



CITY OF MERCER ISLAND

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CRITICAL AREAS DETERMINATION

NOTICE OF DECISION

March 11, 2019

Project Number:	CAO18-003
Description:	Request to reduce Category IV wetland buffer to 25 feet to accommodate a new Single-Family Residence. The City's GIS map indicates a piped watercourse, however following review, the findings indicate there is not a regulated watercourse present on-site. A regulated Category IV wetland is present on site.
Applicant:	Benny Kim 7415 Lake Ballinger Way Edmonds WA 98026
Owner:	Benny Kim 7415 Lake Ballinger Way Edmonds WA 98026
Site Address:	8114 West Mercer Way, Mercer Island WA 98040; Identified by King County Assessor tax parcel number 335850-0974
Zoning District:	R-15
SEPA Compliance:	A Determination of Non-Significance (DNS) for SEP18-024 will be issued on March 11 th , 2019, concurrent with this Notice of Decision.
Exhibits:	<ol style="list-style-type: none">1. Development Application for a Critical Area Determination, received on May 2, 2018.2. Watercourse Assessment prepared by C2MY Engineers received on May 2, 2018.3. Wetland Delineation prepared by Bradford Shea a Senior Ecologist at Westech Company received on May 2, 2018.4. Wetland Buffer Reduction Mitigation Plan prepared by Bradford Shea a Senior Ecologist at Westech Company, received on July 2, 2018.5. Revised Final Wetland Buffer Reduction Mitigation Plan prepared by Bradford Shea a Senior Ecologist at Westech Company received on October 23, 2018.6. Project Narrative prepared by Benny Kim received on May 2, 2018.7. City's first review letter with Environmental Science Associate's (ESA) memo, dated July 26, 2018.8. City's second review letter with ESA's memo, dated November 28, 2018.9. Public comment letters:<ol style="list-style-type: none">a. Christa Friedrichb. Fred Howardc. Lisa Chow and Tuanhai Hongd. Loren Andersone. Tuanhai Hong10. Comment response letter from Benny Kim received on October 23, 2018.

11. Geotechnical Engineer Statement of Risk Letter prepared by Jason Bell Senior Engineer at JJA, Inc. received on October 23, 2018.
12. Revised King County Bond Quantity Worksheet received on March 11, 2019.
13. Plan Set received October 23, 2018.
14. SEPA Determination (SEP18-024) issued March 11, 2019.
15. Revised and Final Site Plan received February 4, 2019.
16. Stormwater and Erosion Control Management Plan received February 4, 2019.

I. FINDINGS OF FACT

1. Application Description:

The request is for approval to reduce a Category IV wetland buffer from 35 to 25 feet in order to accommodate a new Single-Family Residence. The subject site is vacant and slopes downward from the north to the south and contains trees and shrubbery.

2. Zoning:

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

3. Adjacent Land Use:

Land uses adjacent to the subject site include of single-family residences to the north, west, south and east.

4. Consistency with Land Use Code/Zoning Requirements:

Mercer Island City Code (MICC) 19.07.080(C)(2) state that *"the code official may allow the standard wetland buffer width to be reduced to not less than the minimum buffer width in accordance with an approved critical area study when he/she determines that a smaller area is adequate to protect the wetland functions, the impacts will be mitigated consistent with MICC 19.07.070(B)(2), and the proposal will result in no net loss of wetland and buffer functions."*

The applicant must provide mitigation as described in MICC 19.07.070(B)(2)(b). The applicant's revised critical area study and mitigation plan (Exhibits 3 and 5) verify that a reduced buffer is adequate to protect the wetland and the proposal will result in no net loss of wetland and buffer functions, based on the analysis below.

5. State Environmental Policy Act (SEPA) Compliance:

After SEPA review, a Determination of Non-Significance (DNS) will be issued concurrent with this decision on March 11, 2019. Please refer to Exhibit 14.

