



MEMORANDUM

Date:	November 28, 2023	Project #:	23-023
To:	City of Mercer Island Department of Community Planning & Development		
From:	Roger Cecil, P.E., Cecil + Associates		
cc:	Janet Fischer, Property Owner		
Subject:	Fischer Property – Proposal for Short Plat Pre-Application Project Narrative and Questions		

The subject property has been in the Fischer family since the 1960's. The family is in the process of determining the development potential for the property. Based on studies done to date, the next step in the process is to attend a Pre-Application Conference with the City of Mercer Island to confirm preliminary findings of the studies and identify additional development requirements for the property. This document provides a project narrative, and a list of questions for the City, as required by the City for a pre-application meeting.

Project Narrative

The subject parcel is approximately 1.62 acres in size and is currently zoned R9.6. It is located approximately 3 blocks west of the South Mercer Playfield, at the west terminus of SE 76th Street, along the north side of the street. It is a lot/tract in the Mercer Terrace neighborhood with access directly to SE 76th Street, topographically separated from the remainder of the Mercer Terrace residential lots. The topography includes a plateau along the western edge, with slopes facing eastward toward the east property line, which coincides with a ravine containing a classified stream. The project proposes a 2-lot short plat, with access to SE 76th via a 25-ft wide pipe stem which extends to the right-of-way. There is sufficient area on the plateau for two building pads, which will constitute the main body of each proposed lot. Buffer reductions and mitigation is proposed in accordance with the TALASAEA Site Reconnaissance Letter dated October 11, 2023.

Questions for City

1. Please confirm the analysis and findings from the Site Reconnaissance Letter by TALASAEA Consultants, Inc. dated October 11, 2023.
2. Please confirm the analysis and findings from the December 11, 2009, letter from Gordon Thomas Honeywell, LLP regarding the viability of this land for development.
3. For stormwater review purposes, can the BMP feasibility analysis be completed based on soil characterization in lieu of PIT test/infiltration testing?

If you have any questions, or need additional information, please let us know. You can reach me by phone at (206) 484-3495 or via email at rogerc@cecilnassoc.com.



MEMORANDUM

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To:	City of Mercer Island Department of Community Planning & Development		
From:	Roger Cecil, P.E., Cecil + Associates		
cc:	Janet Fischer, Property Owner		
Subject:	Fischer Property – Proposal for Short Plat Pre-Application Request for Waiver from Tree Inventory and Replacement Worksheet		

This memo is a request for waiver from the requirement to provide a Tree Inventory and Replacement Worksheet for this project for the Pre-Application Request. The property owner is in the process of determining the feasibility of development on the property. Although tree preservation and protection is an important part of residential development, it will be addressed during the permitting process. We do not believe that the preservation of trees will be a prohibitive requirement that affects the feasibility of the development. Therefore we are requesting that this requirement be deferred.

If you have any questions, or need additional information, please let us know. You can reach me by phone at (206) 484-3495 or via email at rogerc@cecilnassoc.com.

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: (206) 275-7605 | www.mercerisland.gov



PRE-APPLICATION MEETING REQUEST FORM

WHY WOULD I BE REQUIRED OR FIND IT USEFUL TO HAVE A PRE-APPLICATION MEETING?

- REQUIRED:** Before an application can be submitted for certain land use projects, a Pre-Application Meeting is required by City Code. (Refer to page 2 for the lists of types of permits that are required to have a pre-application meeting)
- USEFUL:** Pre-Application meetings are *recommended* during the feasibility phase and prior to conceptual project design, and any time a property owner or designer would like feedback from Community Planning & Development Staff. Pre-application meetings increase certainty, result in more complete application submittals, and reduce review timeframes.

At the end of the pre-application meeting, you will receive a set of written comments and notes that summarizes the issues and questions discussed.

WHAT QUESTIONS DO I HAVE ABOUT MY PROJECT? WHO CAN ANSWER THEM AT THE PRE-APPLICATION?

