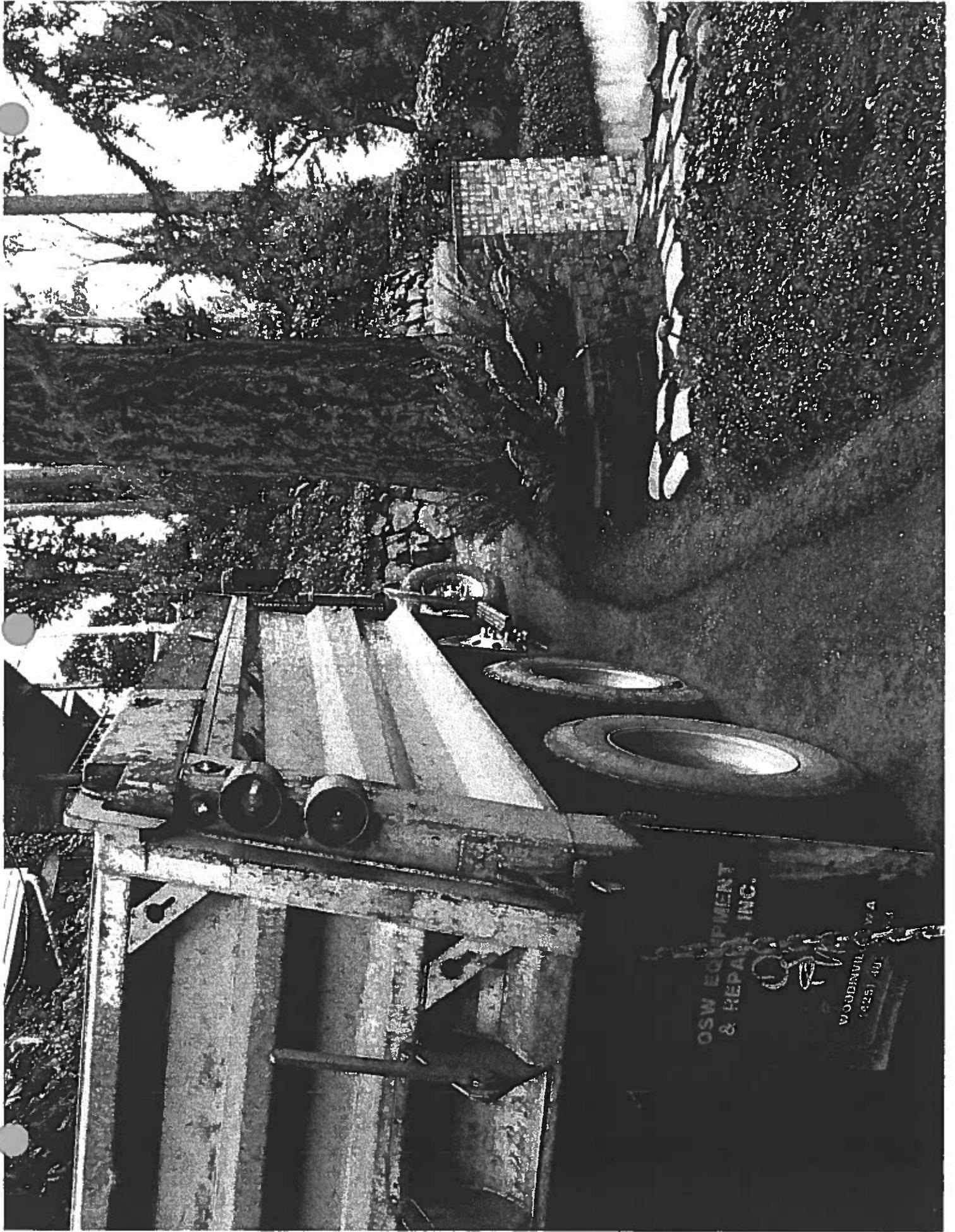
due to the restricted width and configuration of the access road in numerous places; smaller trucks may have to be utilized increasing the truck traffic for excavation to an estimated 400 to 452 round trips.

Sincerely yours,

A handwritten signature in cursive script, reading "Michael Showalter", followed by a horizontal line extending to the right.

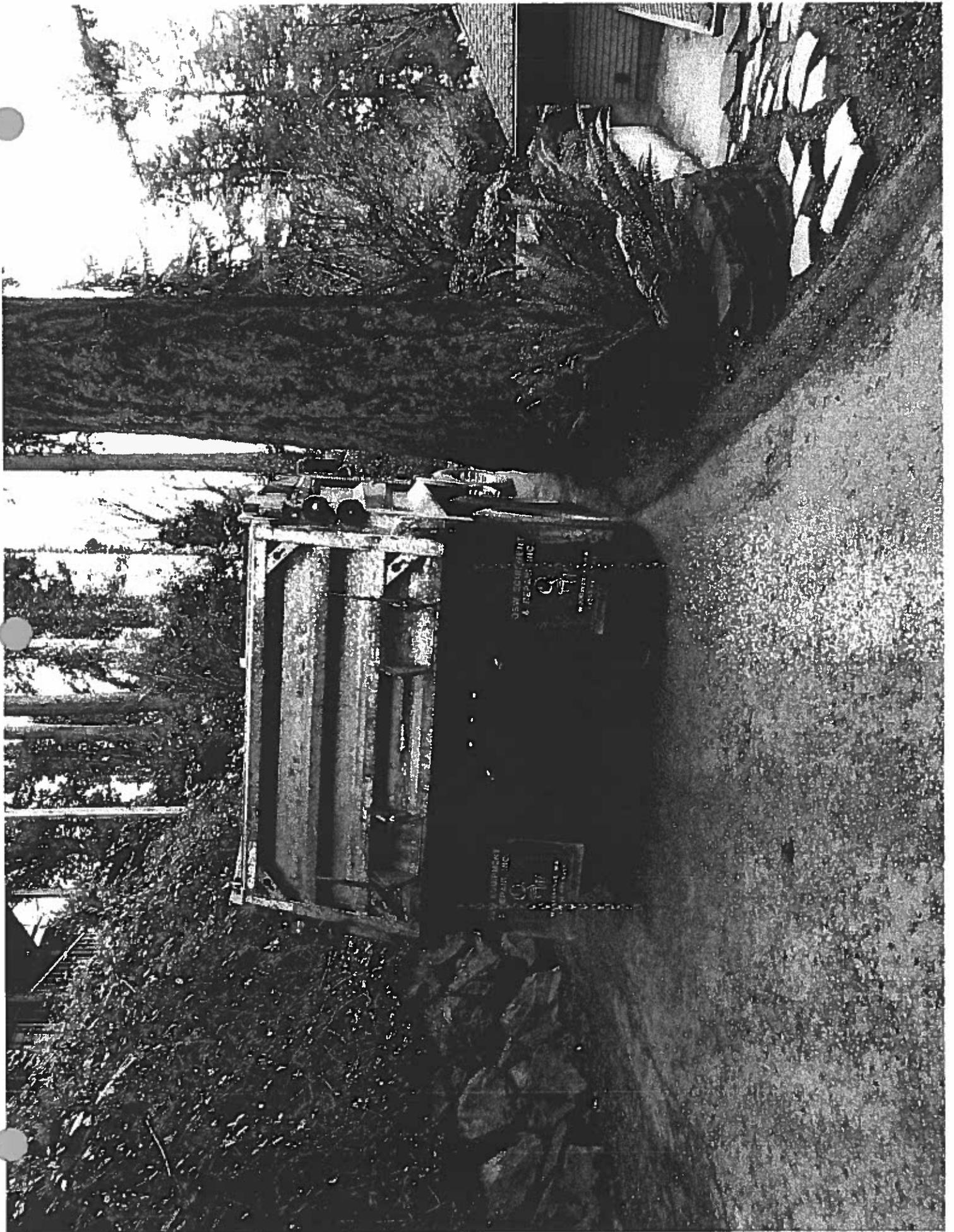
Michael Showalter, President

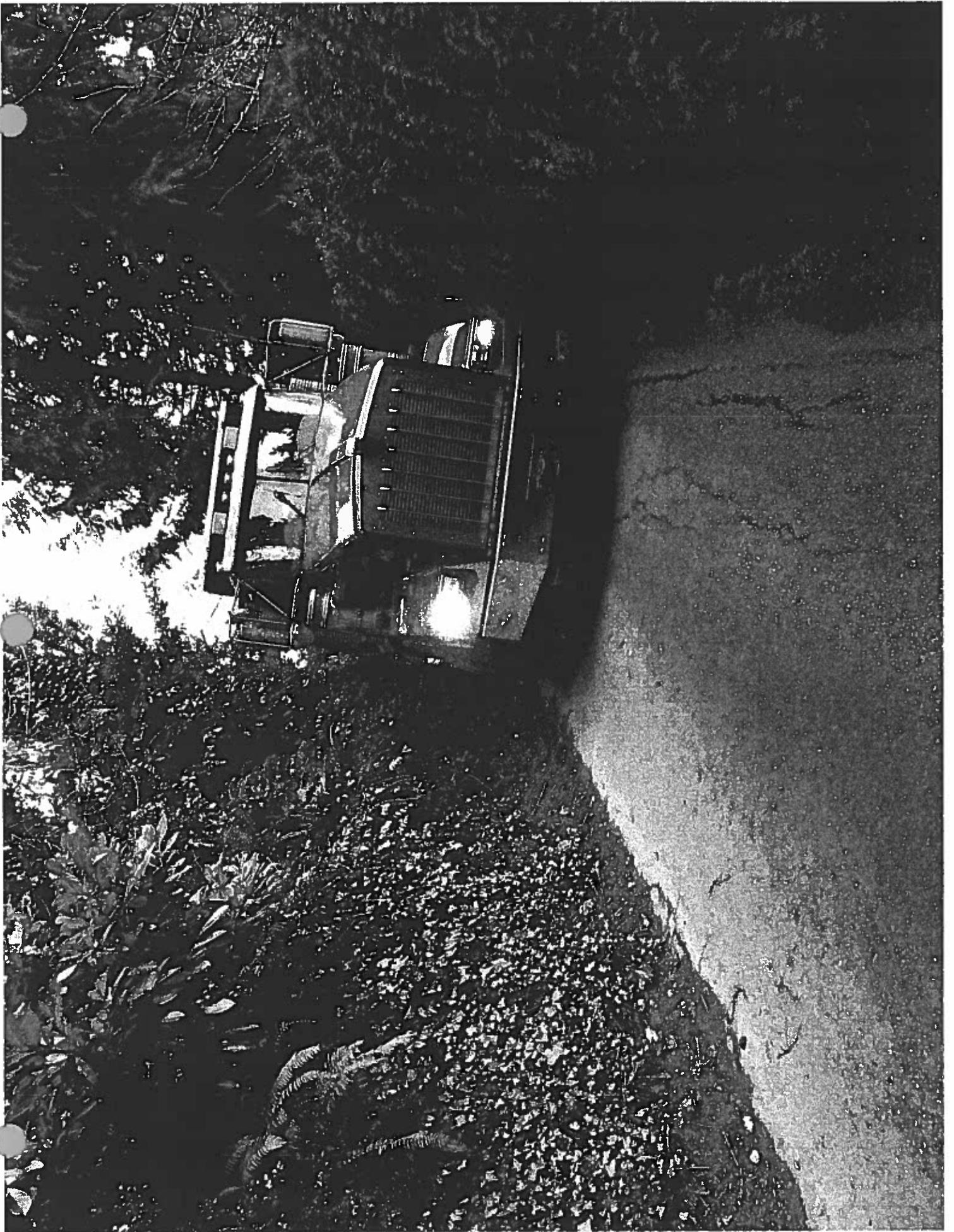


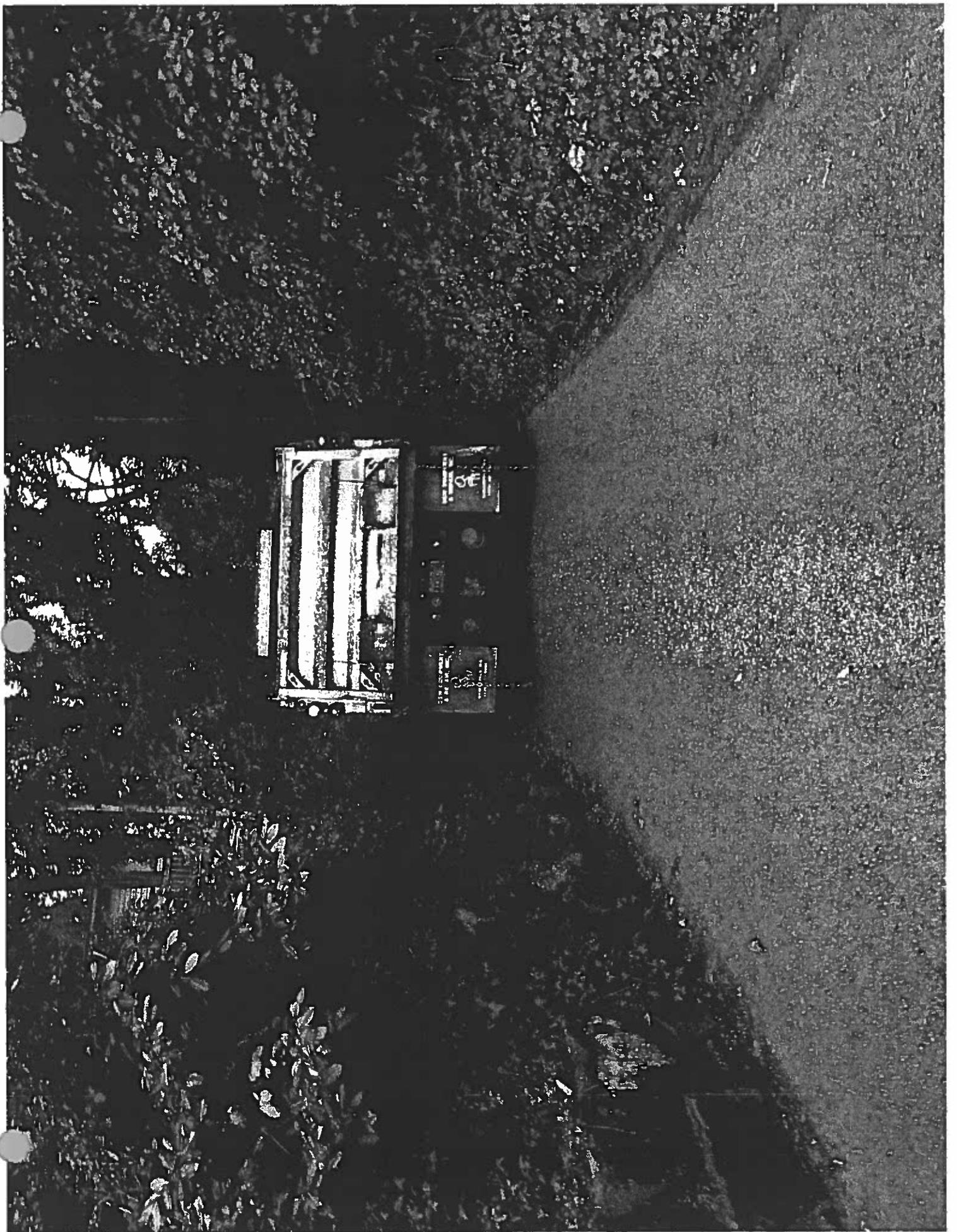


OSW EQUIPMENT
& REPAIR, INC.