6. Public Noticing and Comments:

There is no public hearing requirement for a Critical Areas Determination (a type III land use review) per MICC 19.15.030 (Table A and B). On June 11, 2018, City staff sent a Public Notice of Application to all property owners within 300 feet of the subject property and placed the Public Notice of Application in the City Weekly Permit Bulletin. A public comment period ran from June 11, 2018 through 5:00 P.M. on July 11, 2018. The City received multiple comment letters during the public comment period (Exhibit 9a-e) regarding the topics below. The applicant responded to the neighbor's general concerns in a response letter (Exhibit 10).

- a. Landslide hazard: concerns about development with the steep slope and potential landslide hazard;

Staff Analysis:

The applicant has designed the project to follow the recommendations from the geotechnical report prepared for this project. Please refer to Exhibit 11, Geotechnical Report and Statement of Risk. Page 2 of Exhibit 11 states the following: “the hazard area will be modified per CS2 Engineer’s structural design to mitigate the existing steep slope, including but not limited to; maintain a vegetated slope, and a pile supported, stepped concrete foundation. This will provide that the risk to the lot and adjacent property is eliminated or mitigated such that the site is determined to be safe.” Further, construction specifics are being reviewed under the building permit (1401-022) for this project.

- b. Water on-site: concerns about erosion and run-off and the potential impacts to neighboring sites;

Staff Analysis:

The applicant’s wetland consultant prepared an enhancement and re-vegetation plan to stabilize the soils in the construction area, please refer to Exhibit 5, page 9 – 3.1 Mitigation Plan Components. Best Management Practices (BMP) will be used during construction and silt fences will be kept in place until new shrubs and trees are established in the buffer enhancement area- refer to Exhibit 5, Chapters 3 & 4. The silt fence will be placed on the outer western edge of the designated reduced buffer zone and will be installed and approved by the City prior to construction. In addition, the applicant provided a Stormwater and Erosion Control Management Plan (Exhibit 16).

- c. Provided documents: proposed plans and potential impacts (off-site) were vague, and a possible wetland was not indicated;

Staff Analysis:

In a response letter (Exhibit 10), the applicant’s wetland consultant stated that the small 200 sf possible wetland was studied further and found not to constitute a wetland area – refer to Exhibit 5 Final Mitigation and Monitoring Plan, figure 4 and Appendix A.

7. MICC 19.07.030(A): Allowed alterations

Allowed Alterations. The following alterations to critical areas and buffers are allowed and the applicant is not required to comply with the other regulations of this chapter, subject to an applicant satisfying the specific conditions set forth below to the satisfaction of the code official; and subject further, that the code official may require a geotechnical report for any alteration within a geologic hazard area:

...

- 6. New Streets, Driveways, Bridges and Rights-of-Way. Construction of new streets and driveways, including pedestrian and bicycle paths, subject to the following:
 - a. Construction is consistent with best management practices;
 - b. The facility is designed and located to mitigate impacts to critical areas consistent with best available science;
 - c. Impacts to critical areas are mitigated to the greatest extent reasonably feasible so there is no net loss in critical area functions; and
 - d. The code official may require a critical area study or restoration plan for this allowed alteration.

Staff Analysis:

The proposal includes adding a new driveway within the wetland buffer. The new driveway is designed and located to mitigate impacts to the wetland consistent with best available science as demonstrated by the Wetland Delineation Report (Exhibit 3) and the Final Mitigation and Monitoring Plan (Exhibit 5). As requested by ESA and the City, the driveway was narrowed and reconfigured to minimize impacts to the wetland and a row of trees were added as a vegetative buffer along the northern edge of the driveway. Please refer to Exhibit 15 Final Site Plan, which

shows the new driveway location and trees. The Final Site Plan illustrates the correct spacing (10 feet) and location of the trees.

