

---

# CITY OF MERCER ISLAND

## COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | [www.mercergov.org](http://www.mercergov.org)

---



---

## STAFF REPORT

### Critical Areas Determination

---

<b>Project No.:</b>	CAO19-008
<b>Description:</b>	Buffer averaging of a type 3 watercourse with a planting plan.
<b>Applicant/ Owner:</b>	Kevin Sutton (MZA Architects) / Timothy Paek
<b>Site Address:</b>	2215 80 <sup>th</sup> Ave SE Mercer Island, WA 98040 Identified by King County Assessor tax parcel number: 54523-02145
<b>Zoning District</b>	R-8.4
<b>SEPA Compliance:</b>	Exempt per WAC 197-11-800(6)(e)
<b>Staff Contact:</b>	Lauren Anderson, Planner
<b>Exhibits:</b>	<ol style="list-style-type: none"><li>1. Plan Set received by the City on May 6, 2019.</li><li>2. Project Narrative prepared by MZA Architecture received by the City on May 6, 2019.</li><li>3. Critical Areas Study prepared by John Altmann, an Ecologist at Altmann Oliver Associates LLC received by the City on May 6, 2019.</li><li>4. Development Application received by the City on May 6, 2019.</li><li>5. ESA First Review Memo received by the City on August 8, 2019.</li><li>6. Site Visit Photos from August 5, 2019.</li><li>7. City's GIS watercourse map.</li></ol>

## INTRODUCTION

### 1. Application Description:

The proposal is a significant remodel and story addition that involves the removal of the entry level walls down to the foundation and at the floor framing above the daylight basement below. The downhill side of the house will be three (3) stories. The existing house has a gross floor area of 3,352 square feet and the new proposed house will be 4,370 square feet. For the proposed development, the applicant has a building permit application under review, #1808-172.

### 2. Zoning & Adjacent Land Use:

The site gently slopes down to the west and has three existing trees within the 35-foot watercourse buffer. The lot and surrounding lots are zoned R-8.4 residential and are single-family residential. The existing home sits within the existing 35-foot buffer of an existing type 3 watercourse that is located on the western neighbor's property. The proposal is to do buffer averaging and reduce the buffer where the remodel and existing house exists.

### **3. SEPA Compliance:**

The proposal is categorically exempt from SEPA (State Environmental Policy Act) review per WAC 197-11-800(6)(e).

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

A Critical Areas Determination for watercourse buffer averaging is a type III (3) land use review per MICC 19.15.030 Table A. The applicant has applied for a Critical Areas Determination to average the width of the watercourse buffer by removing 141 square feet from the southwest portion of the lot and relocating the 141 square feet of buffer to the northwest portion of the lot. The watercourse buffer enhancement area is 187 square feet and consists of native vegetation (red currant and snowberry).

The City's GIS map (Exhibit 7) indicated that the watercourse was a type 2 watercourse, however the City's peer reviewer (ESA) Ecologist and the applicant's Ecologist (AOA, LLC) have found that it is a type 3 watercourse with a 35-foot associated buffer. Please refer to Exhibit 3 and 5, and the analysis below in the Findings of Fact and Conclusions of Law #8.

## **Findings of Fact & Conclusions of Law**

### **5. Application Date, Letter of Completion, Vesting:**

The applicant applied on May 6, 2019 and the application was deemed complete on May 30, 2019. Due to the application being a type III land use review, per MICC 19.15.170(B) it vests on the date of completion.

### **6. NOA, Review Process, Comment Period:**

Type III land use reviews per MICC 19.15.030(Table B) require public notice of application (NOA) which includes the following: weekly bulletin notice, 300-foot mailing, 30-day comment period and sign posted near the site. The public NOA was issued on June 3, 2019 and the 30-day comment period went until 5pm on July 3, 2019. The City received no public comments during this time or afterwards.

### **7. Site Visit Finding:**

City Planner Lauren Anderson and Jessica Redman from ESA (Environmental Science Associates, peer reviewer) conducted a site visit on August 5, 2019. Refer to Exhibit 6 site visit photographs of the backyard (western portion) of the lot and looking over the fence. The watercourse looked to be a ditched channel and no flow was observed. Refer to Exhibit 5 for ESA's review memo with ESA's recommendations and findings.