Woodsport, WA
(325) 40...







February 3, 2017

Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 98101

Attn: Rita V. Latsinova

Transmitted via email to: rita.latsinova@stoel.com

Re: **Geotechnical Review of Proposed Single-Family Residence Development**
4634 East Mercer Way, Mercer Island, Washington
City of Mercer Island Permit No. 15-07-166
Project No. 0383008.010.011

Dear Ms. Latsinova:

At your request, I have reviewed the building permit document set and City of Mercer Island (City) Permit No. 1507-166¹ for the proposed single-family residence (SFR) to be located at 4634 East Mercer Way in Mercer Island, Washington (subject property). The following documents were provided for my review:

- *Geotechnical Report Addendum; Evaluation of Surcharge Load on Soldier Pile Wall; Proposed Development; 4634 E Mercer Way, Mercer Island, WA, dated August 12, 2016, prepared for Barcelo Homes, LLC by PanGeo*
- *Statement of Risk; Proposed Development; 4634 E Mercer Way, Mercer Island, WA, dated July 19, 2016, prepared for Barcelo Homes, LLC by PanGeo*
- *Response to Correction Notice #5, dated July 18, 2016, prepared by Andrew Wisdom of Studio 19 Architects*
- **Approved Building Permit Submittal Drawings, including City of Mercer Island Cover Sheet dated August 23, 2016:**
 - *Sheets G0.01 and G0.02, prepared by Studio 19 Architects*
 - *Site Survey: Sheets 1 and 2, prepared by APS Surveying and Mapping*
 - *Civil Drawings: Sheets C1 through C6, prepared by Litchfield Engineering*
 - *Architectural Drawings: Sheets A1.01 through A9.04, prepared by Studio 19 Architects*
 - *Structural Drawings: Sheets S1 through S-10, prepared by Tecinstruct LLC*
- **Conditions of Permit Approval, City of Mercer Island, August 23, 2016.**

¹ Approved by the City on August 23, 2016.

In addition, I have made several visits to the area to observe conditions as they relate to the shared community access road.

Geologic Hazard Areas

Mercer Island City Code (MICC) identifies the site of the proposed development as within a geologic hazard area. Geologic hazard areas are susceptible to erosion, sliding, earthquake, or other geological events. Because of their hazardous conditions, these areas pose a threat to health and safety when development is sited too closely. Geologic hazard areas are regulated mainly for these safety reasons, but they are also regulated for their habitat values. Steep slopes can be conduits for groundwater draining from hillsides to form the headwaters of wetland and streams.

Per section 19.07.060.D.1 of the MIMC, alterations of geologic hazard areas may occur if the code official concludes that such alterations:

- a) Will not adversely impact other critical areas;
- b) Will not adversely impact (e.g., landslides, earth movement, increase surface water flows, etc.) the subject property or adjacent properties;
- c) Will mitigate impacts to the geologic hazard area consistent with best available science to the maximum extent reasonably possible such that the site is determined to be safe; and
- d) Include the landscaping of all disturbed areas outside of building footprints and installation of all impervious surfaces prior to final inspection.

As shown on Figure 1, the shared community access roadway and the area surrounding the proposed development are located within erosion and landslide hazard areas and are critical areas as defined by MICC 19.16.010. Therefore, construction of the SFR at 4634 East Mercer Way in Mercer Island, Washington cannot adversely impact other critical areas and the surrounding properties.

Comments

My review of the materials listed on page 1 revealed no attempt by the City to analyze the adverse impact of the proposed development on "other critical areas" including the shared road, or mitigate any impacts based on best available science, as required by section 19.07.060.D.1 of the MICC.

Based on my own review of the Approved Building Permit Submittal Drawings and conditions observed during several visits to the area, likely adverse impacts to the critical areas surrounding the proposed development include:

- The paved width of the shared access road varies from about 9 1/2 ft to over 15 ft, with an average of about 10 ft. A typical truck is 8 ft in width. According to the June 24, 2015 *Site Development Information Worksheet* prepared by Andrew Wisdom of Studio 19 Architects, the development calls for the excavation of approximately 1,633 in-place cubic yards (cy) of soil. Assuming a typical fluff factor of 25 percent for converting in-place cy to truck cy, gives a total estimated volume of soil to be hauled from the site of about 2,042 cy. Assuming a typical truck capacity of 9 to 10 cy, this equates to a minimum of approximately 200 to 226 total

truck trips to haul off the excavation soil. In addition, concrete trucks, logging trucks, and numerous material supply trucks will need to use the shared access roadway during construction. The pavement at several areas along the shared access road has failed or is showing distress. Based on my experience with roadway design, the existing shared access road is inadequate to handle the expected heavily wheeled construction truck traffic.
Conclusion: The shared access roadway will likely fail, necessitating total replacement.

- The shared access road is relatively narrow (Attachment 1-1: Photographs 1 and 2; Attachment 1-2: Photograph 3). There are only a few places available along the shared access roadway for vehicles to safely pass one another. This will require vehicles to back up to areas where they can safely pass. Portions of the existing access roadway are estimated to have grades between 15 and 20 percent and there are two hairpin turns along the roadway. It will likely be difficult for a fully loaded dump truck, concrete truck, or log truck to drive up the steep portions of the access roadway. The trucks will likely need to use their lowest gear and high engine revolutions in order to climb up the roadway. This will likely result in excessive noise and increased emissions from the diesel trucks.
Conclusion: Since the access roadway is steep and narrow, it is likely that use of the roadway by local residents will be significantly impacted due to construction truck traffic.
- At the top of one of the lower hairpin turns, the road is constricted by a significant, large fir tree on one side and rockery along the other side. The road width is only 14 ft (Attachment 1-2: Photograph 4) at this location. It will be difficult for a 10 cy dump truck to make this turn (Attachment 1-3: Photograph 5) along with concrete trucks and other large trucks.
Conclusion: There is potential for significant damage to the tree and/or rockery.
- Between East Mercer Way and the upper hairpin turn, the slope along the north side of the shared access road descends steeply downward (Attachment 1-3: Photograph 6). I observed several indications of instability of the slope along this portion of the roadway. Several trees were observed to lean backwards (Attachment 1-4: Photograph 7), the fire hydrant is leaning outward (Attachment 1-4: Photograph 8), and two areas along the north edge of the shared access road have subsided (Attachment 1-5: Photographs 9 and 10). Slope instability is likely a result of creep of the surficial soil on the slope below the roadway. Between the two hairpin turns, a steep slope supported by a series of landscape retaining walls is present along the eastern side of the shared access road (Attachment 1-6: Photograph 11). Several large cracks in the pavement (Attachment 1-6: Photograph 12) that parallel the slope face were observed. The cracking is likely due to deflection of the landscape retaining walls and soil creep. The slopes supporting these portions of the shared access roadway may not be able to support the expected construction truck traffic. The project geotechnical engineer should have evaluated the impact of trucks on the stability of the slopes along the access roadway.
Conclusion: In my professional opinion, this will likely increase the potential of a slope failure involving the access roadway and represents a potential public safety hazard.
- The Temporary Erosion and Sediment Control (TESC) Plan (Sheet C4) calls for the temporary construction access roadway to be constructed of quarry spalls. Though required by Note 4 of the approved TESC Plan, no measures are shown to prevent and/or capture runoff and sediment from the construction access road before reaching the shared access roadway. Note 2 of the TESC only requires sweeping of the shared access roadway to remove sediment from the shared access roadway at the end of the day. Even if earthwork will likely occur between April and October of 2017, significant precipitation events can occur in the spring and summer months and uncontrolled runoff from temporary construction access roadway can adversely

impact the residence downgradient from the subject property. Section 1.07.060.D.1.b of the MICC does not allow for increased runoff from geologic hazard areas.

Conclusion: There are inappropriate erosion control measures for the temporary access road, jeopardizing the down gradient property owner.

- All runoff from the shared access road from the lower hairpin turn is collected by a trench drain across the driveway to the residence located at 4632 East Mercer Island Way (Attachment 1-7: Photograph 13). The trench drain may discharge directly to Lake Washington. Without adequate erosion control measures, sediment from the construction site may reach the lake.

Conclusion: There are inappropriate erosion control measures for the temporary access road, exposing Lake Washington to construction sediment flows.

- Sheet 3 of the Civil Drawings show that the lower portion of the driveway is sloped in excess of 20 percent. A single catch basin is shown at the base of the driveway. In my professional opinion, during periods of intense precipitation, stormwater runoff from the driveway will likely overshoot the catch basin and flow down the shared access road. Section 1.07.060.D.1.b of the MICC does not allow for increased runoff from geologic hazard areas.

Conclusion: There is insufficient analysis and design of the stormwater collection system of the driveway, impermissibly exposing the geologic hazard area to increased runoff.

Statement of Risk

Per section 19.07.060.D.2 of the MICC, alteration within geologic hazard areas may occur if the development conditions listed in MICC section 19.07.060.D.1 are satisfied and the geotechnical professional provides a statement of risk with supporting documentation indicating that one of the following conditions can be met:

Statement of Risk. Alteration within geologic hazard areas may occur if the development conditions listed above are satisfied and the geotechnical professional provides a statement of risk with supporting documentation indicating that one of the following conditions can be met:

- a) The geologic hazard area will be modified, or the development has been designed so that the risk to the lot and adjacent property is eliminated or mitigated such that the site is determined to be safe;*
- b) Construction practices are proposed for the alteration that would render the development as safe as if it were not located in a geologic hazard area;*
- c) The alteration is so minor as not to pose a threat to the public health, safety and welfare; or*
- d) An evaluation of site specific subsurface conditions demonstrates that the proposed development is not located in a geologic hazard area.*

MICC 19.07.060.D.2 (emphasis added).

The following specific comments are provided regarding the July 19, 2016 Statement of Risk prepared by PanGeo:

- The Statement of Risk provides no supporting documentation that the requirements of section 19.07.060.D.2 have been met.
- The Statement of Risk states that *"The overall site stability will be greatly improved for the post-construction condition after soldier pile walls are constructed."* Section E on Sheet S10 of the *Structural Drawings* shows a temporary excavation in front of the soldier pile wall along the west side of the house to accommodate construction of the basement foundation. The excavation appears to be about 12 ft deep and sloped at about a 1 horizontal to 1 vertical inclination. The detail indicates that the excavation is to be backfilled after construction of the basement wall, leaving a level surface in front of the soldier pile wall. Review of the soldier pile calculations (Response to Correction Notice #5), indicates that an allowable passive lateral earth pressure of 300 pounds per cubic foot (pcf) was used in the design of the soldier pile wall. In my opinion, an allowable passive lateral earth pressure of 300 pcf would be appropriate if the ground surface in front of the soldier pile wall is level. The soldier pile wall along the west side of the house may undergo unacceptable deflection due to inadequate lateral resistance. The geotechnical engineer and structural engineer should have evaluated and revised the design as necessary.
Conclusion: In my professional opinion, the passive lateral earth pressure inadequately accounts for the temporary excavation in front of the wall, jeopardizing the integrity of the site and presenting a potential safety hazard.
- My review the Approved Building Permit Submittal Drawings and conditions indicates that the erosion control measure are inadequate.
- The slopes supporting portions of the shared access roadway may not be able to support the expected construction truck traffic. This will likely increase the potential of a slope failure involving the access roadway and represents a potential public safety hazard.

