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**CITY OF MERCER ISLAND**

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**CRITICAL AREA DETERMINATION**

**NOTICE OF DECISION**

**October 14, 2019**

<b>Project Number:</b>	CAO19-006
<b>Description:</b>	A request for a Critical Areas Determination (MICC 19.07.070(B)). The proposal is to reduce a piped watercourse buffer to allow construction of a new single-family residence after demolishing the existing residence. The buffer for the piped watercourse will be reduced from 25 feet to 10.75 feet at its narrowest point. 374 square feet of buffer will be reduced, and 375 square feet of buffer will be added.
<b>Applicant/ Owner:</b>	Richard A Fisher of RFA Architects/Steve and Sophy Yang
<b>Site Address:</b>	6660 E Mercer Way (a.k.a. 9640 SE 68 <sup>th</sup> St), Mercer Island, WA, 98040; Identified by King County Assessor tax parcel 239600-0050
<b>Zoning:</b>	R-8.4
<b>SEPA Compliance:</b>	This proposal is categorically exempt from SEPA review per WAC 197-11-800(b)(i).
<b>Exhibits:</b>	<ol style="list-style-type: none"><li>1. Development Application, dated received by the City on March 14, 2019.</li><li>2. Project plans prepared by The Watershed Company, dated received by the City on October 7, 2019.</li><li>3. Critical Area Study prepared by The Watershed Company, dated received by the City on October 10, 2019.</li><li>4. Project Narrative, dated received by the City on March 1, 2019.</li><li>5. Approach Summary, dated received by the City on March 1, 2019.</li><li>6. Tree Report prepared by Bruce MacCoy, Consulting Arborist, dated received by the City on February 11, 2019.</li><li>7. Public comment from Karen Walter of the Muckleshoot Tribe, dated received by the City on May 14, 2019.</li><li>8. Public comment from Chris Niederman, dated received by the City on March 26, 2019.</li><li>9. Public comment from Alan L. Wallace and Sean T. James of Williams, Kastner &amp; Gibbs PLLC (the Niederman's attorney), dated received by the City on April 30, 2019.</li><li>10. Public comment from Alan L. Wallace and Sean T. James of Williams, Kastner &amp; Gibbs PLLC (the Niederman's attorney), dated received by the City on September 11, 2019.</li></ol>

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## **I. FINDINGS OF FACT**

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### **1. Application Description:**

The applicant has requested approval of a critical area determination to average a piped watercourse buffer to allow construction of a new single-family residence after demolishing the existing residence. The buffer for the piped watercourse will be reduced from 25 feet to 10.75 feet at its narrowest point. No net loss will be ensured by buffer enhancement including removal of the existing home that is currently located over the piped watercourse and planting native vegetation.

### **2. Zoning:**

The existing zoning of the subject site is R-8.4(Residential, 8,400 square foot minimum lot area).

### **3. Adjacent Land Use:**

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

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

A Critical Area Determination is a Type III land use review by the code official pursuant to MICC 19.15.030 Table A that allows reduction or averaging of a wetland or watercourse buffer, or alteration of a steep slope. The applicant has applied for a Critical Area Determination to reduce a watercourse buffer to construct a new single-family residence after demolition of the existing home on the lot.

### **5. SEPA:**

This proposal is categorically exempt from SEPA review per WAC 197-11-800(1)(b)(i).

### **6. Public Noticing and Comments:**

There is no public hearing requirement for a Critical Area Determination (a Type III land use review) pursuant to MICC 19.15.030 Table B. On April 15, 2019 City staff sent a Public Notice of Application to all property owners within 300 feet of the subject property and placed the Public Notice of Application in the City Weekly Permit Bulletin. The site was posted with a public notice sign, in a location that is visible to the public right-of-way on April 15, 2019 as required by MICC 19.15.090(B). A public comment period ran from April 15, 2019 through 5:00 P.M. on May 15, 2019.

Four public comments from two commenting parties were received during the public comment period (Exhibits 7 through 10).

a. One comment was received from Karen Walter of the Muckleshoot Tribe (Exhibit 7). The following are her comments:

(1). As noted in the Critical Areas Report for the project, there is an existing watercourse (stream) onsite that is currently piped throughout its length on this property until it discharges into Lake Washington. With the project site being fully redeveloped, this is the opportunity to daylight this stream. Please explain why this project is not daylighting this stream as part of this project, particularly given the new home's location farther away from this piped watercourse. As part of this response, please note the approximately date as to when this stream was piped and the condition of this pipe.

(2). The plans note a few existing trees (unidentified pine species) will be removed from areas adjacent to the piped stream and Lake Washington. The proposed critical areas planting plan

shows no new trees along the piped stream and planted areas Lake Washington. There should be trees planted to replace those removed or at least some native willows that will provide more habitat functions along the nearshore of Lake Washington than those shrub species proposed.