Types of Questions:	Review Discipline
<ul style="list-style-type: none"> Development Standards: Setbacks, Building Height, Lot Coverage, Gross Floor Area, Hardscape Land Uses: New uses or changes of uses on a site or in a building Shorelines: Development on or near Lake Washington 	<ul style="list-style-type: none"> Subdivisions Critical Areas: Watercourses, Wetlands, Geologically Hazardous Areas Design Review: Projects in the Town Center or non-single family elsewhere SEPA Review Wireless Communication Facilities <p style="text-align: center;">Land Use Planning</p>
<ul style="list-style-type: none"> Access and Traffic Stormwater Utilities: Water and sewer 	<ul style="list-style-type: none"> Improvements in public rights of way Grading and erosion control Construction site management <p style="text-align: center;">Civil Engineering/ Storm/Utilities</p>
<ul style="list-style-type: none"> Building codes Energy code 	<ul style="list-style-type: none"> Geotechnical analysis Changes to occupancy or use <p style="text-align: center;">Building/Structural Engineering</p>
<ul style="list-style-type: none"> Fire sprinkler Fire alarm 	<ul style="list-style-type: none"> Emergency vehicle access/circulation Storage of hazardous materials <p style="text-align: center;">Fire Marshall</p>
<ul style="list-style-type: none"> Tree preservation and removal Tree protection during construction 	<ul style="list-style-type: none"> Street trees Tree pruning <p style="text-align: center;">City Arborist</p>

PROPERTY INFORMATION:

Site Address 75XX SE 76TH Street, Mercer Island, WA	Parcel No. 5453600380
Property Owner Information:	
Name Janet Fischer	Phone (970) 846-7859
Address 23780 Peckham Ln, Oak Creek CO 80467	Email janetkate@gmail.com
Project Contact Information:	
Name Roger J. Cecil, P.E.	Phone (206) 484-3495
Address PO Box 598, Bothell WA 98011	Email rogerc@cecilnassoc.com

PROJECT INFORMATION

Provide Brief Project Description:

The subject parcel is approximately 1.62 acres in size and is currently zoned R9.6. It is a lot/tract in the Mercer Terrace neighborhood with access directly to SE 76th Street, topographically separated from the remainder of the Mercer Terrace residential lots. The project proposes a 2-lot short plat, with access to SE 76th via a 25-ft wide pipe stem which extends to the right-of-way. Buffer reductions and mitigation is proposed in accordance with the TALASAEA Site Reconnaissance Letter dated October 11, 2023.

IDENTIFY MEETING TOPICS

<input checked="" type="checkbox"/> FEASIBILITY STUDY	<input type="checkbox"/> BUILDING PERMITS	<input checked="" type="checkbox"/> A CRITICAL AREA	<input type="checkbox"/> SHORELINE PERMITS
<input checked="" type="checkbox"/> SUBDIVISIONS	<input type="checkbox"/> LOT LINE REVISIONS	<input type="checkbox"/> DESIGN REVIEW	<input type="checkbox"/> SEPA
<input type="checkbox"/> ACCESSORY DWELLING UNITS	<input type="checkbox"/> WIRELESS COMMUNICATIONS FACILITIES	<input type="checkbox"/> VARIANCE	<input checked="" type="checkbox"/> OTHER Land Use - Legal development viability

WHICH REVIEW DISCIPLINES NEED ATTEND THE PRE-APPLICATION MEETING?

Based on the types of questions that you have (refer to "types of questions" section on page one), identify all review disciplines that are required/requested for attendance at the pre-application meeting. If you want feedback from a specific review discipline, you must check the box below to ensure a staff member from that review team will attend your meeting.