In my opinion, the July 19, 2016 Statement of Risk prepared by PanGeo does not fully address the requirements of MICC section 19.07.060.D.2. All critical areas must be designated and their functions and values protected using the best available scientific information - known as "BAS". It does not appear as if BAS was used to evaluate the risk if the development on the surrounding properties. Though the Statement of Risk states that the development has been designed so that the risk to the subject property and adjacent properties has been eliminated or mitigated such that the site is determined to be safe, it provides no supporting documentation for that statement as the code requires. For the reasons described above, it is my opinion there are likely adverse impacts as a result of inadequacy of the soldier pile wall, inadequate erosion control measures, and slope instability along the shared access road.

Other Issues

Other issues to note:

- The City permit conditions require special inspections. The City's cover sheet attached to the approved drawings does not list any required special inspections. The City should list the required special inspections on the cover sheet.
- The shared access roadway joins East Mercer Way on a curve and there is poor site visibility, especially for vehicles traveling north on East Mercer Way (Attachment 1-7: Photograph 14). Without proper traffic control at the intersection, there is an increased risk to motorists and bicyclists traveling on East Mercer Way from construction vehicles entering the roadway.

Based on our review of the approved plans and conditions observed during our visits to the area, it is my opinion that construction of the proposed SFR at 4634 East Mercer Way in Mercer Island, Washington will adversely impact critical areas on adjacent properties, thereby jeopardizing both public safety and property. Therefore, the project should not be allowed per MICC Section 19.07.060.D.1. In addition, the July 19, 2016 Statement of Risk prepared by PanGeo does not fully address the requirements of MICC Section 19.07.060.D.2.

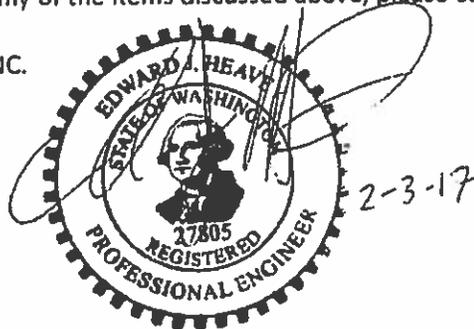
Thank you for the opportunity to be of service on this project. If you should have any questions or require clarification on any of the items discussed above, please call me at (206) 390-8742.

LANDAU ASSOCIATES, INC.

Edward Heavey
Principal

EJH/jrc

[Y:\383\008 #1\CRITICAL AREAS COMMENT LETTER\CRITICAL AREAS PERMIT COMMENT LTR.DOCX]



Attachments: Figure 1: Landslide Hazard Map
Attachment 1: Site Photographs

ATTACHMENT 1

Site Photographs



1. Lower portion of access road, looking west from the northeast corner of the subject property.



2. Access road, looking south from upper hairpin turn toward lower hairpin turn.

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3. Upper portion of access road, looking west toward East Mercer Island Way.



4. Constricted at lower hairpin turn.

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5. A 10-cubic yard truck making turn between large tree and rockery.



6. Slope along upper portion of access road, looking east from East Mercer Island Way.

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7. Backward leaning tree along shared access road.



8. Leaning fire hydrant along shared access road.

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9. Depression and cracking of access road pavement along top of slope.

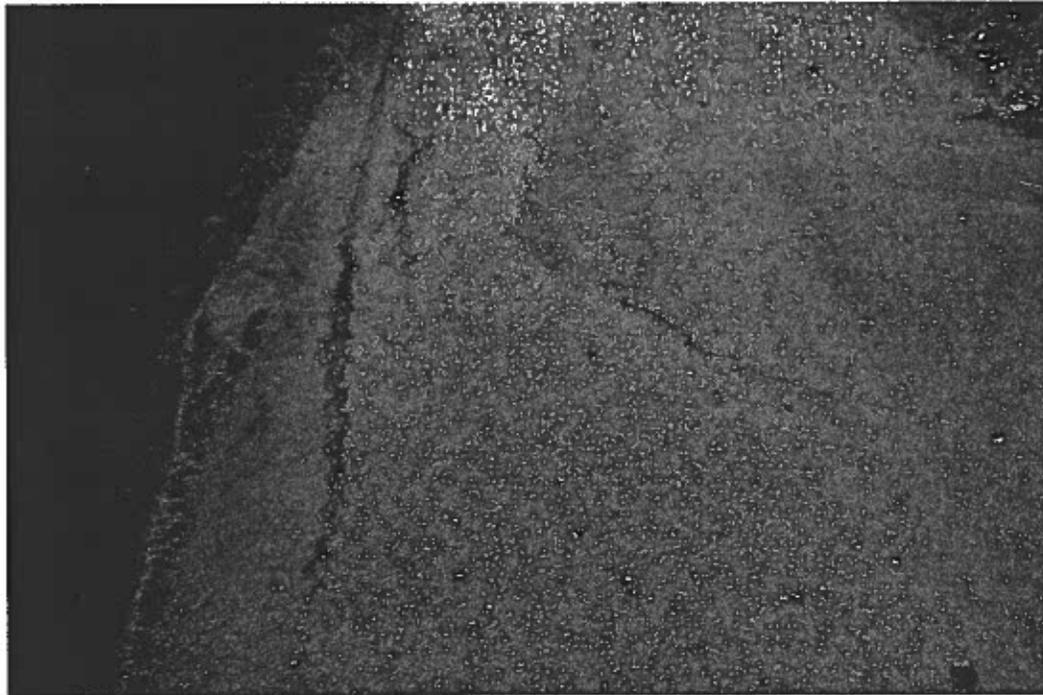


10. Depression and cracking of access road pavement along top of slope.

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11. Retaining walls supporting access road between hairpin turns.



12. Depression and cracking of access road pavement along top of slope.

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13. Trench drain at east end of access road.



14. Looking north along East Mercer Island Way toward intersection with entrance to access road; photo taken about 100 ft south of entrance.

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G. Robert Rohrbach
Building Code Consultant

February 7 2017

Stoel Rives LLP
600 University Street, Suite 3600
Seattle, Washington 98101

Attn: Rita V. Latsinova

RE: City of Mercer Island Project No. 0383008.010.011

Dear Ms. Latsinova:

You have asked for a summary of my opinions regarding the construction of a new single family residence on a steep slope lot at 4634 East Mercer Way as it relates to Chapter 19 of the Mercer Island Code. I am organizing my thoughts in the order I would propose to present them to the Planning Commission.

Application of MIMC Title 19 to a building permit application

INTRODUCTION. My name is G. Robert Rohrbach. I have over 25 years of experience as a Building Official in 5 different cities, nine of which were spent as the Building Official for the City of Mercer Island. I was involved in daily plan review and site inspections of new construction on Mercer Island, and developed permit application and review procedures to ensure full disclosure of project information in complete application documents. I also participated in the development of Ordinance A-18, known as the Steep Slope Code. This ordinance is now codified in Chapter 19 of the Mercer Island Municipal Code as a part of the environmental review criteria for new development.

Early on in my career as a Building Official, I attended a seminar devoted to reading, writing, and interpreting the language of Building Codes and Municipal Statutes. One of the more important concepts I learned during this seminar was the need to understand the construction of the regulation and how important it is to begin by understanding the definitions, the intent, and the purpose and scope of the regulation or code. The rest of the body of the regulation will flow from these elements and enumerates the details and means of regulating the targeted activity.

DEFINITIONS. I would like to begin with the definitions of slope and steep slope in Title 19 of the MIMC. This is an important starting point in this inquiry because the determination of what regulations apply to the issuance of a building permit for this project is based on which definition applies to the subject site.

- Exhibits showing definitions and site topography.

TITLE 19 REVIEW. In most cities in Washington State, the Building Official is responsible for the administration and enforcement of the building code and its companion codes as promulgated by the State Building Code Council. In the City of Mercer Island, the City Council has added an additional layer of review and enforcement by the adoption of Title 19, which was adopted for the purpose of protecting and promoting health, safety, and the general welfare through the regulation of development within the city of Mercer Island, with special emphasis on the abatement of unsafe and dangerous conditions that can occur as the result of construction on a steep slope or geologically hazardous property.

Because of this additional layer of regulation, the first step the applicant and the Building Official need to take is to analyze the available maps to determine whether the regulations regarding construction in a geologic hazard area will apply and what additional information is necessary to evaluate the project in conformance with the provisions of Section 19.07.060 of the Municipal Code.

As a result of my review of the permit application documents, it is apparent that:

- The applicant did not correctly calculate the slope on the site per the code definitions. This resulted in a project submittal that was lacking in adequate geotechnical review and evaluation, coordination between the design consultants to develop a slope sensitive construction plan and construction sequence, and an adequate site restoration plan.
- It is my opinion that the Building Official did not exercise appropriate caution when reviewing the geotechnical report for this project. I believe that he should have utilized the provisions of Section 19.070.060(C)2 of the MIMC to require peer review of the entire geotechnical report when it has been prepared for construction on a steep slope lot and associated with a waiver of the construction season limitation for a geologic hazard area. Instead, the Building Official required peer review of only the soldier pile design. The peer reviewer concluded that the proposed

design was insufficient and required extensive revisions. This finding leaves doubt as to the adequacy of the balance of the report.

SECTION 19.07.060. Once it is determined that the project is located on a steep slope, the conditions of this section of Title 19 become **the minimum** requirements for the applicant to prove that the project can be constructed in a manner that mitigates the risk of landslide and erosion, without causing damage to adjacent properties or other improvements in geologic hazard areas.

Specifically, Section 19.07.060.C requires the submittal of a comprehensive geotechnical report with design recommendations that are intended to mitigate the risks associated with the slope and soils found on the subject site. Section 19.07.060.D.2 also requires the geotechnical engineer to prepare a statement of risk, **"with supporting documentation"**, indicating that either:

- a) The geologic hazard will be modified, or the development has been designed to eliminate the risk and the site and surrounding properties will be safe, or
- b) Construction practices are proposed for the project that would result in a condition of stability as if the site were not located in a geologic hazard area, or
- c) The alteration is so minor as to pose no threat to surrounding properties, or
- d) An evaluation of site specific subsurface conditions demonstrates that the site is not located in a geologic hazard area.

In this instance, the original geotechnical report by PanGeo did not include a statement of risk. A supplemental report by PanGeo submitted on July 19, 2016 stated that the requirements of section 19.07.060.D.2.b¹ above are met, but without any supporting documentation required by the code. The geotechnical engineer modified his recommendations to include some large concrete blocks to stabilize the cuts into the site, but this recommendation has not been incorporated into the project plans or construction sequencing to ensure the intended stability.

¹ The supplemental report incorrectly cited the city code and erroneously referenced 19.07.060.D.2.c rather than 19.07.060.D.2.b.

Independent of the statement of risk in subsection D.2 above, all four conditions (a) through (d) in Section 19.07.060.D.1 must also be met. Alteration of a critical area is not allowed unless the review demonstrates that:

- a) The project work "**will not adversely impact other critical areas.**"

This requirement has been ignored completely in this application in that there is no mention of protection of off-site properties or the road serving the subject site, which is a private road that traverses multiple geologic hazard areas.

- b) The project will not "adversely impact" (destabilize the site or increase surface water flow) the subject property or adjacent properties;

In this instance, there is no evidence of an evaluation for perched water in the hillside, nor is there a site restoration plan to maintain soil stability and reduce erosion.

- c) The project "will mitigate impacts to the geologic hazard areas consistent with best available science to the maximum effect reasonably possible."

This again should have been reflected in the geological engineer's statement of risk and mitigation proposals and supported by specific design criteria.

- d) The site restoration will be completed per the approved plan.

In this instance, there is no site restoration plan that can be relied on to provide the intended stabilization and erosion control.

Finally, because the project includes a new drainage line running from the site to the shore of Lake Washington, the developer must show compliance with Section 19.07.110, which provides the standards and specifications for work within the shoreline of Lake Washington. My review of the permit drawings reveals that:

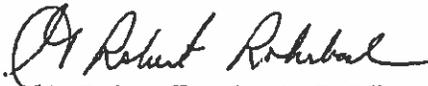
- The issue of work in the shorelines of Lake Washington does not appear to have been addressed. There is a large storm drain line of uncertain size, (one note states a 6" line, while another note states a 12" line), proposed in a 5' wide easement running from the subject site to the shore of the lake. It is unclear from the notes and details on pg 6 of the Civil drawings how much of the line will be buried, and it is not clear that

Civil drawings how much of the line will be buried, and it is not clear that the storm line can actually be placed in the 5' easement while avoiding damage to the existing trees in the easement.

