
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

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STAFF REPORT

CRITICAL AREA DETERMINATION

Project No.:	CA019-013
Description:	Request for a critical area determination to average the buffer of a Type 3 watercourse and category IV (4) wetland to replace and expand an existing patio with a new covered patio and stairs. The applicant is proposing to conduct development activity within 60 square feet of the watercourse's buffer, while adding 60 square feet to the buffer elsewhere on the property. In addition, the proposal also includes substantial 2,800sf buffer enhancement on the steep slope.
Applicant / Owner:	Josh Brincko (Josh PS) / Jonathan Lai
Site Address:	7505 92 nd Ave SE, Mercer Island, WA 98040; Identified by King County Assessor tax parcel number 257950-0188.
Zoning District:	Single Family Residential (R-9.6)
Staff Contact:	Lauren Anderson, Planner
Exhibits:	<ol style="list-style-type: none">1. Development Application, received by the City of Mercer Island on June 25, 2019.2. Revised Development Plan Set, received by the City of Mercer Island on May 20, 2020.3. Project Narrative, received by the City of Mercer Island on June 25, 20194. Revised Critical Areas Report, received by the City of Mercer Island on July 8, 2020.5. Peer Review Memorandum prepared by Environmental Science Associates, dated July 30,2020.6. Revised Bond Quantity Worksheet, received by the City of Mercer Island on July 30, 2020.7. Topographic and Boundary Line Survey, received by the City of Mercer Island under associated building permit #1906-045 on April 15, 2020.

INTRODUCTION

I. Project Description

The applicant has applied for a Critical Area Determination to average the buffer of a Type 3 watercourse and category 4 wetland to replace an existing patio with a new expanded covered patio and stairs. The City's GIS critical areas map indicates that there is a type 2 watercourse present on site,

however the applicant's Professional Wetland Scientist, Kerrie McArthur at Confluence, and the City's consultant Jessica Redman, Wetland Ecologist at Environmental Science Associate (ESA), found that it is a type 3 watercourse. The proposal involves encroaching 60 square feet into the buffer south of the project for the construction of the patio and stairs, while adding 60 square feet to the buffer east of the project area. The portion of the buffer to be reduced will not be reduced below the minimum width allowed. In addition, a total of 2,800 square feet of buffer enhancement is proposed.

II. Site Description and Context

1. The proposed activity is to occur at 7505 92nd Ave SE, Mercer Island, WA 98040. This site is designated Single Family Residential (zoned R-9.6).
2. Adjacent properties to the north, east, west, and south are also within the R-9.6 zone. Adjacent properties to the north are within the R-9.6 zone. All adjacent properties contain residential uses.

Findings of Fact & Conclusions of Law

III. Application Procedure

1. The application for a Critical Area Determination was received by the City of Mercer Island on June 25, 2019. The application was determined to be complete on July 1, 2019 and a letter of completeness (via email) was sent to the applicant on July 11, 2019.
2. Under MICC 19.15.030, Table A, applications for Critical Area Determinations must undergo Type III review. Type III reviews require notice of application (discussed below). A notice of decision is issued once the project review is complete.
3. The City of Mercer Island provided public notice of application for this Critical Area Determination application, as set forth in MICC 19.15.090. The comment period for the public notice period lasted for 30 days, from July 15, 2019 to August 14, 2019. No public comments were received. The following methods were used for the public notice of application:
 - 1) A mailing sent to neighboring property owners within 300 feet of the subject parcel.
 - 2) A sign posted on the subject parcel.
 - 3) A posting in the City of Mercer Island's weekly permit bulletin.

IV. State Environmental Policy Act (SEPA)

This proposal is categorically exempt from SEPA pursuant to WAC 197-11-800(2)(f).

V. Consistency with the Critical Areas Code

1. The general provisions for Critical Area Determinations are listed in MICC 19.07.020:
 - a. Applicability. Any alteration of a critical area or buffer shall meet the requirements of Chapter 19.07 MICC unless an allowed alteration or reasonable use exception applies pursuant to MICC 19.07.030.