<input checked="" type="checkbox"/> LAND USE PLANNING	<input checked="" type="checkbox"/> FIRE MARSHALL
<input checked="" type="checkbox"/> CIVIL ENGINEERING/STORM/UTILITIES	<input checked="" type="checkbox"/> CITY ARBORIST
<input type="checkbox"/> BUILDING/STRUCTURAL ENGINEERING	

WHAT TYPE OF PRE-APPLICATION MEETING DO I NEED? If you are unsure of your selection, please email City Staff at epermittech@mercerisland.gov for assistance

If you checked <u>two (2)</u> or <u>less</u> review disciplines above, then you need a Type 1 Pre-Application Meeting.	If you checked <u>three (3)</u> or <u>more</u> review disciplines above, then you need a Type 2 Pre-Application Meeting.
<input type="checkbox"/> Type 1 Pre-Application Meeting	<input checked="" type="checkbox"/> Type 2 Pre-Application Meeting
A Type 1 meeting is required prior to submittal of the following application types:	A Type 2 meeting is required prior to the submittal of the following application types:
* Development code interpretations	* Conditional Use Permit
* Shoreline Substantial Development Permit	* Critical Area Review 2
* Wireless communication facilities height variance	* Design Commission Review
* SEPA Threshold Determination	* Plat alteration and vacations
A Type 1 meeting is recommended as part of feasibility or prior to conceptual design.	* New and modified wireless (non-6409) eligible facility
Note that if you select a Type 1 meeting, only the two reviewers that you selected above will review the application materials and attend the pre-application meeting. Other review disciplines will not be in attendance.	* Reasonable Use Exception
	* Variance
	A Type 2 meeting is recommended as part of feasibility or prior to conceptual design.

I, the undersigned, understand that this is a request for a meeting and that this is not a permit application. Permit and Land Use Applications must be uploaded separately to the Permit Submittal Portal, with the appropriate permit application form and documents. Additional information about application requirements can be found here: <https://www.mercerisland.gov/cpd/page/how-upload-your-submittal>

Signature Janet Fisel Date 9-18-23

HOW DO I SUBMIT MY PRE-APPLICATION?

Step 1:

Prepare Submittal Documents Include required forms and documents described here:

- THIS PRE-APPLICATION MEETING REQUEST FORM (REQUIRED)
- YOUR QUESTIONS FOR THE REVIEWERS (REQUIRED)
- PROJECT NARRATIVE (REQUIRED)
- PRELIMINARY PLANS (REQUIRED)
- TREE INVENTORY AND REPLACEMENT SUBMITTAL WORKSHEET (REQUIRED, UNLESS WAIVED BY CITY ARBORIST) [WAIVER REQUEST](#)
- ARBORIST REPORT (AS NEEDED)

Step 2:

Upload Documents to the [Mercer Island Permit Submittal Portal](#).

1. **To Log On:**
 - a. Navigate to the portal here: <https://liquidfiles.mercergov.org/filedrop/PermitSubmittals>
 - b. Enter your email address
 - c. Click the blue "Authenticate" button
 - d. Check your email. You will have an email from smtp.relay@mercergov.org that will contain your "Secure Token."
 - e. Enter the "Secure Token" and click the blue "Verify" button.
2. **To Upload:**
 - a. Fill in your project Address or Parcel Number
 - b. Leave the Permit No. field blank (a PRE-APP Number will be assigned after you submit)
 - c. Click the green "Add Files" button or drag files over to the "Drop Files Here" box.
 - d. Once files are added, click the blue "Send" button
 - e. You will receive email confirmation that the upload is complete. Check your spam folder if you do not see the email.

Step 3: Upon Receipt of all Required Documents, City Staff will contact you with the date and time of the scheduled meeting and provide instructions for fee payment. The meeting will be scheduled for the next available Tuesday. Meetings are currently held virtually, via Microsoft Teams video conference.

WHAT ARE THE FEES FOR MY PRE-APPLICATION?

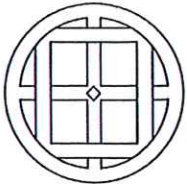
Type 1 Pre-Application Meeting:

\$954 minimum fee, plus charges for any staff time spent on the pre-application over 6 hours. Any additional staff time is charged at a rate of \$159/hour.