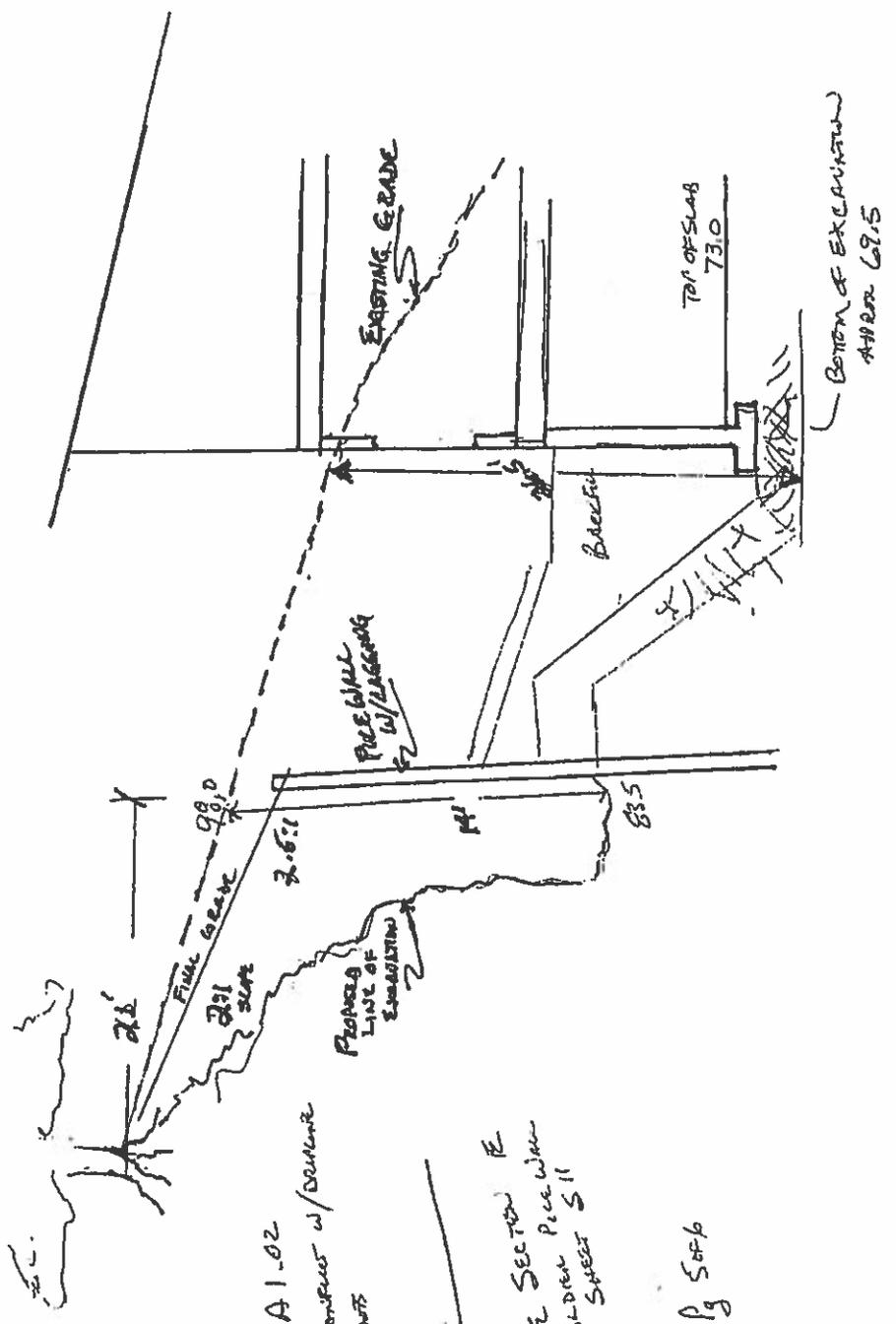
- There is also no mention of the shoreline stabilization and net loss of shoreline ecological function in the geotechnical report as required by MIMC 19.07.110 (B) 2. There is also no evidence of a permit from fisheries for work to install a new storm drain outlet into the lake.
- There is no calculation of the amount of excavation required in the 200 foot shoreline management area in order to install the storm drain line. Excavation and/or surface modification in excess of 250 cu yd will require a Shorelines permit. (MIMC 19.07.110(E)Table C.

Conclusions and recommendation. It is my opinion that this application is so lacking in the required information and appropriate detail for a project of this magnitude in a geologic hazard area, it is apparent that the proposed contractor/developer and his design team are equally lacking in the necessary knowledge and experience to adequately pursue this project in the winter months, and the City should withhold any waiver of the seasonal limitations imposed by Section 19.07.060.D.4.

It is also my opinion that because of the serious lack of compliance with Title 19 in the documentation presented by the developer, permit 1507-166 for construction on a steep slope does not comply with the intent and purpose of MIMC Chapter 19 with respect to alteration of geologically hazardous areas. The City should rescind permit 1507-166, and require the completion of adequate studies (including a Critical Area Study, MIMC 19.07.050) to establish that any proposed construction will meet the protections and risk mitigation intended by Title 19 of the MIMC for the subject site, the adjacent properties, the road serving the site, and the shoreline.



By: G. Robert Rohrbach, Building Code Consultant



SEE A1-02
 FOR CONCRETE W/ DIMENSIONS
 & NOTES

SEE SECTION E
 FOR PILE WITH
 SOILDEN SHEET S11

pg 5 of 6

October 2, 2015

Stoel Rives LLP
600 University Street, Suite 3600
Seattle, Washington 98101

Attn: Rita V. Latsinova

Transmitted via email to: *rita.latsinova@stoel.com*

Re: **Geotechnical Review**
Proposed Single-Family Residence Development
4634 East Mercer Way, Mercer Island, Washington
Project No. 0383008.010.011

Dear Ms. Latsinova:

At your request, I have reviewed documents submitted to the City of Mercer Island (City) for the proposed single-family residence (SFR) to be located at 4634 East Mercer Way in Mercer Island, Washington (subject property). The following documents were provided for my review:

- *Geotechnical Engineering Study (Revised); Proposed Development; 4634 E Mercer Way, Mercer Island, WA, dated July 11, 2014, revised February 2, 2015 prepared for Barcelo Homes, LLC by PanGeo*
- *Structural Drawings: Sheets S1 through S-9, dated March 11, 2015 prepared by Tecinstruct LLC*
- *Site Survey: Sheets 1 and 2, dated March 15, 2015 prepared by APS Surveying and Mapping*
- *Civil Drawings: Sheets C1 through C4, dated June 16, 2015 prepared by Litchfield Engineering*
- *State Environmental Protection Agency (SEPA) Checklist, dated June 24, 2015 by Andrew Wisdom of Studio 19 Architects*
- *Site Development Information Worksheet for Single Family Residential Development, dated June 24, 2015 by Andrew Wisdom of Studio 19 Architects*
- *Building Permit Submittal Drawings: Sheets G0.01 and G0.02, dated June 24, 2015 prepared by Studio 19 Architects*
- *Architectural Drawings: Sheets A1 through A9, dated June 24, 2015 prepared by Studio 19 Architects.*

In addition, I accompanied you and Mr. Mike Showalter of Construction Dispute Resolution, Inc., to observe site conditions from the shared neighborhood access road.

QUALIFICATIONS

I am a principal geotechnical engineer with Landau Associates with over 29 years of geotechnical experience throughout the Northwest. I am currently providing third-party-peer review services to the

Cities of Edgewood and Federal Way, Washington. My project experience includes major water and sewage pipelines, dams, water reservoirs, wastewater treatment facilities, roads, bridge, and geological hazards assessment, including landslide and slope stabilization. I am highly experienced in geologic hazard assessment and slope stability. A copy of my current resume is attached (Attachment 1).

OBSERVATIONS AND OPINIONS

The following summarizes my observations and opinions regarding the above-referenced development.

Slope Inconsistency

There is inconsistency in the above documents regarding steepness of the slopes at the site of the subject property. In section B.1.b of the *SEPA Checklist*, the steepest slope on the site is stated to be 37.89 percent. The *Site Development Information Worksheet* indicates that the average slope is 37.89 percent. The *Geotechnical Engineering Study* report prepared by PanGeo indicates that the average slope across the site is about 25 percent. It is unclear how PanGeo arrived at this number. The topography shown on the *Site Survey* (Sheet 1 of 2) indicates that portions of the slopes on the site, as measured over a horizontal distance of at least 30 feet (ft), are between 50 and 60 percent. A markup of the *Site Survey* (Sheet 1 of 2) showing three slope areas that are in excess of 50 percent is attached (Attachment 2). According to the City's requirements where critical slopes are greater than 50 percent, no development is allowed and no impervious surfaces are permitted, unless the applicant can demonstrate through professional reports that the public's health, safety, and welfare will not be compromised. In addition, with slopes greater than 50 percent, the lot coverage requirements may be different than assumed for the proposed development.

Existing Access Road

The existing access road was observed to consist of few inches of asphalt; subgrade support conditions for the access road are marginal at best. As stated in Section A.11 of the *SEPA Checklist*, the development calls for the excavation of approximately 1,633 in-place cubic yards (cy) of soil. Assuming a typical fluff factor of 25 percent for converting in-place cy to truck cy, gives a total estimated volume of 2,042 cy of soil to be hauled from the site. Assuming a typical truck capacity of 9 to 10 cy, this equates to a minimum of approximately 200 to 226 total truck trips to haul off the excavation soil. In addition, concrete trucks, logging trucks, and numerous material supply trucks will need to use the access road during construction. Based on our experience with roadway design, the existing access road is inadequate to handle the expected construction truck traffic. It is likely that the existing access road will fail, necessitating total replacement.

The width of the access road varies from about 9½ ft to over 15 ft. A typical truck is 8 ft in width. There are a few places available along the access road for vehicles to safely pass one another. There are

limited areas where a truck can turn around. It may be necessary for the trucks to back down the access road to the site. Portions of the existing access road are estimated to have grades between 15 and 20 percent. It will likely be difficult for a fully loaded dump truck or log truck to drive up the steep portions of the access roadway. The trucks will likely need to use their lowest gear and high engine revolutions in order to climb up the roadway. This will likely result in excessive noise and increased emissions from the diesel trucks. Given how steep and narrow the access road is, it is likely that there will be significant impacts to the residents along the access road due to construction truck traffic.

The access road (4600 block) joins East Mercer Way on a curve and there is poor site visibility for vehicles traveling north on East Mercer Way. Without proper traffic control at the intersection, there is an increased risk to motorists and bicyclists traveling on East Mercer Way from construction vehicles entering the access road.

The temporary construction access road into the site will likely be sloped at least 20 percent. It is impractical for a dump truck or log truck to access the site using such a steep roadway. Therefore, the trucks will likely have to be loaded out while sitting in the access road. This will negatively affect the residents who share the access road.

The Temporary Environmental and Sediment Control (TESC), Plan Sheet C4 of the *Civil Drawings* calls for the temporary construction access roadway to be constructed of quarry spalls. No provisions are shown on the TESC Plan as to how runoff from the temporary construction access roadway will be retained on the site. Even though earthwork will likely occur between April and October of 2016, significant precipitation events can occur in the spring and summer months and uncontrolled runoff from the temporary construction access road can adversely affect the residence downgradient from the subject property.

Tree Drip Line

There appears to be an inconsistency with the size of the radius of the tree drip line circles shown on the *TESC Plan* (Sheet C4) and Sheet A1.01 of the *Architectural Drawings*. The proposed temporary access road and proposed temporary stockpile area shown on drawing C4 would be within the tree drip line radius shown on drawing A1.01. If the radii of the tree drip lines circles are incorrectly shown on drawing C4, there is a potential for negative impacts to the trees that are to remain. Drawing A1.01 also indicates that there will be clearing and grading activities within the tree drip line circles, such as trenching for the site utilities, construction of retaining walls, and fill placement downslope and upslope of the proposed subject property.

CONCLUSIONS AND RECOMMENDATIONS

In my opinion, there are several issues that warrant additional investigation by the City. These include:

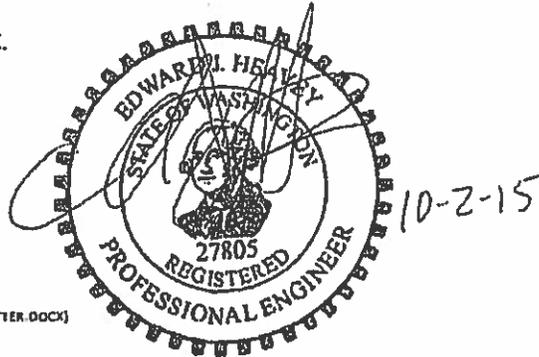
- Lot coverage requirements, given that there are slopes of up to 60 percent on the property
- Noise and air impacts from construction trucks
- Impacts to East Mercer Way for construction traffic
- Ingress and egress impacts due to construction truck traffic
- Impacts to the shared access roadway from construction truck traffic
- The potential for stormwater runoff from the temporary access roadway
- Impacts within the tree drip line circles due to excavation and grading activities at the site.

Thank you for the opportunity to be of service on this project. If you should have any questions or require clarification on any of the items discussed above, please call me at (253) 284-4875.

LANDAU ASSOCIATES, INC.

Edward J. Heavey
Principal

EJH/jrc
(Y:\389\008.010\RDU 8ROWA COMMENT LETTER.DOCX)



Attachments: Attachment 1: Edward J. Heavey Resume
Attachment 2: Marked-up Site Survey Map

Edward J. Heavey Resume

Ed Heavey, P.E.

Principal, Geotechnical Engineer

Expertise

Project management

Geotechnical engineering

Slope stability and slope deformation analysis

Trenchless technology

Seismic engineering

Geologic hazard assessment

Construction support

Education

M.S., Geotechnical Engineering, University of Washington, 1987

B.S., Geological Sciences, University of Washington, 1982

Registration

Professional Engineer (Civil): 1991/Washington, No. 27805

Ed is a principal geotechnical engineer with more than 29 years of experience assisting public agencies and private clients with design and construction of major water and sewage conveyance pipelines, pump stations, wastewater treatment facilities, storm drainage facilities, slope stabilization, roads and bridges, water reservoirs, buildings and educational facilities. Ed has extensive experience providing a wide range of geotechnical engineering support services such as geological hazards assessment, forensic studies, expert testimony/ litigation support, critical area reviews, third party peer reviews, pavement design, seismic engineering and construction support for a wide range of municipal clients.