The driveway will be constructed using all reasonable and feasible Best Management Practices (BMP), including a silt fence, straw wattle and other erosion control methods as specified in the Final Maintenance and Monitoring Plan (Exhibit 5). In addition, the impacts to the wetland and buffer will be mitigated to the extent reasonably feasible with a 1,301 square foot mitigation area which will be enhanced with the removal of non-native vegetation and the addition of native vegetation. Please refer to Exhibit 5 and Exhibit 15 for the mitigation and enhancement plan. There are 4 planting areas within the buffer as illustrated on the Final Site Plan (Exhibit 15). The proposed enhancement and plant species can be found on page 13-14 within Exhibit 5. The performance standards include 100% plant survival within the first year after the initial planting and 90% survival for the subsequent years. Please refer to Exhibit 5 sections 3.2 and 3.3 for the Monitoring and Performance Standards. Exhibit 5, page 17 Westech states the following: “the mitigation and monitoring plan has been formulated to provide measures which offset impacts to the wetland and which are expected to result in “No Net Ecological Loss” to the wetland and its buffer zone.”

Staff finds the proposal meets the requirements of MICC 19.07.030(A)(6)(a-d). .

8. MICC 19.07.070(A):

Watercourses – Designation and Typing. Watercourses shall be designated as Type 1, Type 2, Type 3 and Restored according to the following criteria:

1. Type 1 Watercourse. Watercourses or reaches of watercourses used by fish, or are downstream of areas used by fish.
2. Type 2 Watercourse. Watercourses or reaches of watercourses with year-round flow, not used by fish.
3. Type 3 Watercourse. Watercourses or reaches of watercourses with intermittent or seasonal flow and not used by fish.
4. Restored Watercourse. Any Type 1, 2 or 3 watercourses created from the opening of previously piped, channelized or culverted watercourses.

Staff Analysis:

The applicant provided a Watercourse Assessment (Exhibit 2) that indicates that the type 2 watercourse indicated on the City’s GIS map is not a regulated watercourse and is stormwater runoff. MICC 19.16 defines a watercourse as the following: “a course or route, formed by nature and generally consisting of a channel with a bed, banks, or sides throughout substantially all its length, along which surface waters, with some regularity (annually in the rainy season), naturally and normally flow in draining from higher to lower lands. This definition does not include irrigation and drainage ditches, grass-lined swales, canals, storm water runoff devices, or other courses unless they are used by fish or to convey waters that were naturally occurring prior to construction.” The City’s environmental consultant, Environmental Science Associates (ESA), has confirmed that the stream does not meet the City’s definition of a watercourse per MICC 19.16 and that there is not a regulated watercourse present on-site, refer to Exhibit 7, page 2.

9. MICC 19.07.070(B)(1):

Watercourse Buffer Widths. Standard buffer widths shall be as follows, measured from the ordinary high water mark (OHW), or top of bank if the OHW cannot be determined through simple nontechnical observations.

Watercourse Type	Standard (Base) Buffer Width (feet)	Minimum Buffer Width with Enhancement (feet)
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Type 1	75	37
Type 2	50	25
Type 3	35	25
Restored or Piped	25	Determined by the code official

Staff Analysis:

Due to ESA confirming that there is no regulated watercourse on-site (Exhibit 7, page 2), Staff finds that this code section no longer applies.

10. MICC 19.07.080(B):

Wetland Ratings. Wetlands shall be rated as Category I, Category II, Category III or Category IV according to the wetland classification system.

Staff Analysis:

The applicant provided a wetland delineation report (Exhibit 3) and revised critical areas study (Exhibit 5) that identifies the wetland as a Category IV. Staff finds this criterion has been met.

