



TALASAEA
CONSULTANTS, INC.

9 March 2018

TAL-1129B

Ms. Nicole Gaudette
Senior Planner
City of Mercer Island Development Services Group
9611 SE 36th Street
Mercer Island, Washington 98040

REFERENCE: Hou Critical Areas Determination, 4825 E Mercer Way, Mercer Island, WA 98040; King County Tax Parcel #216200-0070
SUBJECT: Eagle Tree Status

Dear Nicole:

One large diameter (~80") Douglas fir wildlife tree is located near the eastern property boundary. The last verified activity in this tree was in 2005. Talasaea staff have made multiple visits to the Site over several years and evaluated this tree for the presence of Bald Eagles. During site visits in 2006 and 2017, eagle activity was not observed. Bill Vogel of the US Fish and Wildlife Service (USFWS) visited the Site on 30 June 2017 to evaluate this and surrounding trees for the continued presence of Bald Eagles. Bill Vogel summarized his lack of findings via an email dated 30 June 2017 that he had found no evidence of an eagle nest within the tree nor any indication of eagle usage of the tree. His correspondence with the Applicant was previously provided to the City.

Bald Eagle Regulations

We understand that this 80" Douglas fir on the Site has been previously identified by the City of Mercer Island as an Eagle Tree, Tree #6 on the Mercer Island "Properties Affected by Bald Eagles" map prepared by the City. The data reflected on the "Properties Affected by Bald Eagles" map is based on data previously collected by WDFW. Due to staffing and budget issues, WDFW has not regularly updated this information in many years (personal communication, WDFW staff), so the information is not the most up to date. In addition, Mercer Island City Code Chapter (MICC) 19.07.090 *Wildlife habitat conservation areas* (text below, emphasis is ours) notes Bald Eagles as being protected by the City through the Washington State Department of Fish and Wildlife (WDFW) as established in Washington Administrative Code (WAC) 232-12-011 through 232-12-014.

Resource & Environmental Planning

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19.07.090 Wildlife habitat conservation areas.

A. Designation. Bald eagles are the only endangered or threatened non-aquatic wildlife species known to inhabit Mercer Island and the [city](#) designates those areas used by these species for nesting, breeding, feeding and survival as [wildlife habitat conservation areas](#). If other non-aquatic species are later added by the State Washington Fish and Wildlife Department as endangered or threatened as set forth in [WAC 232-12-011 through 232-12-014, as amended](#), the [city](#) council will consider amending this section to add such species. The provisions of this section do not apply to any habitat areas which come under the jurisdiction of the [city's shoreline master program](#).

The [city's watercourse, wetland](#) and shoreline regulations in this chapter provide required protections for aquatic species.

The Applicant coordinated with WDFW in 2006-2007 to prepare an Eagle Management Plan, dated 12 April 2007. However, since that time, a number of important changes have happened with regards to Bald Eagles. First off, Bald Eagles were removed from the Federal endangered species list (Endangered Species Act, ESA) in 2007. Bald Eagles were, and still are, offered protections through the Federal Bald and Golden Eagle Protection Act (BGEPA) and the Migratory Bird Treaty Act (MBTA). Most notably, the Bald Eagles were delisted because of a strong population increase, particularly after DDT was banned, that reflected their ability to adapt to a changing environment. Following the delisting of the Bald Eagle from the (federal) ESA, WDFW changed the Bald Eagle's State status from threatened to sensitive, which triggered a change in protective measures afforded Bald Eagles. As of December 2016, the Bald Eagle was removed from the WDFW State endangered species lists, recognizing that State protections were no longer necessary given the success of eagle populations in Washington State, among other locations, and that the continued Federal protections through the BGEPA and MBTA would be sufficient to protect this bird in the future. It is important to note that Federal protections only extend to trees with nests present, whether active or inactive, and do not extend to trees that have the potential to contain nests.

MICC Chapter 19.07.090 does not reflect the current science or policy regarding Bald Eagles. Subsection A of this code notes that bald eagles are the 'only endangered or threatened non-aquatic wildlife species known to inhabit Mercer Island...', however, bald eagles are no longer listed as endangered or threatened at the State or Federal levels. This same subsection of code references "[WAC 232-12-011 through 232-12-014, as amended](#)..." These sections of the WAC have been amended since this section of the MICC was developed, but to remove the Bald Eagle from these lists and not to add any additional species that occur within or near this Site.