City of Tacoma, North Waterview Stabilization Project Pond Evaluation; Tacoma, WA. Project manager for geotechnical services to the City of Tacoma for the repair of a landslide that occurred in the 4600 block of North Waterview Street in Tacoma. The landslide took out almost the entire roadway width. A soldier pile wall with permanent tieback anchors was constructed to retain the roadway across the slide area. Landau Associates completed geotechnical explorations to characterize near surface soil and groundwater conditions, developed geotechnical design recommendations for the soldier pile wall. Landau Associates also provided geotechnical support during construction of the soldier pile wall.

City of Edgewood, On-Call Geotechnical Consulting Services; WA. Contract manager and project manager for geotechnical engineering services to the City of Edgewood from 2001 through the present. Services included providing geotechnical third party peer review of projects proposed in critical areas, geotechnical consulting regarding roadways and utilities within the City, assisting the City in construction oversight in critical areas, and emergency services related to slope failures impacting City right-of-way and failures/damage to City-maintained infrastructure.

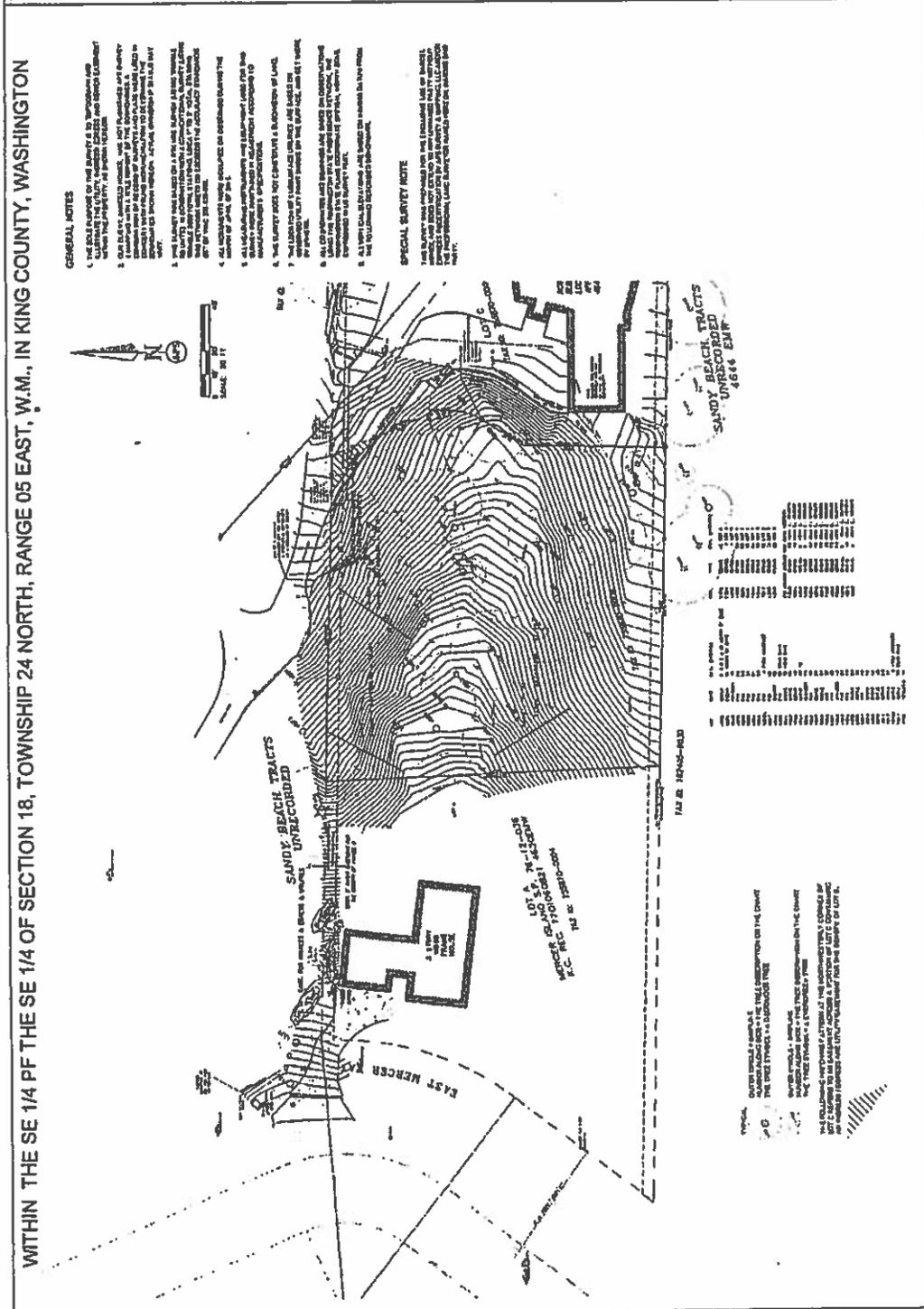
Boulevard Road/Log Cabin Road Intersection Improvements; Olympia WA. Project manager for geotechnical services for improvements to the intersection of Boulevard Road and Log Cabin Road. Improvements consisted of constructing a new two-lane roundabout and extending Log Cabin Road to the east to serve a proposed new residential development. Sloped embankments and mechanically stabilized earth (MSE) walls were utilized to retain cuts and fills to accommodate the roadway widening. Recommendations included an assessment of the landslide hazard areas on the site; an evaluation of the stability of the steep slopes located in the roadway corridor; site grading; installation of new underground utilities; criteria for design of gravity, MSE, and soldier pile retaining walls; pavement design; and an assessment of the infiltration capabilities of the near-surface soils based on the City of Olympia Stormwater Management Manual method (2005) and the results of an aquifer pumping test.

Pierce County, On-Call Geotechnical Consulting Services; WA. Project manager for providing geotechnical and environmental services to Pierce County Public Works and Utilities for on-call geotechnical consulting services. Projects have included roadway realignment and widening, pavement design, bridge foundations, sanitary sewer stormwater conveyance and treatment facilities, infiltration facilities, environmental investigation for characterization of soil/groundwater contamination, right-of-way acquisition support, and other infrastructure-related issues.

Pacific Hwy S HOV Lanes Phase IV; Federal Way, WA. Project manager for geotechnical and environmental services provided to KPG and Federal Way to support the widening of Pacific Highway South between South 312th Street and Dash Point Road. The project includes both state and federal funding. Geotechnical services included field explorations, developing geotechnical recommendations for site grading, subgrade preparation for pavements), geotechnical parameters for construction of retaining structures, a corridor-level Phase I environmental site assessment (ESA) for the right-of-way acquisition, a full Phase I ESA and Phase II ESA on a property with identified soil and groundwater contamination. We also provided geotechnical services during roadway construction.

Marked-up Site Survey Map

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|--|----|----------------------------|----|--------------|----|
| DATE: 1/17/75 | | APPROX PROJECT NO.: 100000 | | JOB AND NAME | |
| DUNCAN PLANS | | DUNCAN PROJECT NO. | | WASHINGTON | |
| AS-BUILT SURVEY of 4004 EAST MERCER WAY DUNCAN HOME | | | | | |
| DATE | BY | REVISION | BY | DATE | BY |
| | | | | | |
| DRAWN BY: LRS CHECKED BY: _____ | | | | | |
| SCALE: AS SHOWN | | | | | |



GENERAL NOTES

1. THE BOUNDARIES OF THIS SURVEY ARE BASED ON THE INFORMATION PROVIDED BY THE CLIENT AND THE SURVEYOR'S FIELD MEASUREMENTS. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE PROPERTY OR THE ADJACENT PROPERTIES.
2. THIS SURVEY IS BASED ON THE INFORMATION PROVIDED BY THE CLIENT AND THE SURVEYOR'S FIELD MEASUREMENTS. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE PROPERTY OR THE ADJACENT PROPERTIES.
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SPECIAL SURVEY NOTE

THIS SURVEY WAS CONDUCTED FOR THE EXCLUSIVE USE OF THE CLIENT AND IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE PROPERTY OR THE ADJACENT PROPERTIES.

10. Noise from heat pumps, air handlers, generators, etc. shall not exceed the parameters in WAC Section 173-60-040. A sound measurement must be taken at the point of the receiving property nearest to the source. This is to be performed by the installer. A certification form (provided by the City) is to be signed by the installer guaranteeing compliance with state law. This certification must be provided prior to the final inspection.
11. A field survey during construction is required to verify the height of any structure that is within 2 feet of the allowable height specified by the Mercer Island City Code. Contact the Development Services Group at (206) 275-7605 for questions or more information about this requirement.
12. Concrete mixers and concrete pumpers are not to be washed out into any catch basin or onto public property.
13. New mailbox locations must be approved by the Postmaster. You must contact Paula Nowell at 206-275-1194 or paula.a.nowell@usps.gov for approval.
14. Business Licenses are required. A business license from the City of Mercer Island is required for all subcontractors that will be conducting, maintaining, operating or engaging in business within the City limits during any tax year; this includes all subcontractor work at job sites on Mercer Island. This general license is issued annually and grants the business owner the right to conduct business within the City of Mercer Island. The fee for the Business License is \$30.00 per year and must be obtained prior to starting work. A business license application can be obtained by visiting the Finance Department at City Hall, by downloading the application from the City website at www.mercergov.org/businesslicenses, or by calling the Business License Division of the Finance Department at 206-275-7783.
15. Subcontractor List required. As a condition of this permit approval, the permit holder (building owner or general contractor) is responsible for the completion of the List of Subcontractors that was provided at the time of permit issuance. The completed List shall be returned to the Finance Department at least thirty days prior to Final Inspection. If you have questions, please call 206-275-7783.

Construction Parameters

1. Hours of work are 7:00 a.m. to 10:00 p.m. Monday through Friday (except holidays) and 9:00 a.m. to 10:00 p.m. Saturday, Sunday and holidays.
2. All public access roadways are to be restored to the existing condition prior to the project (pictures before start of work recommended). All access roads are to remain clean.
3. The City is to be provided with the name and license numbers (state contractor's and City business license) of the contractor and sub-contractors prior to any inspection (MICC 5.01.040).
4. Any changes to the siting or construction of this building require prior approval by City Staff.

Construction Vehicle Parking

1. On-site parking shall be established within 7 days from the start of construction activity. The provided parking capacity shall be sufficient for all anticipated construction vehicles. If sufficient on-site parking cannot be provided, the contractor shall find alternative off-site parking locations not on City of Mercer Island Streets and shuttle workers onto the site.
2. The Owner or Contractor shall apprise all subcontractors of these parking requirements upon their arrival on the job site.
3. Construction vehicles shall be parked in a manner that minimizes their impact on the neighborhood. A limitation on construction vehicle parking within the City right of way may result if it is determined that construction parking adversely impacts normal neighborhood activity.

4. Vehicles shall not be parked along any City street or right-of-way for more than a 72 hour period (MICC 10.36.225).
5. Do not park any vehicle along a City street within eight feet of the centerline of a two-lane roadway (MICC 10.36.226).
6. Do not stop or park a vehicle in such a position as to block the driveway entrance to any abutting property. Do not use any neighborhood driveway for vehicle turnaround purposes without the prior written permission of the property owner(s). Do not park within an alley or private road in such a manner as to leave available less than eight feet of the width of the roadway for the free movement of vehicular traffic (MICC 10.36.227).
7. The City of Mercer Island Fire Department may perform site visits to verify emergency vehicle access is maintained.
8. Additional parking restrictions may be required if it is determined that construction parking adversely impacts normal neighborhood activities or on projects extending beyond a one-year duration.

Erosion Control

1. Erosion control and Tree Protection are your first inspections. These inspections may be done along with the pre-construction inspection (if required).
2. All tree protection fencing needs to be in place at drip-lines or beyond before any work begins on the property.
3. Properly install sediment and erosion control measures as noted on the approved site plans (MICC 19.07.010). All sediment and erosion control features must be installed and inspected prior to the start of any land-disturbing activity. No construction activity shall be inspected (foundation, etc.) prior to an approved erosion control inspection. All erosion and sediment control features are required to be maintained for the duration of the project and are subject to inspection at any time. All "land disturbing activity" is subject to provisions of MICC 15.09.
 - a) Protect adjacent properties from any increased runoff or sedimentation due to the construction project through the use of appropriate "best management practices" (BMP). Examples include, but are not limited to, sediment traps, sediment ponds, filter fabric fences, vegetative buffer strips, or bioengineered swales.
 - b) Construction access to the site should be limited to one route. Stabilize entrance with quarry spalls to prevent sediment from leaving the site or entering the storm drains. A Right-of-Way permit may be required for this construction.
 - c) Prevent sediment, construction debris, paints, solvents, etc. or other types of pollution from entering public storm drains. Contain all pollution on your site.
 - d) All exposed soils shall remain denuded for no longer than two (2) days from October 1st to April 30th and not longer than seven (7) days from May 1st to September 30th. All soils shall be stabilized with mulch, hay, a plastic covering, or other appropriate ground cover. All exposed soils shall be covered immediately during any rain event.
4. You are responsible for controlling all silt runoff and are responsible for any costs incurred in any required cleanup. Immediate response by you is required in the event of any level of damage to adjacent properties, which are a result of your project.
5. Silt fence: clean and provide regular maintenance of the silt fence. The fence is to remain vertical and is to function properly throughout the term of the project.
6. See the approved site plan/erosion control plan for additional specific requirements.