### **8. SEPA Finding of Fact and Conclusions:**

Categorical exemption finding pursuant to WAC 197-11-800(6)(e). In addition, the watercourse is located on the neighbor's property, thus the site is not considered lands covered by water.

### **9. Critical Areas:**

MICC 19.07.070 has the watercourse requirements for typing, buffer size and buffer averaging. This code is copied below with staff analysis in italic text.

- 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.
- B. Watercourse Buffers.
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)
Type 1	75	37
Type 2	50	25
Type 3	35	25
Restored or Piped	25	Determined by the code official

*Staff Analysis: The applicant’s Ecologist, Altmann Oliver Associates (AOA) found that “since Stream 1 does not contain fish habitat and conveys only seasonal or intermittent flows, it meets the criteria for a Type 3 watercourse per MICC 19.07.070.A (Exhibit 3, page 2).” In addition, the City’s peer reviewer, ESA agreed with AOA’s findings that it is a type 3 watercourse which has a 35-foot standard buffer. ESA stated the following: “ESA and City staff observed the watercourse from the project parcel during the August 5, 2019 site visit. The watercourse appeared to be a ditched channel that was dug to primarily convey stormwater. No flow was observed during the August site visit. Stream substrate was primarily soil and no fish habitat was observed. Based on the stream characteristics and the location of the parcel near the start of a deep ravine, we also agree that the stream would not support fish and therefore, is a Type 3 watercourse, which would be allotted a 35-foot buffer (Exhibit 5, page 2).”*

.....

3. Averaging of 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 in width shall not contain a steep slope.

*Staff Analysis:*

- a. *As shown in Exhibit 3 and Exhibit 5, ESA and AOA Ecologist’s both found that the proposal will result in a net improvement of watercourse function. The proposal includes permanent removal of*

*impervious surface within the buffer and native vegetation plantings. ESA states the following: "Based on our review of the AOA Report and MICC, as well as the site visit, ESA concludes the proposed buffer addition and enhancement with native plantings will improve buffer conditions at the site and result in an ecological lift in functions [Exhibit 5, page 3]."*

- b. As shown in Exhibit 1 page 11, eleven one-gallon red currant and eleven one-gallon snowberry will be planted within the enhancement area. MICC 19.16 defines native vegetation as "vegetation identified by the Washington Native Plant Society or the United States Department of Agriculture as being native to Washington State. Native vegetation does not include noxious weeds." Red currant and snowberry are identified by the United States Department of Agriculture as being native to Washington State.*
- c. As shown in Exhibit 1 page 10 and 11, the total area contained in the averaged buffers on the site is not decreased as 141 square feet (sf) buffer area is being reduced and 141 sf is being added.*
- d. As shown in Exhibit 1 page 10 and 11, the buffer width is not reduced to less than 25 feet (minimum buffer width) at any location.*
- e. As shown in Exhibit 1 page 5 Topographic Survey by Terrane, the reduced buffer area does not contain a steep slope.*

#### **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. Substantial conformance with the development plan set (Exhibit 1).
3. 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.
4. The mitigation plants shall be monitored twice (2) approximately one (1) year after plant installation (to determine survival and replacement) and five (5) years after the plant installation to ensure the mitigation actions of the project were a success.
5. The applicant shall install and have inspected full temporary erosion and sediment control measures prior to construction.

#### **DECISION**

Based upon the above noted Findings of Fact and Conclusions of Law, critical areas determination application CAO19-008, as depicted in Exhibit 1 and 3, is hereby preliminarily **APPROVED**. This decision is final, unless appealed in writing consistent with adopted appeal procedures, MICC 19.15.020(J), and all other applicable appeal regulations.

**Approved this 19<sup>th</sup> day of August 2019**



---

**Lauren Anderson**  
**Planner**

**Community Planning & Development  
City of Mercer Island**

*If you desire to file an appeal, you must submit the appropriate form, available from the department of Community Planning and Development, and file it with the City Clerk within fourteen (14) days from the date after the notice of decision is made available to the public and applicant pursuant to MICC 19.15.120. 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.*