

From: [Nicole Gaudette](#)
To: [Nicole Gaudette](#)
Subject: FW: Project CAO19-015
Date: Wednesday, April 15, 2020 4:08:48 PM
Attachments: [jimage001.png](#)

From: Ron & Regina Feinberg <rkfeinberg@msn.com>
Sent: Monday, April 6, 2020 5:34 PM
To: Nicole Gaudette <nicole.gaudette@mercergov.org>
Subject: Re: Project CAO19-015

Hi Nicole,

here is a picture of the original nest on Mercerdale Hillside in 1994. See some history below. Hope that gives some context to the need to keep our eagles habitat safe!



The history of this eagle nest on Mercerdale Hillside Park: there were no eagles on Mercer Island for about 30 years due to DDT.

First nesting pair started up on Mercer Island again, spring of 1994, right here in one of the trees on Mercerdale Hill. This pair nested in Mercerdale Hill every year until that first nest (in photo) fell down in a wind storm after many years of successful eaglets. And they rebuilt in the tree they are in now. That's 26 years on Mercerdale Hill!

I believe they are the same nesting pair. They mate for life. They've been successful every year with one or two eaglets each year.

Generally, They start nest re-building early spring, babies hatch right around Mother's Day in May, they are learning to fly around Sea Fair time in early August. They leave for the Skagit or Nooksack to feed on Salmon during the winter. Often coming back around November and leaving again until they start nest rebuilding. I have pics from that first nest.

I was told by the Seattle Audubon that there is at least a 1000 meter buffer for bald eagle nests. They have asked me to forward the public notice for this project to Josh Morris, the Urban Conservation Manager of Seattle Audubon as well as notifying the Wash. Dept of Fish and Wildlife.

Thank you so much for your attention on this!

Regina Feinberg
206 232 2872

From: Ron & Regina Feinberg <RKFEINBERG@msn.com>
Sent: Monday, April 6, 2020 12:34 PM
To: Nicole Gaudette <nicole.gaudette@mercergov.org>
Subject: Project CA019-015

Hi Nicole,

Those of us who live near Mercerdale Hill and near our beloved eagle tree are very concerned about the project proposed CA)19-015.

Some questions:

1. When was that property privately sold/owned? We were under the impression that is all part of the Mercerdale Hill public property

King County Assessor records do not provide a sales date, so I am unable to answer when the property was sold. Those records do indicate that the lot was created with the Island Park Replat. The plat was created in 1906. It is a privately owned lot and as far as I can tell the lot has never been a part of Mercerdale Hillside Park.

2. There is an established eagle nest in that area and it does not look like that has been considered or even noted in these plans. This pair of eagles started nesting in 1994 in the Mercerdale Hill. They've successfully raised eaglets every year since and have again returned this year! We are concerned that this has not been addressed in the proposal.

Thanks to public commenters like yourself, City staff is now aware of the eagles presence in a tree nearby the subject property. Both the federal government and the City of Mercer Island require protection of eagle nests.

Protection of eagle nests is addressed through a Critical Area Determination. Therefore, I will be requiring the applicant to expand the scope of this current Critical Area Determination application to submit a wildlife habitat assessment to address the presence of eagles.

3. How is the city allowing a 30' wide drive through the greenbelt?

I have attached a map created in the city's GIS system. The yellow highlights indicate public right of way. You will see that, while currently undeveloped, the area that will be used for access to the lot is public right of way and it's purpose is to provide access and space for utilities.

4. historically and by maps of our community, it appears that there is a designated wetland in that area as well.

The applicant provided an assessment conducted by a professional biologist that indicates there are no wetlands on the property or within 120 feet of the property (110 feet is the City's maximum wetland buffer size). I have walked the property and did not see any wetlands on the lot. I did notice something that is likely a wetland downslope of the lot, but it appears to be more than 110 feet from the lot. The presence of this wetland is why I required the wetland report. If you have any information to the contrary, please provide it to me for review. I have attached the biologists report.

We are in communication with the Audubon Society re: this project proposal. They were concerned about the wording in the notice under SEPA compliance saying "This proposal is categorically exempt from the State Environmental Policy Act (SEPA) per WAC 197-11-800(1)(b)(i) - can you explain how this is exempt?

Per WAC 197-11-800(1)(b)(i), the construction of up to four single family homes on a lot or lots is exempt from SEPA except if there is a wetland or watercourse (lands covered by water) on the property. If it is determined that a wetland is located on the property, SEPA review will be required. Please see an excerpt from the State regulations below. The full text of WAC197-11-800 can be found at this link: <https://apps.leg.wa.gov/wac/default.aspx?cite=197-11-800>

WAC 197-11-800 Categorical exemptions.

The proposed actions contained in Part Nine are categorically exempt from threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC [197-11-305](#).

Note: The statutory exemptions contained in chapter [43.21C](#) RCW are not included in Part Nine. Chapter [43.21C](#) RCW should be reviewed in determining whether a proposed action not listed as categorically exempt in Part Nine is exempt by statute from threshold determination and EIS requirements.

(1) Minor new construction - Flexible thresholds.

(a) The exemptions in this subsection apply to all licenses required to undertake the construction in question. To be exempt under this subsection, the project must be equal to or smaller than the exempt level. For a specific proposal, the exempt level in (b) of this subsection shall control, unless the city/county in which the project is located establishes an exempt level under (c) of this subsection. If the proposal is located in more than one city/county, the lower of the agencies' adopted levels shall control, regardless of which agency is the lead agency. The exemptions in this subsection apply except when the project:

- (i) Is undertaken wholly or partly on lands covered by water;
- (ii) Requires a license governing discharges to water that is not exempt under RCW

43.21C.0383;

(iii) Requires a license governing emissions to air that is not exempt under RCW **43.21C.0381** or WAC 197-11-800 (7) or (8); or

(iv) Requires a land use decision that is not exempt under WAC 197-11-800(6).

(b) The following types of construction shall be exempt:

- (i) The construction or location of four detached single family residential units.

We understand from the City of Mercer Island that there is a stop order for residential construction and that hopefully, we have more time to give comment beyond the April 15 deadline on the notice.

The April 15th deadline is the initial comment deadline. You are able to submit comments anytime.

Please advise,

Regina Feinberg
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Mercer Island, WA
206 232-2872