7. Site Development

1. Work in the public right-of-way requires a separate permit. Contact the City of Mercer Island Development Engineer at least 2 days before you need to use the public right-of-way to allow proper review time before the right-of-way use permit can be issued.
2. Verify locations and depths of utilities prior to any excavation. Do not build over the side sewer. Call "One Call" at 1-800-424-5555 at least 48 hours prior to construction.
3. Roof drains must be connected to the storm drain system and inspected by the Utility Site Inspector prior to any backfilling of pipe. Call (206) 275-7714 24 hours prior to inspection.
4. Installation of concrete driveways, trees, shrubs, irrigation, boulders, berms, walls, rockeries, gates, and other improvements are not allowed in the public right-of-way without a prior approved and recorded Encroachment Agreement and Right-of-Way Use Permit from the Senior Development Engineer.
5. Fire hydrants shall not be used as a source of water for construction projects without prior approval from the Mercer Island Maintenance Department. See the Finance Department to pay a deposit for a double check valve assembly and meter.
6. The contractor shall not use water from new water services until a water meter has been installed. The water meter shall be installed as soon as possible after construction of the water service.

Building Requirements

1. Structural observation by the Engineer of Record per IBC 1702.1 is required for all components of the lateral force resisting system, including nailing, bolting, anchoring, drag struts, braces, hold-downs, and other lateral force resisting elements. Alternatively, provide periodic special inspection per IBC 1707.3 by a WABO Certified Lateral Wood Special Inspector. A report by the engineer or special inspector (per IBC 1709.1 or 1704.1.2 respectively) shall be provided to the City Building Inspector prior to the required framing inspection. **NOTE: A framing inspection by the City Building Inspector is required in addition to the structural observation or special inspection noted above. Do not cover or conceal framing or any lateral force resisting elements prior to the City framing inspection.**
2. Land clearing, grading, filling, and foundation work are not permitted between October 1st and April 1st on lots due to the critical slopes or geologic hazard (MICC 19.07.060).
3. Moratorium Deviation Approved, DEV10-0xx. Weekly reports shall be submitted until all earth-disturbing activities are completed.
4. Reference the attached City of Mercer Island coversheet for required special inspections and geotechnical inspections.

Civil Engineering/Utility Requirements

1. All staging and storage shall occur on site.
2. Do not backfill with native material on public right of way. All material must be imported.
3. Refer to water service permit for actual location of new water meter and service line determined by Mercer Island water Department.
4. A side sewer back flow preventer is required for the side sewer system.
5. No ADS flexible pipe shall be allowed.
6. Sand Collars are required for grouting PVC pipe to concrete structures. This also applies to ADS N-12 pipes and HDPE pipes.

7. Owner shall control discharge of surface drainage runoff from existing and new impervious areas in a responsible manner. Construction of new gutters and downspouts, dry wells, level spreaders or downstream conveyance pipe may be necessary to minimize drainage impact to your neighbors. Construction of minimum drainage improvements shown or called out on the plan does not imply relief from civil liability for your downstream drainage.
8. The contractor must pot hole all utilities prior to making connections to verify material, diameter, alignments, etc. Prior to making connections, contractor shall have all necessary parts, materials and equipment on site. Contact Site & Utilities inspector to verify.
9. Catch basin filter/sock should be provided for all storm drain catch basins/inlets downslope and within 500 feet of the construction area. Catch basin filters should be designed by the manufacturer for use at construction sites and approved by the city inspector. Catch basin filters should be inspected frequently, especially after storm events. If the filter becomes clogged, it should be cleaned or replaced.
10. The TV inspection of the existing side sewer to the city sewer main is required. If the result of the TV inspection is not in satisfactory condition, as determined by the City of Mercer Island Inspector, the replacement of the existing side sewer is required. Alternately, a pressure test of the side sewer, from sewer main to point of connection, may be substituted for the video inspection.
11. Newly installed side sewer requires a 4 p.s.i. air test or provide 10' of hydrostatic head test.
12. Pot holing the public utilities is required prior to any grading activities less than 6" over the public mains (water, sewer and storm systems). If there is a conflict, the applicant is required to submit a revision for approval prior to any grading activities over the public mains.
13. The limits and extends of the pavement in the public right of way shall be determined by the City engineer prior to finalize the project.
14. All utility work must be either on the subject property or within the limits of the existing private easements. No work outside the property or outside the existing private easements are allowed under this permit, unless there are written agreements from the neighboring property owners.
15. As-built drawings are required for water service, water supply lines, storm drainage, and side sewers prior to backfill. Storm detention systems and complex improvements in the City Right-of-Way require a full size as-built drawing.

Fire Requirements

Inspection Scheduling:

Most residential sprinkler, fire alarm and final fire inspections require a three day notice. Please schedule online at <https://inspection.mybuildingpermit.com/> or by calling the Inspection Request Line at (206) 275-7730. Please contact the Fire Marshal's office at (206) 275-7966 to confirm inspection availability.

Conditions:

The checked items below are conditions of permit approval for this project. These conditions contain information that must to be provided to the various contractors, for example: information regarding the fire and water service for the plumbing contractor, fire alarm requirements for the electrical contractor, sprinkler coverage and design requirements for the fire sprinkler contractor, etc.

- Fire Alarm requirements shall consist of:

- Low voltage Household Fire Alarm System per NFPA 72 Chapter 29 and monitored by UL Central Station.
- Local water flow alarm only.
- Local water flow alarm monitored by Central Station (via listed auto-dialer).

Note: At a minimum, all local water flow alarms shall consist of an interior water flow alarm and an outside water flow bell. The interior water flow alarm may utilize a UL Listed relay to connect compatible line voltage smoke alarms (for example, FIREX relay module # 0498 with the FIREX smoke alarms, Kidde relay/power supply module SM120X with the KIDDE smoke alarms, etc.). The outside water flow bell shall be at least an 8-inch bell and approved for exterior locations (e.g.—Potter water flow bell, etc.). Where fire alarm systems do not require monitoring by a Central station, an approved permanent sign shall be installed adjacent to each fire alarm box that reads: **WHEN ALARM SOUNDS—CALL FIRE DEPARTMENT**. Accounts for Central station monitoring must be in place before the final flow test is performed.

- Fire Sprinkler system is required to protect the following areas:
 - Entire Dwelling
 - Additions only (note – this partial sprinkler system requires that the sprinklered area be compartmentalized from surrounding areas).
- Fire Sprinkler system shall be installed in accordance with the following standard:
 - IRC Appendix R
 - NFPA 13-D (areas exempt from sprinkler coverage are allowed)
 - NFPA 13-D Plus (sprinkler entire house except attics & crawlspaces)
 - NFPA 13-R Plus (sprinkler entire house except attics & crawlspaces)
 - NFPA 13
- Required Fire Sprinkler system design and installation shall be installed per designs standards posted at <http://www.mercergov.org/page.asp?NavID=2614>.
- ✓ TESTING: Three fire sprinkler system tests are required.
 - Hydrostatic pressure testing.
 - A functional flow test (bucket test). The city inspector will witness the testing conducted by a certified installer/tester. It is strongly recommended this test be performed prior to the cover inspection.
 - Final. The city inspector will witness the testing conducted by a certified installer/tester. All alarms must be installed and operational with monitoring (when required). Provide copies of the backflow preventer test results, head box and wrenches, and all controls properly labeled. A statement of compliance must be provided to the inspector at the final inspection; a written statement by the installing contractor attesting the fire protection system has been installed per approved plans and tested per manufacturer's specifications and appropriate standards. Any deviations from the design standards shall be noted and copies of the approvals for such deviations shall be attached to the statement.
- Fire-retardant coating shall be applied to protect all combustible concealed spaces such as attics, crawlspaces, plenums and similar spaces that are not protected by fire sprinklers. The application shall be in accordance with an approved ICC-ES Report, approved manufacturer's installation instructions, and NFPA 703 (Chapter 5 - Fire-Retardant Coatings for Building Materials) and include the following items:

- ✓ The approved fire retardant coating shall have an ICC report available. The application shall be certified by the applicator as being in conformance with the manufacturer's directions. A copy of the application certificate shall be provided to the city inspector.
- ✓ Fire-retardant coatings shall remain stable and adhere to the material under all atmospheric conditions to which the material is exposed. Fire-retardant coatings shall possess the desired degree of permanency and shall be maintained to retain the effectiveness of the treatment under the service conditions encountered in actual use. A fire-retardant coating shall not be used for outdoor installations that are not weather protected unless labeled for such installations.
- ✓ The classification of fire-retardant coatings shall apply only when the coating is applied at the rates of coverage and to the applicable substrate, building material, or species of wood indicated on the test report when the coating is applied in accordance with the manufacturer's directions supplied with the container.
- ✓ A fire-retardant coating shall not be coated over with any material unless both the fire-retardant coating and the overcoat have been tested as a system and are found to meet the requirements of a fire-retardant coating.
- ☒ A minimum thickness of 5/8" Type X Gypsum Wall Board shall be installed throughout all interior walls and ceilings.
- ☐ Solid core doors will be provided at all bedrooms, utility and laundry rooms.
- ☒ Address identification shall be plainly visible from the street fronting the property. These numbers shall be a minimum of 6 inches high with a minimum stroke width of 0.5 inch on a contrasting background. Where access is by means of a private road and the building address cannot be viewed from the street, directional signage with an indicating address shall be provided as necessary to identify the building location. For example, all forks or turn-offs of an access road leading to the final driveway shall be marked. The driveway shall be marked with the house address numerals as shall the home or building facing the entrance drive (IFC 505).
- ☒ Fire and Rescue pathways around buildings shall be provided as follows:
 - ✓ A clear path around the house shall be maintained for fire and rescue access.
 - ✓ A minimum four foot wide space around the exterior shall be maintained.
 - ✓ Grass, pavement or gravel is acceptable.
 - ✓ Fenced areas shall have gates provided at each end of the house if applicable.
- ☒ FIRE SAFETY DURING CONSTRUCTION
 - ✓ Approved fire extinguishers shall be placed throughout each floor level and clearly marked so that no travel distance shall exceed 50 feet. Fire extinguishers shall have a minimum rating of 2A10B:C and shall be tagged by a certified extinguisher company as currently serviced
 - ✓ Flammable liquids are not allowed to be used for cleaning. Flammable liquids shall be kept in approved cabinets. Motorized equipment shall not be refueled inside the building.
 - ✓ Spraying (using lacquers and flammables) is specifically prohibited inside the structure. The spraying of flammable finishes shall be accomplished in an IFC approved spray booth and the finished wood transported to the site for assembly. The contractor may use flammable lacquer finish that is applied by brush.
 - ✓ Other flammables (contact cement, glues, paints, solvents, etc.) shall be used in a well-ventilated area with no smoking signs erected and sources of potential ignition eliminated.
 - ✓ No Smoking signs shall be posted and maintained throughout the structure (especially where flammable finishes will be applied).

- ✓ Welding, cutting, brazing and other hot work shall be done with extreme care and a fire watch shall be maintained for at least 30 minutes after the hot work is completed. Fire extinguishing equipment shall be readily available while all hot work is underway.
- ✓ All temporary stairs and ramps into the structure shall be capable of supporting required loads and provided with a graspable handrail at the open side.

Planning/Zoning Requirements

1.

Trees

1. Post permit with conditions in a visible spot on site during work.
2. Designated tree/trees may be cut if:
 - Roots are undisturbed and retained for slope stability
 - Other designated vegetation is not disturbed within protected drip lines or slopes
 - An eagle management plan is required by the US Fish & Wildlife Service
 - Trees on adjacent property are protected
 - Designated tree trunks are wrapped
 - Geotechnical hold harmless agreement is signed and recorded by owner
 - Waiver to seasonal development limitation is granted
 - Tree protection fencing is installed and inspected prior to any work including demolition
 - Right of way trees are protected throughout project
 - Replacement trees are planted at least 10 feet from buildings, each other, and existing trees
 - For border trees, written permission from neighbor is obtained prior to removal
3. All tree protection fencing shall be installed before any work begins, including demolition and grading. Fencing must be maintained for the duration of the project and is subject to inspection at any time. Temporary removal of fencing requires prior approval by the city arborist.
 - Tree protection fencing must be installed at the drip line of trees to be saved or as otherwise noted on the plans
 - Do not remove tree protection fencing without authorization by city arborist
 - No driving or parking of equipment within drip line
 - No storage of construction supplies, materials, or debris within drip line
 - Steel plates or 12" of mulch required to cover roots within drip line if work is approved within drip line
 - No grading within drip line.
 - Exposed roots must be clean cut, covered with mulch and consistently irrigated
 - Removal of existing vegetation within drip line shall only occur in conjunction with final landscape installation.
 - Violation may require assessment by qualified arborist with TRAQ certification and installation of mitigation measures recommended by the arborist.
4. Change to the original scope of work requires prior approval by the city arborist.
5. Slopes exceeding 30% are subject to the October 1 – April 1 Seasonal Development Limitations described in MICC 19.10.030. No tree cutting may occur during this period unless a hazard exists.
6. Hazard Tree Assessments are the responsibility of the owner when applicable.

- 7. If tree protection is not maintained during construction or there is evidence of detrimental impact observed on any tree on site, trees may be required to be assessed by a qualified arborist with TRAQ certification hired by the applicant and appropriate mitigation measures recommended. The arborist shall determine if the trees are healthy, and whether or not they have been adversely impacted by construction activities, reducing the likelihood of survival after construction. The arborist shall provide the city arborist with a written inspection report documenting the tree assessment, findings of whether adequate tree protection was provided and identification of appropriate mitigation measures if trees were damaged. Mitigation may include pruning, watering, applying wood chips, or removal of tree if stability of tree is compromised due to construction. If the arborist determines that the tree(s) must be removed, then the tree(s) shall be replaced at a ratio up to 4:1 as determined by the city arborist. The species of the replacement trees must be approved by the city arborist.
- 8. Comply with Mercer Island Tree Protection Fencing and Tree Replanting details.
- 9. Other site specific permit conditions:

- When authorized by the city arborist, the contractor may excavate within the dripline of a tree. However, a qualified arborist (Certified Tree Risk Assessor TRAQ) must be on site during all construction activities and shall provide a written inspection report documenting their observations during construction. All large exposed roots must be evaluated in writing by the qualified arborist. Large roots are considered any roots at least two inches in diameter encountered within five times the trunk diameter (DSH) of the tree. This is to ensure that the tree(s) will not be destabilized by severing the root(s) in question.