This same outdated section of the MICC notes that the City “designates those areas used by these species [Bald Eagles] for nesting, breeding, feeding and survival as wildlife conservation areas.”

Nesting or Breeding

It has been confirmed by a USFWS biologist, the lead agency for the conservation of Bald Eagles, that there is currently no nest within this tree that would trigger Federal protections. WDFW has confirmed that they do not have jurisdiction over Bald Eagles as this bird has been removed from Washington State endangered species lists. Since there is no nest in this tree, no nesting or breeding is occurring in the tree in question.

Feeding

Bald Eagles are known to frequently use large bodies of water, Lake Washington in this area, which Mercer Island abuts. Bald Eagles would be expected within this general area often, as flyovers while using Lake Washington. It is possible that Bald Eagles might use this tree for roosting around their hunting activities. However, a USFWS biologist also confirmed that no indicators were present that would suggest past or current use of this tree for roosting or feeding.

Survival

This section of code notes that the City will designate “those areas used by these species for...survival” as wildlife habitat conservation areas. This section is vague as the term “survival” is not defined within the MICC. Nesting, breeding, and feeding cover a wide range of activities, including those activities that are location-specific (nesting). The National Bald Eagle Management Guidelines (USFWS, 2007) identifies that eagles are most sensitive to human activities during their nesting period (courtship, nest building through fledging) and near their roosting sites, preferring established roost sites or communal roost sites. Activities that impact either nesting eagles or a communal roost are most likely to have negative impacts on eagles. However, this tree has been documented by a USFWS biologist, the agency that has jurisdiction over Bald Eagles within the State of Washington, as of summer 2017, to lack evidence of nesting or roosting, indicating that this tree is not, and has not been in some time, used for nesting or roosting by eagles. Therefore, this tree is not currently playing an active role in the survival of eagles within this area.

Populations of Bald Eagles have steadily increased over the past several decades. Environmental contaminants are recognized as one of the biggest factors negatively affecting the future success of Bald Eagles. Restrictions on the use of DDT and other chemicals have allowed eagle populations to recover and rebound from their previous population lows.

Video Footage of Trees

I reviewed drone footage of the tree canopy provided to me by Sang Hou for his property on Mercer Island. I saw no indication of eagle usage from the video footage. There was clearly no nest in the tree, nor was any indication observed that there had been a nest present.

Summary

The provided video footage, in conjunction with our past and recent conversations with Bill Vogel, support that this tree is not being actively used by bald eagles at this time. The current policy regarding Bald Eagles is that WDFW defers to the USFWS as the lead agency with jurisdiction over Bald Eagles. USFWS has evaluated this tree and determined that they have no jurisdiction over the tree. My observations as a professional Ecologist support that this tree does not reflect current or recent usage by eagles.

Given that MICC Chapter 19.07.090.A does not reflect the most recent science or policy regarding Bald Eagles, and that no active or recent usage of this tree has been identified, this tree should not be considered a wildlife habitat conservation area. While this large Douglas fir is very clearly a significant tree due to its large size, it is not currently functioning as habitat for any listed species or Bald Eagles.

Given the size of this particular tree, its proximity to Lake Washington, and that it has been used in the past for nesting, it is possible that this tree will be used again by Bald Eagles. However, especially considering the urban nature of this area, the development of the Hou property consistent with the zoned use is unlikely to prevent future usage of this tree by eagles. The most important protections are to the tree itself through the engagement of a certified Arborist to ensure all appropriate tree protection measures are implemented. The implementation of standard tree protection measures would not preclude the development of this Site based on this single tree.

We trust that you will find this information helpful for your current needs. If you have any questions or require additional information, please contact me at (425) 861-7550.

Sincerely,

TALASAEA CONSULTANTS, INC.



Jennifer Marriott, PWS
Senior Ecologist

References:

- US Fish and Wildlife Service
 - Eagle Management
<https://www.fws.gov/birds/management/managed-species/eagle-management.php>
 - Eagles in the Pacific Northwest
https://www.fws.gov/pacific/eagle/all_about_eagles/laws_and_regulations.html
 - Bald Eagle Management Guidelines
<https://www.fws.gov/pacific/eagle/documents/NationalBaldEagleManagementGuidelines.pdf>
- Washington Department of Fish & Wildlife
 - Bald eagles in Washington
https://wdfw.wa.gov/conservation/bald_eagle/
 - Periodic Status Review, WAC 232-12-011/014
https://wdfw.wa.gov/commission/meetings/2016/12/dec0916_10_summary.pdf