Type 2 Pre-Application Meeting:

\$1,908 minimum fee, plus charges for any staff time spent on the pre-application over 12 hours. Any additional staff time is charged at a rate of \$159/hour.

Please Note: Fees will continue to accrue, post pre-application meeting, in situations where the applicant requests follow up or has additional questions that require additional staff time. Fees will be assessed at the hourly staff rate in place at the time of accrual and invoiced via email.



TALASAEA
CONSULTANTS, INC.

Natural Resources Consulting | Environmental Planning & Design

11 October 2023

TAL-1286B

Janet Fischer
23780 Peckham Lane
Oak Creek, Colorado 80467

REFERENCE: Property at the Western End of SE 76th Street in Mercer Island, Washington
SUBJECT: Site Reconnaissance Letter

Dear Ms. Fischer:

Talasaesa Consultants, Inc. has conducted a site reconnaissance of the property located at the west end of SE 76th Street in Mercer Island, Washington (referred to as "Property" hereinafter) (**Figure 1**). The purpose of our reconnaissance was to review and delineate critical areas (wetlands and streams) on the Property. The parcel number for this property is 5453600380. The Public Land Survey System location of the property is the SW ¼ of Section 25, T24N, R4E, W. M.

The Property is an irregularly shaped parcel approximately 68,882 square feet in size (approximately 1.6 acres) (**Figure 2**). The southern portion of the Property is a 23-foot wide by 165-foot long "stove pipe" that provides access to the property from SE 76th Street. All parcels bordering the subject property are developed as single-family residences.

The Property is currently undeveloped and forested with mixed deciduous and conifer trees (**Figure 3**). The shrub understory is very dense in some areas consisting of noxious invasive species, such as Himalayan blackberry (*Rubus discolor*), English ivy (*Hedera helix*), and laurel cherry (*Prunus laurocerasis*), with native shrubs comprising a minor component of the onsite vegetation.

Soils on the site are mapped by the NRCS as Kitsap silt loam that is partially hydric¹. King County also indicates that the Property is within a mapped erosion hazard zone. A g

¹ Partially hydric soil types are those soils that are not classified as a hydric soil but include minor hydric soil components that form a significant fraction of the total mapped area for the parent soil type

eotechnical engineer will likely be required to determine the erosion hazard level of this property and prepare a Geotechnical Review.

We tentatively measured the slope of the ravine on the Property at approximately 45 percent. Analysis of LiDAR terrain data for this parcel supports our field observation. The actual percent slope should be determined through a site survey by a licensed land surveyor.

The eastern border of the Property is defined for the most part by a natural stream within a steep-sloped ravine (**Figure 3**). The City of Mercer Island maps this stream as originating approximately 365 feet south of SE 76th Street near Ridgecrest Lane. The drainage enters the Property at its southeastern property corner north of the stove pipe extension and exits at the Property's northern corner. The drainage is approximately one and one-half to two feet wide and approximately 3 inches deep at the south end of the property to approximately 2 feet deep at the north end of the property. The general direction of flow is from south to north. Bed material consisted of fine sand and silt material including large gravel to cobble. The drainage appears to be head-cutting at the southern end of the Property with depositional material masking the location of the channel near the southern end of the widest portion of the property approximately 375 feet from the northern property corner. The presence of cobble and a downcut channel suggests that stream flows are likely flashy and influenced by stormwater input. No water was flowing in the drainage at the time of our site visit. However, some small pools of water and saturated bed material were seen at the north end. We did not find any areas of wetland conditions on the subject property.

The drainage is identified on the City of Mercer Island's Watercourse Type Map as a Type NS stream. Type NS streams are seasonal and have a 60-foot standard buffer attached. The buffer may be reduced to 45 feet under the MIC §19.07.180 (C)(5), which suggests mitigation options including removal of noxious weedy species, habitat enhancement of the waterway, use of pervious paving materials, and use of biofiltration/infiltration mechanisms.