Additional comments:

By signing this, I acknowledge that I have read all of the above conditions and will follow them to the best of my abilities. If I have any questions on these conditions or any other part of the permit documents I will call and get clarifications prior to performing any work:

Owner/Representative: _____ Date: _____

Printed Name: _____

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

COREY and COURTENEAY DUBROWA,
individually and as husband and wife,

Plaintiffs,

vs.

CITY OF MERCER ISLAND, a municipal
corporation; BARCELO HOMES, INC., a
Washington corporation; and STUDIO 19
ARCHITECTS,

Defendants.

NO. 15-2-26847-3 SEA

ORDER OF DISMISSAL ON
SUMMARY JUDGMENT

(CLERK'S ACTION REQUIRED)

THIS MATTER came before the Court on Plaintiffs' Motion for Summary Judgment and Defendant City of Mercer Island's Cross Motion for Summary Judgment, with which Defendant Barcelo Homes, Inc., has joined. The Court has reviewed the records, files, and pleadings herein including:

1. Plaintiff's Complaint for Declaratory and Injunctive Relief;
2. Plaintiff's Motion for Summary Judgment;
3. Declaration of Rita Latsinova in Support of Summary Judgment Motion;
4. City of Mercer Island's Response to Plaintiff's Motion for Summary Judgment;

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- 5. Declaration of Shana Restall in Support of Mercer Island's Response to Plaintiff's Motion for Summary Judgment;
- 6. Declaration of Christina M. Schuck in Support of Mercer Island's Response to Plaintiff's Motion for Summary Judgment;
- 7. Defendant Barcelo Homes' Joinder in Defendant City of Mercer Island's Motion for Summary Judgment;
- 8. City of Mercer Island's Motion to Dismiss Under CR 12(b)(6), converted to a Cross-Motion for Summary Judgment;
- 9. City of Mercer Island's Reply in Support of its Motion to Dismiss Under CR12(b)(6);
- 10. Order Denying Defendant Barcelo Homes, Inc.'s Motion to Dismiss and Converting Defendant City of Mercer Island's Motion Under CR 56;
- 11. Plaintiffs' Response to City of Mercer Island's Motion for Summary Judgment;
- 12. Plaintiffs' Reply in Support of Motion for Summary Judgment;
- 13. City of Mercer Island's Reply in Support of Summary Judgment;
- 14. Declaration of Shana Restall in Support of Mercer Island's Reply on Summary Judgment;
- 15. Defendant Barcelo Homes' Joinder in the City of Mercer Island's Reply in Support of its Motion for Summary Judgment;
- 16. Department of Ecology Staff Report, 2013 Rulemaking for Chapter 197-11 WAC, SEPA Rules, provided by Barcelo Homes at oral argument on February 19, 2016.
- 17. Certification of Administrative Record for Judicial Review of Land Use Decision dated February 5, 2016.
- 18. Supplemental Certification of Administrative Record dated February 23, 2016

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Based on the foregoing, the Court DENIES Plaintiffs' motion for summary judgment and GRANTS Defendant City of Mercer Island's motion for summary judgment for the following reasons:

FACTUAL BACKGROUND

Plaintiffs Corey and Courteneay DuBrowa challenge the City of Mercer Island (City) decision that a Barcelo Homes project next to their property is categorically exempt from State Environmental Policy Act (SEPA) review under RCW ch. 43.21C. Barcelo Homes seeks a permit to construct a 7,500 square-foot single family residence which involves the excavation over 1,600 cubic yards of soil and the removal of a significant number of large trees on the site. The DuBrowas have serious concerns regarding the scope of the excavation and tree removal. They contend that the City's exemption decision violates SEPA regulations, the Growth Management Act (GMA), and the Mercer Island City Code (MICC). The DuBrowas are particularly disturbed by the fact that the City initially determined that the project was subject to SEPA, notified neighbors of its Determination of Non-Significance (DNS) under SEPA, and then reversed itself after the DuBrowas filed an administrative appeal with the City Planning Commission. The City contends it erred in initiating a SEPA process and it cannot legally impose SEPA requirements on a categorically exempt project.

On November 3, 2015, the DuBrowas filed this petition for judicial review. They seek a declaration that the city's withdrawal of the DNS is contrary to SEPA and MICC, an order directing the City to reinstate the DNS, and an order directing the City to reinstate the DuBrowas' appeal before the Mercer Island Planning Commission.

ISSUES

The Court must answer the following issues:

1. Is Barcelo Homes' project categorically exempt from SEPA under WAC 197-11-305 and WAC 197-11-800(b)?

- 1 2. Even if categorically exempt, does any "critical area" exclusion apply that
2 would pull this project back into the rubric of SEPA?
- 3 3. Has the City of Mercer Island, by withdrawing the DNS, eliminated any
4 opportunity to challenge the project's environmental risks?

5 **ANALYSIS**

- 6 **1. The City of Mercer Island correctly concluded that the Barcelo Homes project
7 is categorically exempt from SEPA.**

8 Under Department of Ecology rules, WAC ch. 197-11, when a person seeks a land
9 use permit, the City must decide whether the project is "categorically exempt" from SEPA.
10 WAC 197-11-720.¹ If a categorical exemption (defined in Part Nine of WAC ch. 197-11)
11 applies, the City has no legal authority to impose SEPA requirements on the permit applicant.
12 RCW 43.21C.110(1)(a). It thus may not make a "threshold determination" that an
13 environmental impact statement is required. WAC 197-11-797; WAC 197-11-720.

14 The City admits that it conducted an evaluation of probable significant adverse
15 environmental impacts because it assumed the project was not SEPA-exempt. It also admits
16 it retracted its threshold determination of non-significance because it erred in deciding the
17 project was non-exempt. The key legal issue is whether the City correctly concluded that the
18 project is categorically exempt under WAC 197-11-305 and WAC 197-11-800.

19 Under WAC 197-11-305(1), the Barcelo Homes project is categorically exempt (a) it
20 fits within a categorical exemption set out in Ecology's SEPA rules and (b) no exception
21 applies.

22 WAC 197-11-800(1)(b) renders categorically exempt the construction of up to four
23 detached single family residential units and the excavation of any fill necessary for the
24 construction of these units. The Barcelo Homes project falls within this exemption.

25 The DuBrowas contend that this subsection (b) exemption does not apply because the
26 City has passed an ordinance with a different exemption level, as allowed by WAC 197-11-

27 ¹ A "categorical exemption" is an action deemed by law not to significantly affect the environment under
28 RCW 43.21C.110(1)(a). WAC 197-11-720.

1 800(c). Under WAC 197-11-800(c), a city may “raise the exempt levels up to the maximum
2 specified in (d) of this subsection by implementing ordinance or resolution.” The regulation
3 sets out a detailed and specific process by which a city may “raise the exempt levels.” *Id.*
4 The DuBrowas argue that MICC 19.07.120(J)(5) is such an ordinance and that it trumps the
5 categorical exemption in WAC 197-11-800(b). This ordinance provides in pertinent part:

6 J. Determination of Categorical Exemption.

7 1. Upon the receipt of an application for a proposal, the receiving city
8 department shall, and for city proposals, the initiating city department shall,
9 determine whether the proposal is an action potentially subject to SEPA and,
10 if so, whether it is categorically exempt. This determination shall be made
11 based on the definition of action (WAC 197-11-704), and the process for
12 determining categorical exemption (WAC 197-11-305). As required, city
13 departments shall ensure that the total proposal is considered. If there is any
14 question whether or not a proposal is exempt, then the responsible official
15 shall be consulted.

16 2. If a proposal is exempt, none of the procedural requirements of this section
17 apply to the proposal. The city shall not require completion of an
18 environmental checklist for an exempt proposal. The determination that a
19 proposal is exempt shall be final and not subject to administrative review.

5. The following types of construction shall be categorically exempt ...:

a. The construction or location of any residential structures of four or fewer
dwelling units;

d. Any landfill or excavation of 500 cubic yards or less throughout the
total lifetime of the fill or excavation ... (emphasis added).

The DuBrowas argue that while WAC 197-11-800(b)(i) and (v) exempt residential projects
regardless of the quantity of soil to be excavated, MICC 19.07.120(J)(5) renders that same
project non-exempt if the quantity of soil to be excavated is greater than 500 cubic yards.

The Court agrees with the City that MICC 19.07.120(J)(5)(d) is not an ordinance
intended by the City to “raise the exempt level” under WAC 197-11-800(c). The WAC sets

1 no quantity limit on soil excavation—it only requires that the excavation be necessary for
2 construction of four or fewer single family residential units. If MICC 19.07.120(J)(5) was
3 intended to modify the categorical exemption of WAC 197-11-800(b)(i) and (v), it would
4 actually lower the exempt soil excavation level, effectively narrowing rather than broadening
5 the categorical exemption. When state law preempts a particular field of regulation, a city
6 cannot by ordinance prohibit what state law allows. *State, Dept. of Ecology v. Wahkiahum*
7 *County*, 184 Wash. App. 372, 377, 337 P.3d 364 (2014), *review denied*, 182 Wash.2d 1023
(2015). The City has the authority to make the categorical exemption broader than the state
regulations allow, but it cannot make the exemption narrower.

8 Moreover, RCW 43.21C.135 grants to municipalities the authority to adopt
9 Department of Ecology SEPA rules by reference. MICC 19.07.120(D) provides that the City
10 adopts by reference all of SEPA rules “as adopted by the Department of Ecology ... and as
11 the same may be amended hereafter amended.” The City specifically cites to WAC 197-11-
12 800 as one of the rules it adopts by reference. Thus, the MICC creates the same categorical
13 exemption as found in WAC 197-11-800(b)(i) and (v). There is nothing in MICC
14 19.07.120(J) that indicates any intent to trump WAC 197-11-800(b) or to “raise the exempt
15 levels” set out in that WAC.

16 The Court concludes that MICC 19.07.120(J)(5) was not enacted by the City of
17 Mercer Island pursuant to the authority granted to it in WAC 197-11-800(c). MICC
18 19.07.120(J)(5) tracked the language of WAC 197-11-800 until Ecology amended the WAC
19 to clarify that the excavation categorical exemption soil limit only applies to stand-alone
excavation projects. There is nothing to suggest in this record that the City of Mercer Island
ever affirmatively chose to take advantage of the ability to deviate from the WACs. Thus, the
categorical exemption of WAC 197-11-800(b)(i) and (v) apply and the Barcelo Homes project
fits within that categorical exemption.

1 **2. The City of Mercer Island has not taken action to exclude critical areas from**
2 **SEPA's categorical exemptions.**

3 Under WAC 197-11-305(1)(a), even if a proposal fits within a specific categorical
4 SEPA exemption, the proposal may lose this exemption if it falls under WAC 197-11-908's
5 critical areas exception. WAC 197-11-908(1) provides:

6 Each county/city may select certain categorical exemptions that do not apply
7 in one or more critical areas....

8 The WAC expressly allows cities to exclude "minor new construction" projects listed in WAC
9 197-11-800(1)(b) from SEPA's categorical exemption if the projects are to be built in a
10 "critical area." If a city chooses to implement a critical area exception, SEPA requirements
11 for otherwise exempt projects would apply.

12 Under the Growth Management Act (GMA), RCW 36.70A.170(1)(d), cities must
13 take steps to designate its "critical areas." A critical area is defined as including
14 "geologically hazardous areas." RCW 36.70.030(5). Geologically hazardous areas are
15 defined as areas that, because of its susceptibility to erosion, sliding, earthquake or other
16 geological events, "are not suited to the siting of commercial, residential, or industrial
17 development." RCW 36.70A.030(9). The parties agree that both the DuBrowas' property
18 and the Barcelo Homes property fall within a geologically hazardous area.

19 RCW 36.70A.172 requires cities to develop policies and regulations to protect the
 functions and values of these critical areas, which the City has done. MICC 19.07.010 *et*
 seq. Any project proposing to alter a critical area must comply with these ordinances.
 MICC 19.07.020(A).

 The question presented is whether the City of Mercer Island, by enacting GMA critical
 area ordinances, has also chosen to exclude residential developments in those areas from the
 SEPA categorical exemption? This Court concludes it has not. The DuBrowas cite to MICC
 19.07.020(A) that provides:

1 [A]ny alteration of a critical area or buffer shall meet the requirements of this
2 chapter unless an allowed alteration or reasonable use exception applies under
3 MICC 19.07.030.

4 The city ordinance describes what happens if a proposed project does not meet the
5 requirements of the chapter: that project must either meet the definition of an “allowed
6 alteration” or the developer must seek a “reasonable use exception” under MICC 19.07.030.
7 This provision, however, does not by its terms exclude critical area development from the
8 SEPA categorical exemption of WAC 197-811-800. A project can be legally SEPA exempt
9 and still subject to the GMA critical areas requirements under the City’s code. The Court
10 concludes that the City has not, by enacting critical area regulations, decided to make all such
11 development projects in those areas subject to SEPA.