11. MICC 19.07.080(C): 1. Standard Wetland Buffer Widths. The following standard buffer widths shall be established from the outer edge of wetland boundaries:

Wetland Type	Standard (Base) Buffer Width (feet)	Minimum Buffer Width with Enhancement (feet)
Category I	100	50
Category II	75	37
Category III	50	25
Category IV	35	25

Staff Analysis:

Both the City's resources (Exhibit 7, page 2) and the applicant's delineation and revised critical areas study (Exhibit 3 and 5) identify the existing wetland as a Category IV. Category IV wetlands are subject to a 35-foot regulated buffer that may be reduced to 25 feet with an approved critical area determination. ESA's first review letter (Exhibit 7, page 2) states that they agree with the applicant's findings that wetland A is a category IV slope wetland. ESA's second review letter (Exhibit 8, page 2) states that they agree with the applicant's findings that the 200 square foot wet area is not a wetland. Staff finds this criterion has been met.

12. MICC 19.07.070(B)(2)(a):

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

Staff Analysis:

The applicant is requesting to reduce a portion of Category IV wetland on site to the minimum buffer width of 25 feet. The applicant is proposing to enhance the wetland buffer by removing non-native plant species, amending the soil, and planting native plants (Exhibit 5 and 15). An analysis provided in the Critical Area Study states that these measures will create no net loss of ecological function by the reduce buffer width. In addition, the impacts to the wetland and buffer will be mitigated to the extent reasonably feasible with a 1,301 square foot mitigation area which will be enhanced with the removal of non-native vegetation and the addition of native vegetation. Please refer to Exhibit 5 and Exhibit 15 for the mitigation and enhancement plan. There are 4 planting

areas within the buffer as illustrated on the Final Site Plan (Exhibit 15). The proposed enhancement and plant species can be found on page 13-14 within Exhibit 5. The performance standards include 100% plant survival within the first year after the initial planting and 90% survival for the subsequent years. Please refer to Exhibit 5 sections 3.2 and 3.3 for the Monitoring and Performance Standards. Exhibit 5, page 17 Westech states the following: “the mitigation and monitoring plan has been formulated to provide measures which offset impacts to the wetland and which are expected to result in “No Net Ecological Loss” to the wetland and its buffer zone.”

A peer review by ESA concluded that the proposed mitigation would create no net loss of ecological function and agreed with Westech’s findings. Please refer to Exhibit 8, the City’s second review letter with ESA’s review memo attached. The peer review also included recommendations to ensure opportunity for mitigation success; these were incorporated into the revised mitigation plan (Exhibit 5 and 15). These recommendations included the following: reducing the standard buffer only in the area needed to accommodate the proposed house, reducing the house footprint to be outside of the reduced buffer, and narrowing the driveway. The Final Site Plan (Exhibit 15) illustrates the steep slope extent, and in this area (north of the proposed house) the buffer will not be reduced.

Staff finds that MICC 19.07.070(B)(2)(a) has been met.

23. MICC 19.07.040(J)(1):

Maintenance and Monitoring. Landscape maintenance and monitoring may be required for up to five years from the date of project completion if the code official determines such condition is necessary to ensure mitigation success and critical area protection.

Staff Analysis

The applicant proposes annual monitoring of the proposed mitigation for five years. Additionally, the project approval is conditioned with a request for a future financial guarantee with a bond or assignment of funds. The applicant has provided a complete Bond Quantity Worksheet (Exhibit 12) and the bond or assignment of funds will be 150% of the total. Staff finds this criterion has been met.

24. MICC 19.07.040(J)(2):

Maintenance and Monitoring. Where monitoring reveals a significant variance from predicted impacts or a failure of protection measures, the applicant shall be responsible for appropriate corrective action, which may be subject to further monitoring.

Staff Analysis

Staff finds that this requirement is appropriate as a condition of approval.

25. Permit Expiration:

MICC 19.15.150(A) states the following: “except as stated below, or as otherwise conditioned in the approval process, land use review approvals shall expire **three years** from the date of notice of decision if the development proposal authorized by the land use review is not commenced. For the purposes of this section, the development proposal shall be considered established if **construction or substantial progress toward construction of a development proposal** for which a land use review approval has been granted must be undertaken within two years of the date of notice of decision of the land use review.”