Response:

According to the City's GIS maps, this water source has been piped since at least 1963. The pipe is extremely deep, and daylighting of the watercourse is not practical. Due to the depth of the pipe, the outlet into the Lake is not visible and could not be located. It appears to extend far into the lake. All existing trees in the watercourse buffer will be preserved. Non-native shrubs will be removed. The replanting plan includes nine vine maples and six cascaras.

b. Three comments were received from the neighbors immediately to the south, Chris and Nicole Niederman (Exhibits 8.a and 8.b, 9, and 10). The comments related to both the Critical Area Determination and the associated building permit. The Niederman's expressed two primary concerns. One concern was about the width of the existing access road that provides access to the subject property. The other concern was that the original plans showed mitigation plantings in an area currently occupied by the Niederman's driveway where it crosses over the applicant's lot outside of the recorded access easement. Planting vegetation in that area would result in the Niederman's relocating their driveway.

Response:

The existing access road has been in place since the 1970's. Fire code does call for a 20-foot wide fire access roadway, and the existing access easement is only 10-feet wide. Because the road and its associated easement is existing, it can remain as 10-feet if the applicant includes code alternates to address the fire deficiency. The fire marshal will only approve their part of the review if they determine that the fire deficiency is alleviated by the code alternates. To address the concern that the mitigation plantings were proposed in the location of the neighbor's driveway, the applicant's relocated the proposed mitigation plantings away from the current location of the Niederman's driveway.

**7. MICC 19.07.070(B)(3)(a) through (e):**

Averaging of Watercourse Buffer Widths.

The code official may allow the standard buffer width to be averaged if:

- (a) The proposal will result in a net improvement of critical area function;
- (b) The proposal will include replanting of the averaged buffer using native vegetation;
- (c) The total area contained in the averaged buffers on the development proposal site is not decreased below the total area that would be provided if the maximum width were not averaged;
- (d) The standard buffer width is not reduced to a width that is less than the minimum buffer width at any location; and
- (e) That portion of the buffer that has been reduced shall not contain a steep slope.

**Staff Analysis:**

*The applicant provided a Critical Area Study (Exhibit 3) that describes existing site conditions, the proposed watercourse buffer averaging, and proposed buffer enhancement. Table 1 of the Critical*

*Area Study (Exhibit 3) demonstrates net improvement of ecological functions. Provided the recommendations of the Critical Area Study are followed, the criteria of MICC 19.07.070(B)(3)(a) through (e) will be met. This decision conditions that the applicant follow the procedures laid out in the Section 7 Buffer Enhancement Plan of the Critical Area Study, and the plan sheets attached to the Critical Area Study.*

## **8. Permit Expiration**

MICC 19.15.150 states “Except as stated below or otherwise conditioned in the approval process, land use review approvals shall expire three years from the date of notice of decision if the development proposal authorized by the land use review is not commenced...”

### **Staff Analysis:**

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

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## **II. CONCLUSIONS OF LAW**

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

1. The subject property contains a piped watercourse.
2. The proposed reduction of the watercourse buffer, as conditioned, is consistent with the provisions of MICC 19.07.070.

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## **III. DECISION**

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Based upon the above noted Findings of Fact and Conclusions of Law, critical area determination application CAO19-006 to average a watercourse buffer, as depicted by Exhibit 2 is hereby **APPROVED** subject to the following Conditions of Approval. This decision is final, unless appealed in writing consistent with adopted appeal procedures.

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## **IV. CONDITIONS OF APPROVAL**

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

1. The approval of the permit is based on the proposal substantially complying with the Plan Set (Exhibit 2) as shown in Exhibit 1, and the Critical Area Study, especially Section 7 “Buffer Enhancement Plan”. (Exhibit 3).
2. The applicant shall post a performance bond for completion of the required buffer enhancement as outlined in the Plan Set (Exhibit 2) and Critical Area Study (Exhibit 3), before issuance of the associated building permit. The bond shall be as determined by the Landscape Bond Quantity Form or as revised and approved by the Code Official. After installation of the required mitigation plantings, the performance bond shall be released upon submittal of a maintenance bond.
3. A 5-year monitoring period to ensure survival of the buffer plantings is required pursuant to the Critical Area Study (Exhibit 3).
4. This project is subject to building permit review, peer review, and subsequent approval. The applicant shall obtain all required permits for construction.
5. The applicant shall install and have inspected full temporary erosion and sediment control measures prior to construction.

6. This approval shall expire three years from the issuance of the Notice of Decision if the development proposal (construction of a single-family residence) is not commenced.

**Approved this 14th day of October, 2019.**



**Nicole Gaudette  
Senior Planner  
Community Planning & 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 Development Services Group, and file it with the City Clerk within fourteen (14) days from the date this decision is signed. Upon receipt of a timely complete appeal application and appeal fee, an appeal hearing will be scheduled. To reverse, modify or remand this decision, the appeal hearing body must find that there has been substantial error, the proceedings were materially affected by irregularities in procedure, the decision was unsupported by material and substantial evidence in view of the entire record, or the decision is in conflict with the city's applicable decision criteria.

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