
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.:	CAO19-014
Description:	A request for a Critical Areas Determination review to construct a new detached garage, reconfigure an existing swimming pool and extend an existing driveway. Demolition and restoration work will occur within a Category IV wetland and Type 3/Ns watercourse buffer. There was a determination as to whether a watercourse that appeared on the City's GIS map existed on the site. It was determined that the watercourse did not exist.
Applicant / Owner:	Ned Nelson (Ned Nelson, Architect) / Greg & Jennifer Headrick
Site Address:	8822 SE 62 nd Street, Mercer Island WA 98040 Identified by King County Assessor tax parcel number: 865050-0040
Zoning District:	Single Family Residential (R-9.6)
Staff Contact:	Lauren Anderson, Planner
Exhibits:	<ol style="list-style-type: none">1. Development Application, dated May 28, 20192. Revised Development Plan Set, received by the City of Mercer Island on May 18, 20213. Project Narrative, received by the City of Mercer Island on July 19, 20194. Revised Critical Areas Report prepared by Wetland Resources, received by the City of Mercer Island on May 18, 20215. First Peer Review Memorandum prepared by Environmental Science Associates, dated September 17, 20196. Bond Quantity Worksheet, received by the City of Mercer Island on May 18, 20217. Second Peer Review Memorandum prepared by Environmental Science Associates, dated December 12, 20198. Email from Karen Walter, received by the City of Mercer Island on August 26, 2019.9. Watercourse Classification Memo prepared by Wetland Resources, dated October 29, 201910. Applicant's Response to 9.17.19 City Review Comments prepared by Wetland Resources, dated October 25, 201911. City Review Comments dated September 17, 2019

INTRODUCTION

I. Project Description

The applicant has applied for a Critical Area Determination to construct a new detached garage, reconfigure an existing pool and patio, and expand an existing driveway located outside the required critical area buffer on the subject property. Several existing structures are proposed to be removed, including all structures located within the 35 foot buffer associated with the Type 3 watercourse and the small category IV wetland. Impacts from the proposed stormwater conveyance system within the buffer will be mitigated. The total mitigation includes 587 square feet of buffer enhancement with 209sf pool/patio removal and 378sf of invasive plant removal and native replanting.

II. Site Description and Context

1. There is a mapped Type 3 watercourse, two piped watercourses, and one small Category IV wetland along the east property line. An additional city mapped watercourse that is shown in the vicinity of the existing house was determined to be absent based on physical inspection. [Exhibit 4 and 5]
2. Per MICC 19.07.070(B)(1) Type 3 watercourses have a standard 35 foot buffer. Per MICC 19.07.080(C)(1) a category IV wetland has a standard 35 foot buffer.
3. The proposed activity is to occur at 8822 SE 62nd Street, Mercer Island, WA 98040. This site is designated Single Family Residential (zoned R-9.6).
4. Adjacent properties to the north, east, south, and west are also 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 26, 2019. The application was determined to be complete on July 26, 2019 and a letter of completeness was sent to the applicant on July 26, 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 29, 2019, to August 28, 2019. 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.
- a. The city received a comment from Karen Walter from the Muckleshoot Indian Tribe Fisheries Division on August 26, 2019 [Exhibit 8]. Karen requested that the applicant collect stream data to determine if the watercourse has potential fish use.

Staff Analysis: Please refer to Exhibit 7 Second ESA Memo, Exhibit 9 Watercourse Classification Memo, and Exhibit 10 Applicant’s Response to 9.17.19 City Review Comments. Environmental Science Associates (ESA) found the “discussion in the Watercourse Classification memo [Exhibit 9] provides adequate information and justification for the stream typing of Stream A consistent with WAC 222-016-031 [Exhibit 7, Table 1].”

IV. State Environmental Policy Act (SEPA)

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

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 alter the buffer of a Type 3 watercourse. The project meets the requirements of MICC 19.07.030(A)(7), 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 (Stream A) and category IV wetland (Wetland A) and the associated buffer.

- 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 19.07.030(A)(2) - 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:

- (A)(7) New Utility Facilities. New utilities, not including substations, 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;
 - d. Utilities shall be contained within the footprint of an existing street, driveway, paved area, or utility crossing where possible; and
 - e. The code official may require a critical area study or restoration plan for this allowed alteration.

Staff Analysis: “Based on site constraints (topography), the proposed flow spreader must be located close to Stream A to limit erosion potential. The proposed location has been modified so that the impacts occur in areas that are dominated by invasive species only, so that as many catch basins as possible are located outside of the buffer. No alternate locations outside the buffer are feasible.” [Exhibit 4, section 1.3.3]

The conveyance will be installed using hand tools only and will implement best management practices (BMPs) to limit erosion from entering the stream. Please refer to the civil plan in Exhibit 2 sheets C1-3 for the erosion control and storm drainage plan. The impacts will be mitigated with the proposed removal of invasive species in a 378 square foot area and the installation of native trees and shrubs. Please refer to the Final Mitigation Plan in Exhibit 2. With this analysis, staff has found criteria (a)-(e) listed above have been met.

3. MICC 19.07.040 – Review and construction requirements.
- a. 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. 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. In accordance with MICC 19.01.060(C)(1), a financial guarantee (e.g. bond or assignment of funds) shall be required for the installation and maintenance of the mitigation planting for this project. The amount of the financial guarantee is based on the total on the Bond Quantity Worksheet (Exhibit 6). The financial guarantee shall be received by the City prior to issuance of building permits.

CONDITIONS OF APPROVAL

1. The project proposal shall be in substantial conformance with Exhibit 2 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. Prior to approval of building permit 1905-249, the applicant shall submit a financial guarantee, whether it is a bond or an assignment of funds, for the installation and maintenance of the mitigation planting. The amount shall be 150% of the total stated in to Bond Quantity Worksheet (Exhibit 6).
5. 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.
6. 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.
7. 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.
8. 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 CAO19-014, as depicted in Exhibit 2, 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 4th day of October 2021



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.