Staff Analysis

A condition of approval has been added to this decision, setting an expiration date consistent with this code standard. Staff finds this criterion has been met.

II. CONCLUSIONS OF LAW

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

1. The applicant has correctly applied for a Critical Areas Determination and SEPA Determination to verify the presence, or lack thereof, of a watercourse, and to reduce required wetland buffers.
2. The subject property does not contain a regulated watercourse.
3. The subject property contains a Category IV wetland, which require buffers pursuant to MICC 19.07.080.
4. The buffers will not be less than the minimum widths specified in MICC 19.07.070(B)(1) and MICC 19.07.080(C)(1).
5. A critical area study consistent with MICC 19.07.050 was submitted (Exhibit 5).
6. The proposed wetland buffer width reduction plus mitigation measures complies with the applicable provisions of MICC 19.07 and will not result in a net loss of ecological function.
7. As shown in Exhibit 5 and 15, no portion of the reduced buffer is on a steep slope.

III. DECISION

Based upon the above Findings of Fact Conclusions of Law and attached Exhibits, the critical areas determination application CAO18-003 to reduce the Category IV wetland buffer from 35 feet to 25 feet as depicted by Exhibit 5 and 15, is hereby **APPROVED** subject to the Conditions of Approval. This decision is final, unless appealed in writing consistent with adopted appeal procedures.

IV. CONDITIONS OF APPROVAL

1. The following conditions shall be binding on the "Applicant," which shall include the owner or owners of the property, heirs, assign and successors.
2. The development of the subject site shall substantially comply with the development proposal as reflected in Exhibits 2, 3, 5, and 15.
3. Per Westech Company's Mitigation Plan, a fence (slip rail or similar) shall be placed along the western side of the Wetland A Buffer Zone, but at least 6 feet from the residential structure. A sign shall be placed indicating there is a wetland and buffer present, which should not be disturbed without proper authorization as required by the Mercer Island City Code.
4. Prior to approval of building permit 1401-022, the applicant shall submit a financial guarantee, wither it be a bond or an assignment of funds. The amount will be 150% of the total stated on the Bond Quantity Worksheet (Exhibit 12).
5. Upon completion of the mitigation work, a letter written by a qualified professional detailing compliance with the approved mitigation plan shall be submitted to the City of Mercer Island Community Planning and Development. The compliance letter shall be accompanied by a set of as-built drawings depicting type and location of mitigation plantings. A maintenance and monitoring memo shall be submitted to the City of Mercer Island Community Planning and Development annually for a period of five years. Plant survival rates are to meet or exceed the performance standards listed in Exhibit 5.
6. This permit approval shall expire **three (3)** years from the date of notice of decision if the activity approved by the permit is not exercised. This activity includes construction or substantial progress toward construction of a development proposal.

7. The applicant shall install and have inspected full temporary erosion and sediment control measures prior to construction.
8. Non-native species within the reduced buffer zone shall be removed by hand (no mechanized equipment). The species to be removed from the site include, but are not limited to, the following: Himalayan blackberry (*Rubus armeniacus*) and reed canary grass (*Phalaris arundinacea*).

Approved this 11th day of March 2019.



**Lauren Anderson, Planner
Community Planning and Development
City of Mercer Island**

Parties of record have the right to appeal the decision on this action when it is issued. If at that time you desire to file an appeal, you must submit the appropriate form, available from the Community Planning and Development, and file it with the City Clerk within fourteen (14) days from the date this decision is signed. Upon receipt of a timely complete appeal application and appeal fee, an appeal hearing will be scheduled. To reverse, modify or remand this decision, the appeal hearing body must find that there has been substantial error, the proceedings were materially affected by irregularities in procedure, the decision was unsupported by material and substantial evidence in view of the entire record, or the decision is in conflict with the city's applicable decision criteria.

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