12 **3. The City of Mercer Island, by withdrawing the DNS and rendering moot the
13 DuBrowas’ SEPA appeal, has not eliminated their opportunity to challenge the
14 project’s compliance with the GMA.**

15 The DuBrowas contend that the City has allowed the Barcelo Homes project to
16 proceed in violation of the City’s critical area ordinances and that they have no method by
17 which to challenge what they claim are GMA violations unless there is a SEPA administrative
18 hearing. This Court disagrees.

19 The legislature enacted the GMA in 1990 to address concerns related to
“uncoordinated and unplanned growth” in the State and “a lack of common goals
expressing the public’s interest in the conservation and the wise use of our lands. . . .” RCW
36.70A.010. The GMA provides a “framework” of goals and requirements to guide local
governments who have “the ultimate burden and responsibility for planning. . . .” RCW
36.70A.3201; *see also Thurston Cty. v. W. Washington Growth Mgmt. Hearings Bd.*, 164
Wash.2d 329, 336, 190 P.3d 38, 41 (2008).

The City has enacted MICC 19.07.060 to impose requirements on developments
within geologically hazardous areas. Under this ordinance, the proponent of a project must
submit a geotechnical report, which the City has required of Barcelo Homes in this case.

1 The code official must then determine if the project will adversely impact other critical
2 areas, whether it will adversely impact adjacent properties (such as the DuBrowas), and
3 whether if so, whether Barcelo Homes can mitigate these impacts. The City has not made
4 a final decision regarding whether the project meets the City's critical area site development
5 requirements. The City's attorney represented to this Court that the City's critical areas
6 assessment is on-going and that the DuBrowas' concerns regarding the removal of trees, the
7 quantity of excavation planned, and the use of a private road for construction are all issues
8 that the City will review as a part of this assessment. Even though the project is SEPA-
9 exempt, the City has not decided that the project is GMA-exempt and has not yet decided
10 what, if any, mitigation measures it might impose on Barcelo Homes to ensure that the
11 DuBrowas' property is not adversely affected.

12 The Court concludes that any alleged violation of the critical areas ordinances by the
13 City is not ripe for judicial review because the City has not rendered a final decision on what
14 development conditions it may impose in this geologic hazard area, as required by MICC
15 19.07.060. Any decision the City makes under MICC 19.07.040 and 19.07.060 are subject to
16 appeal processes set out in MICC 19.15.010(E) and 19.15.020(J). *See* MICC 19.07.040(E).
17 The City's decision to withdraw the DNS and render moot the DuBrowas' SEPA appeal has
18 not eliminated their opportunity to challenge the project's compliance with city critical areas
19 ordinances.

The Court understands the concerns the DuBrowas have regarding the Barcelo Homes
proposed project. They are quite reasonably frightened by what they perceive as a serious
risk to their home, their access road, and the environment surrounding their property. While
the Court is constrained by the law and thus must conclude that the project is SEPA-exempt,
the Court is not finding that the Barcelo Homes project, as currently proposed, is appropriate
for a geologically hazardous area. Under the law, this assessment must be made in the first
instance by the City's code official.

1 For these reasons, the DuBrowas' motion for summary judgment is DENIED. The
2 City of Mercer Island's motion for summary judgment is GRANTED. This case is dismissed.

3 Dated this 24th day of February, 2016.

4 *Electronic signature attached*

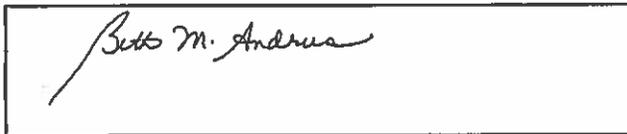
5 _____
6 Judge Beth Andrus
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King County Superior Court
Judicial Electronic Signature Page

Case Number: 15-2-26847-3
Case Title: DUBROWA ET ANO VS MERCER ISLAND CITY OF ET AL

Document Title: ORDER SUMMARY JUDGMENT

Signed by: Beth Andrus
Date: 2/24/2016 10:36:49 AM



Judge/Commissioner: Beth Andrus

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: D92F76D12132FF531AF16720A721F097AC7A50B6
Certificate effective date: 7/29/2013 12:26:48 PM
Certificate expiry date: 7/29/2018 12:26:48 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Beth
Andrus:dE53Hnr44hGmww04YYhwmw=="

From: Sarah Petrie
To: [Robin Proebsting](mailto:Robin.Proebsting@mercer.gov)
Subject: Comments to reject Critical Area Determination CA017-007 for permit 1507-166
Date: Monday, October 9, 2017 10:16:09 AM

I had the wrong email.

Here we go again Robin,

Thanks,

Mark Petrie

From: Sarah Petrie [mailto:Dog-Pony@comcast.net]
Sent: Sunday, October 8, 2017 12:04 PM
To: 'Robin.Proebsting@mercer.gov.com'
Cc: Mark Petrie (mpetrie@copiersnw.com)
Subject: Comments to reject Critical Area Determination CA017-007 for permit 1507-166

Planning Development Services,

I Mark Petrie am the neighbor directly downhill in my own critical area and I am asking that the Planning Commission reject the proposal for the Barcelo, now 4 Seasons Builds plans for a rather large over 7,500' house on a steep nearly 40% grade Critical Area lot for the following reasons.

- 1) Poorly planned drainage that will further risk runoff onto my lot with greatly increased silt running into Lake Washington. See attached photos of a rain that does not include this development that several times per year floods my property. With the vast majority of the large tree canopy removed this will greatly increase the water runoff and silt coming downhill directly onto my property which is already having trouble with water runoff. I have three large Cedar trees near the lake that will likely die due to the pipe planned to run down the 5' easement along the South side of my property.
- 2) Risk of retaining wall collapse. See attached photos that show an old declining railroad timber retaining wall that will not stand the increased construction load, vibration and excess mud runoff as this is right next to my property line and 20' downhill from the lowest part of the 4634 lot to the East.
- 3) Public safety access problems. 14 households share this driveway and with 500+ dump truck trips simply to remove the trees and the 1,633 cubic yards of dirt to scalp this lot to make way for over 7,500' of home will impact my access plus many of the other neighbors that share this road. See attached photo for the 180 degree turn that is needed to access this lot for construction and for the future new owners. This will damage my property.

What recourse will I have when damage occurs to my property? What recourse will the neighbors have when they have limited access and the shared roadway is damaged by several hundred trips up and down this narrow already compromised roadway?

I ask that the Planning Commission deny this permit as it fails the 4 areas of "Statement of Risk" per

section 19.07.060.Di2 and for the 3 reasons listed above.

Mark Petrie
4640 EMW



600 University Street, Suite 3600
Seattle, WA 98101
T. 206.624.0900
F. 206.386.7500
www.stoel.com

October 10, 2017

RITA V. LATSINOVA
D. 206.386.7613
rita.latsinova@stoel.com

VIA EMAIL AND MESSENGER

DEVELOPMENT SERVICES GROUP
CITY OF MERCER ISLAND
OCT 11 2017
RECEIVED

Robin Proebsting, Senior Planner
Development Services Group
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040

Re: Comment on the Critical Area Determination CAO17-007 for the Proposed Development at 4634 East Mercer Way

Dear Robin Proebsting:

This comment is provided on behalf of Mark and Sarah Petrie, owners of 4640 East Mercer Way, the property that lies directly downgrade from the proposed development. It incorporates by reference and is supplemental to the prior comments submitted by the Petries and Ed Heavey, a geotechnical engineer, on their behalf.

The timing of the City's CAO17-007 in September of 2017, a year after the building permit was initially issued, is problematic. The purpose of the critical area determination is to establish, based on best available science, whether a proposed project is appropriate for a critical area (here, a geologically hazardous slope). The CAO determination should be made before the building permit and ancillary permits are issued.

When the critical area determination is made after the permits have been issued, it may indicate that the critical area determination is a mere afterthought. See, e.g., *King County v. Washington State Boundary Review Board for King County*, 122 Wn.2d 648, 860 P.2d 1024 (1993) (some government actions tend to "snowball" and acquire an unstoppable administrative inertia). That violates the requirement of the Growth Management Act to protect the function and values critical areas. RCW 36.70A.172(1); WAC 365-196-485(1)(b), (3)(d).

For the reasons identified in the above-referenced Heavey comment letter and based on our review of the documents provided by the City in response to Public Records Act requests, there is no evidence in the City's records that it provided any scientific information, much less the "best available science," that the project, as proposed, will not damage the adjacent critical areas,

Robin Proebsting, Senior Planner
October 10, 2017
Page 2

including the Petrie property. We urge the City to conduct a meaningful critical area determination based on the best available science and will act appropriately in the absence of it.

Very truly yours,



Rita V. Latsinova

RVL:srt

From: Holly
To: [Robin Proebsting](mailto:Robin.Proebsting)
Cc: ashrik@aol.com
Subject: Official Comments on CA-017-007
Date: Thursday, October 5, 2017 11:13:37 AM

To the City of Mercer Island,
Thursday, Oct. 5th 2017

Comments on CA017-007

My husband and I reside at 4630 E. Mercer Way just above the proposed steep slope/building project at 4634 E. Mercer Way.

I want to insure that the steep slope modification/building project does not increase the possibility of a landslide on our property and neighboring properties. As you are aware, there is a very steep slope starting from E. Mercer at our house down through 4634 and to the water. There have been landslides, as shown in City maps in this area surrounding the lot.

I understand there is some discussion about allowing the project to start this fall through a wet season deviation for the project. I am concerned about this especially since it includes the removal of 20 large trees.

I also want to alert you to the fact that the road just south of our house on E. Mercer is dangerous due to erosion already. The ground next to the road on the downward side of the street has dropped 5 inches over the 17 years we have lived here. So, a car that goes off the edge of the road here may lose control. Please pass this information on to Public Works to investigate. Also, the water course detailed in the building proposal runs under the street here and down under a huge cottonwood tree and through the ravine next to 4634. Further erosion in this area could be dangerous.

Please pass on this information to Public Works and to the City Geotech who is reviewing this proposal.

Thank-you for documenting our comments on CA-017-007 and for all the good work you do.

Holly Shrikhande
4630 E. Mercer Way
206-455-5672

From: Thomas Trumble
To: [Robin Proebsting](#)
Cc: [Jim Pirak](#); [Sara Trumble](#)
Subject: Re: Subject: File CA017-007
Date: Thursday, September 21, 2017 2:58:38 PM
Importance: High

Robin:

Thank you for taking the time to speak with me. I have CC'd our neighbors who are closer to the proposed construction site. The project is so massive that 250 truck loads of dirt will have to be excavated. The scope is dangerous for the access roads that can barely take a single car. In addition to the roads, the water systems are over 60 years old and very fragile. Children use the route to access the bus stops for school. I don't think it is fair for the neighbors to endure a long and prolonged construction project. This is much closer to a commercial project. The damage from erosion and lake contamination is a real concern that will be hard to manage.

Tom

206 947-4120

> On Sep 20, 2017, at 10:18 PM, Thomas Trumble <mail@thomastrumble.net> wrote:

>

> Hi Robin:

> How do we submit a comment about this proposal. The slope is so steep that there will be erosion that could affect the hill side going as far up as EastMercer Way. The access road are not improved and cannot withstand the truck traffic without severe damage and the water lines are not protected.

>

> Thank You,

> Tom Trumble

> 4602 East Mercer Way

Gerald Yuen

4624 E Mercer Way
Mercer Island, WA 98040
gerald.yuen@gmail.com

October 9th 2017

RE: Building Permit No: 1507-166

To Whom It May Concern,

I'm Gerald Yuen. My Family resides in 4624 E Mercer Way and we are writing to express our deepest concern on Barcelo Homes' proposed construction of an oversized 7500 sqft home in 4634 E Mercer Way, situated on a densely wooded sloped terrain with limited easement access that would severely affect our quality of life, cause undue property damages and dire environmental consequences.

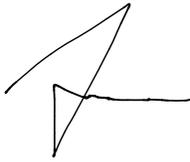
We are the sole easement holder that grants exclusive access to the homes of 4616, 4632 and 4640 E Mercer Way. We were approached by Barcelo Homes to purchase our easement rights for access to the new home to be constructed in 4634 E Mercer Way. Since then, we made several inquiries into the construction project and its potential negative impact on the neighborhood and environment. In response, Barcelo Home has subsequently redesigned the house to utilize the existing easement access of 4640 E Mercer Way which will greatly impede ingress and egress to our surrounding neighbors.

It is clear that Barcelo Homes is not acting on our neighborhood's best interest. Service vehicles have already overburdened our narrow driveway over the years. The estimated required dump truck loads of over 200 runs for the oversized 7500 sqft property construction will most certainly damage our roads and surrounding properties. It would also create severe traffic congestions as well as safety concerns for foot and car traffic during and post construction.

Another major concern we have is the fate of the bald eagles nesting in our neighborhood. We have been living in our property for over 10 years, and we are well aware that the 4634 E Mercer Way parcel is home to a bald eagle nest. The Bald and Golden Eagle Protection Act prohibits any tree removal containing an active or inactive eagle nest without obtaining a permit from the US Fish & Wildlife Services. It is not only a felony to displace the home of the bald eagles without a proper permit, but would be detrimental to the wildlife habitat in the surrounding area.

We sincerely ask that the City of Mercer Island to reconsider the far reaching impact of the construction of an oversized house that will affect the quality of life for our family and neighbors for many years to come.

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'G' followed by 'Yuen'.

Gerald Yuen