Staff Analysis: *The applicant has applied for a critical area determination to average the buffer of a Type 3 watercourse and category 4 wetland. The project meets the buffer averaging requirements of MICC 19.07.070(B)(3) and MICC 19.07.080(C)(3), as discussed in Section V.2 of this staff report below.*

- b. Public Notice – Critical Area Determination. A critical area determination requires public notice pursuant to MICC 19.15.100. A decision on a critical area determination may be appealed to the hearing examiner following the appeals process described in MICC 19.15.130.

Staff Analysis: *As discussed in Section III.3 of this staff report above, the City of Mercer Island provided public notice for this project pursuant to MICC 19.15.100.*

- c. Critical Area Designation and Mapping. The approximate location and extent of critical areas are shown on the City’s critical area maps, as now existing or hereafter amended. These maps are to be used as a reference only. The applicant is responsible for determining the scope, extent and boundaries of any critical areas to the satisfaction of the code official.

Staff Analysis: *The applicant has provided a critical area study (Exhibit 4) and survey (within Exhibit 2) of the site that show the location of the Type 3 watercourse and category 4 wetland and the associated buffers.*

- d. Compliance with Other Federal, State or Local Laws. All approvals under the chapter, including critical area determinations and reasonable use exceptions, do not modify an applicant’s obligation to comply in all respects with the applicable provisions of any other federal, state, or local law or regulation.

Staff Analysis: *The applicant is responsible for complying with all federal, state, and local regulations. This decision further conditions that the applicant provide documentation to the City should compliance with federal, state, and local regulations change the scope of the proposal.*

2. MICC 19.07.040 – Review and construction requirements.

- a. (I) Timing. All alterations or mitigation to critical areas shall be completed prior to the final inspection and occupancy of a project.

Staff Analysis: *This decision conditions that the proposed mitigation to the critical area and its buffer be completed prior to the final inspection of the building permit associated with this project.*

- b. (J) Maintenance and Monitoring.
 - 1. 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.
 - 2. 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: This decision conditions that maintenance and monitoring shall be required for the proposed mitigation landscaping, for a term of five years from the date of project completion. MICC 19.01.060(C)(1)(a) states that the city may require an applicant to provide a financial guarantee. However, due to the total project cost (refer to Exhibit 6 Bond Quantity Worksheet) being relatively low, a financial guarantee is not required.

3. MICC 19.07.050 Critical areas study. When a critical areas study is required under MICC 19.07.030, 19.07.060, 19.07.070, 19.07.080 or 19.07.090, the following documents are required:
 - A. Site Survey.
 - B. Coversheet and site construction plan.
 - C. Mitigation and restoration plan to include the following information:
 1. Location of existing trees and vegetation and proposed removal of same;
 2. Mitigation proposed including location, type, and number of replacement trees and vegetation;
 3. Delineation of critical areas;
 4. In the case of a wildlife habitat conservation area, identification of any known endangered or threatened species on the site;
 5. Proposed grading;
 7. Proposed monitoring plan.

Staff Analysis: The critical areas study, site plan, and survey provided by the applicant (Exhibit 2, 4, and 7) includes the items listed above. This criterion is met.

4. MICC 19.07.070(B)(3) – Averaging of Buffer Widths. The code official may allow the standard buffer width to be averaged if all of the following criteria are met:
 - a. The proposal will result in a net improvement of critical area function.

Staff Analysis: The critical areas study provided by the applicant (Exhibit 4) indicates that the proposed 2,800 square foot enhancement area will result in an improvement of critical area function. The plantings will also increase water quality and hydrology functions and reduce the potential for erosion from the shoulder of the slope. The peer review memorandum prepared by ESA (Exhibit 5) concurs that the proposal will improve the function of the critical area. This criterion is met.

- b. The proposal will include replanting of the averaged buffer using native vegetation.

Staff Analysis: The critical areas report (Exhibit 4) indicates that the 60 square foot area added to the buffer will be planted with native vegetation. The proposal goes beyond the minimum requirement and will enhance a total of 2,800 square feet of the buffer. The enhancement area includes the removal of invasive species and planting with native species which includes the following: 14 douglas-fir and 14 western red-cedar. This criterion is met.