The Property is currently zoned R-9.6 with a residential with a lot size of at least 9,600 square feet. Approximately 7 lots could be developed on the Property. However, the buffer for the stream and the steep slopes will reduce the amount of developable area (*i.e.*, unencumbered by critical areas or their required buffers, as well as infrastructure requirements (road access to the residences)). Assuming minimum lot layouts with 20-foot front yards and 25-foot back yards (as specified under MIC §19.02.020(C)) and reducing the Stream's buffer to 45 feet with enhancement, the available area for development is reduced to two lots (Lots 1 and 2)(**Figure 5**). Lot 1 would be approximately 26,743 sf in size. Lot 2 would be approximately 46,457 sf in size.

To proceed with the development of the Property, the ordinary high-water mark of the drainage would need to be professionally surveyed. A Critical Areas Study meeting the specifications of MIC§19.07.110 would need to be prepared in conjunction with the

Janet
Mr. Paul Fischer
11 October 2023
Page 3 of 3

abovementioned Geotechnical Review. Critical areas delineations and formal documentation are outside of the scope of this reconnaissance letter.

We trust that the information presented here is sufficient for your current needs. If you have any questions or require additional information, please contact Bill Shiels or me at (425) 861-7550.

Sincerely,

TALASAEA CONSULTANTS, INC.

David R. Teesdale, PWS
Senior Wetland Ecologist/Project Manager.

Cc: Mr. Patrick Fischer

Attachments: Figure 1 – Vicinity Map and Driving Directions
Figure 2 – King County iMap
Figure 3 – OWHM Delineation Map
Figure 4 – NRCS Soils Map
Figure 5 – Conceptual Site Plan.

SW 1/4 SEC. 25, TWP. 24N, RGE. 4E, W.M.