- 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.

Staff Analysis: Figure 4: Proposed Buffer Averaging in Exhibit 4 shows that the buffer is being reduced by 60 square feet south of the project, while 60 square feet is being added to the buffer to the east of the project area. The total area of the buffer will not be reduced below the area of the buffer if it were not averaged, thereby meeting this criterion.

- d. The standard buffer width is not reduced to a width that is less than the minimum buffer width at any location.

Staff Analysis: Under MICC 19.07.070(B)(1), the standard buffer for a Type 3 watercourse is 35 feet and can be reduced to 25 feet. Under MICC 19.07.080(C)(1), the standard buffer for a Category IV (4) wetland is 35 feet and can be reduced to 25 feet. At its closest point, the proposed development will be taking place approximately 29 feet from the watercourse and wetland, as shown on Exhibit 2 and Exhibit 4. The standard buffer is not proposed to be reduced below the minimum buffer width at any location. This criterion is met.

- e. That portion of the buffer that has been reduced in width shall not contain a steep slope.

Staff Analysis: As shown on sheet A-1.0 of Exhibit 2 and Figure 4: Proposed Buffer Averaging in Exhibit 4, the proposed portion of the buffer to be reduced does not contain a steep slope. This criterion is met.

5. MICC 19.07.080(C)(3) – Wetlands.

- c. Averaging of Wetland Buffer Widths. The code official may allow averaging of the standard wetland buffer widths in accordance with the criteria of MICC 19.07.070(B)(3).

Staff Analysis: The project meets the buffer averaging requirements of MICC 19.07.070(B)(3) and MICC 19.07.080(C)(3), as discussed in Section V.2 of this staff report above.

CONDITIONS OF APPROVAL

1. The project proposal shall be in substantial conformance with Exhibit 2, Exhibit 4, and all applicable development standards contained within Mercer Island City Code (MICC) Chapter 19.07.
2. The applicant is responsible for documenting any required changes in the project proposal due to conditions imposed by any applicable local, state and federal government agencies.
3. All alterations or mitigation to critical areas shall be completed prior to the final inspection and occupancy of the project.
4. Upon completion of the mitigation plantings, 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 Department. The compliance letter shall be accompanied by a set of as-built drawings depicting the type and location of mitigation plantings. A maintenance and monitoring memo shall be submitted to the City of Mercer Island Community Planning and Development Department annually for a period of five years. Plant survival rates are to meet or exceed those set out in Exhibit 4.

5. A City of Mercer Island Building Permit may be required for construction of this project proposal. The Building Official may require an appropriate performance and maintenance bond in an amount to be determined prior to Building Permit issuance to ensure all required vegetation installation is completed in compliance with applicable code requirements.
6. Construction of this project proposal shall only occur during approved construction hours by the City of Mercer Island and/or as otherwise restricted by the Building Official.
7. Construction or substantial progress toward construction of a development for which a permit has been granted must be undertaken within three years after the approval of the permit or the permit shall terminate. The code official shall determine if substantial progress has been made.

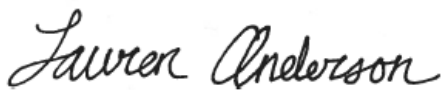
DEVELOPMENT REGULATION COMPLIANCE – DISCLOSURE

1. The applicant is responsible for obtaining any required permits or approvals from the appropriate Local, State, and Federal Agencies. The applicant is responsible for meeting the conditions required by the agencies pursuant to MICC 19.07.020(E).
2. All required permits must be obtained prior to the commencement of construction.

DECISION

Based upon the above noted Findings of Fact and Conclusions of Law, Critical Area Determination application CAO19-013, as depicted in Exhibit 2 and Exhibit 4, is hereby **APPROVED**. This decision is final, unless appealed in writing consistent with adopted appeal procedures, MICC 19.15.130, and all other applicable appeal regulations.

Approved this 10th day of August, 2020



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.