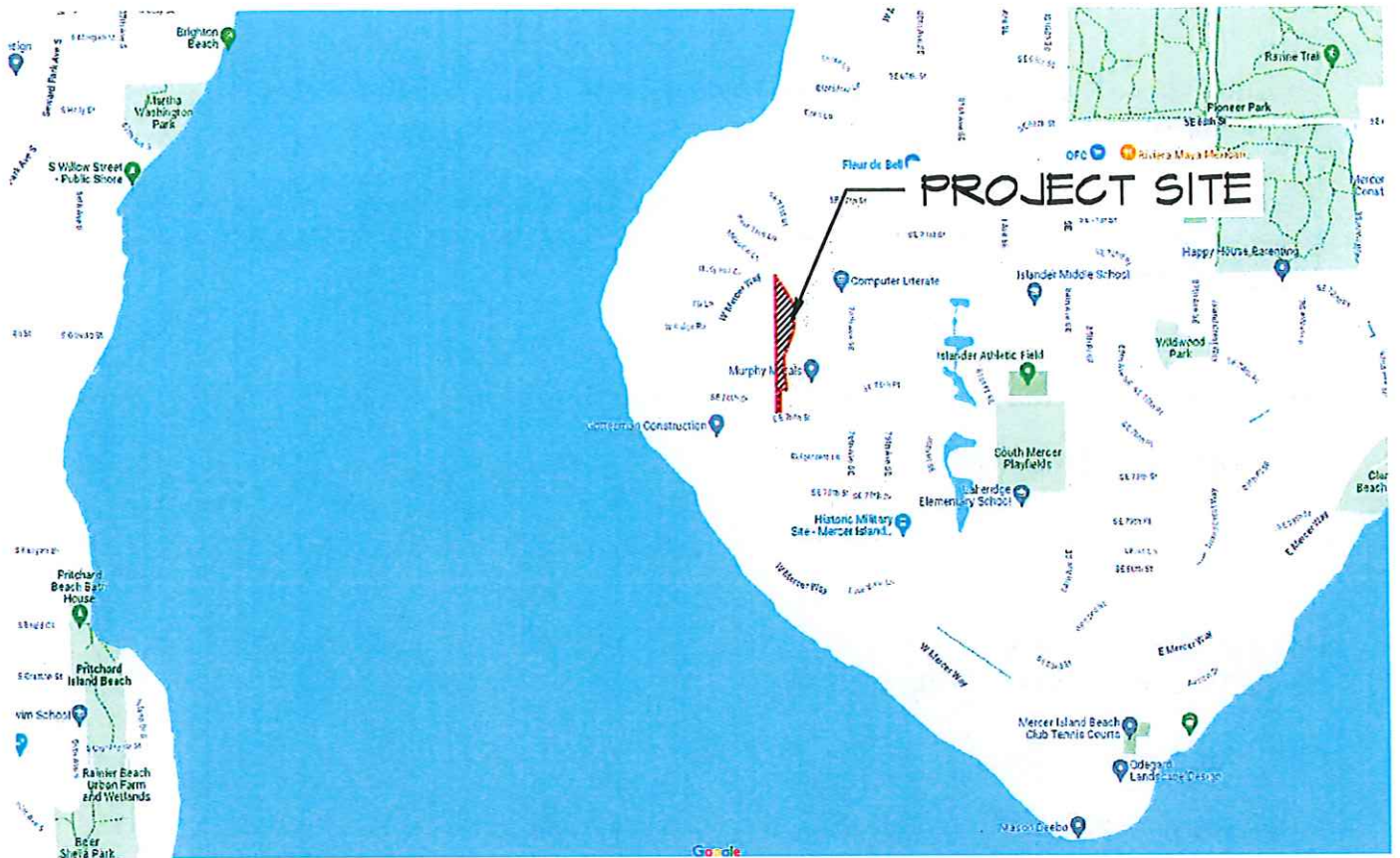


IMAGE SOURCE: GOOGLE MAPS, WWW.MAPS.GOOGLE.COM (ACCESSED 11 OCT 2023)

DRIVING DIRECTIONS:

1. LEAVING FROM MERCER ISLAND CITY HALL, TAKE 95TH AVE SE/96TH AVE SE TO SE 36TH ST
2. HEAD WEST TOWARD 95TH AVE SE/96TH AVE SE
3. SLIGHT RIGHT ONTO 95TH AVE SE/96TH AVE SE
4. TURN LEFT ONTO SE 36TH ST, CONTINUE ONTO GALLAGHER HILL RD
5. TURN RIGHT ONTO SE 40TH ST, USE THE LEFT 2 LANES TO TURN LEFT ONTO ISLAND CREST WAY
6. TURN RIGHT ONTO SE 68TH ST
7. TURN LEFT ONTO 84TH AVE SE
8. CONTINUE ONTO SE 72ND ST
9. TURN LEFT ONTO 78TH AVE SE
10. TURN RIGHT ONTO MERCER TERRACE DR
11. TURN RIGHT ONTO 76TH AVE SE
12. ARRIVE AT DESTINATION



**TALASAEA
CONSULTANTS, INC.**

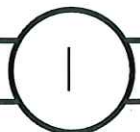
Resource & Environmental Planning
16020 Bear Creek Road Northeast
Woodinville, Washington 98077
Bus (425)861-7550 - Fax (425)861-7549

FIGURE #1

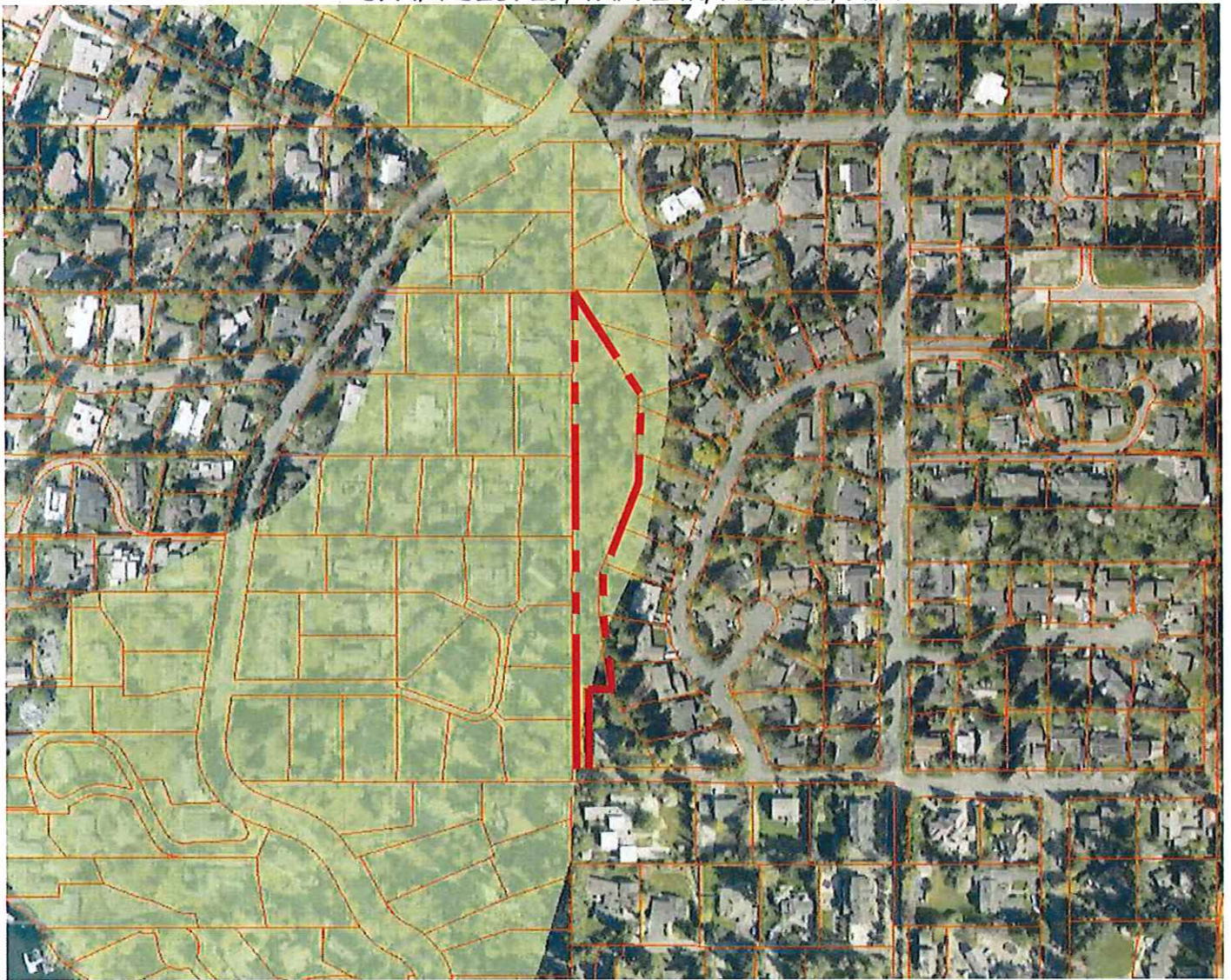
VICINITY MAP & DRIVING DIRECTIONS
FISCHER PROPERTY
MERCER ISLAND, WASHINGTON

DESIGN	DRAWN	PROJECT
	DRT,TH	1286B

SCALE
NTS
DATE
10-11-2023
REVISED
10-26-2023



SW 1/4 SEC. 25, TWP. 24N, RGE. 4E, W.M.



LEGEND

Erosion hazard (1990 SAO)



IMAGE SOURCE: KING COUNTY IMAP, [HTTPS://GISMAPS.KINGCOUNTY.GOV/IMAP](https://gismaps.kingcounty.gov/imap)
(ACCESSED 11 OCT 2023)



**TALASAEA
CONSULTANTS, INC.**

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15020 Bear Creek Road Northeast
Woodinville, Washington 98077
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FIGURE #2

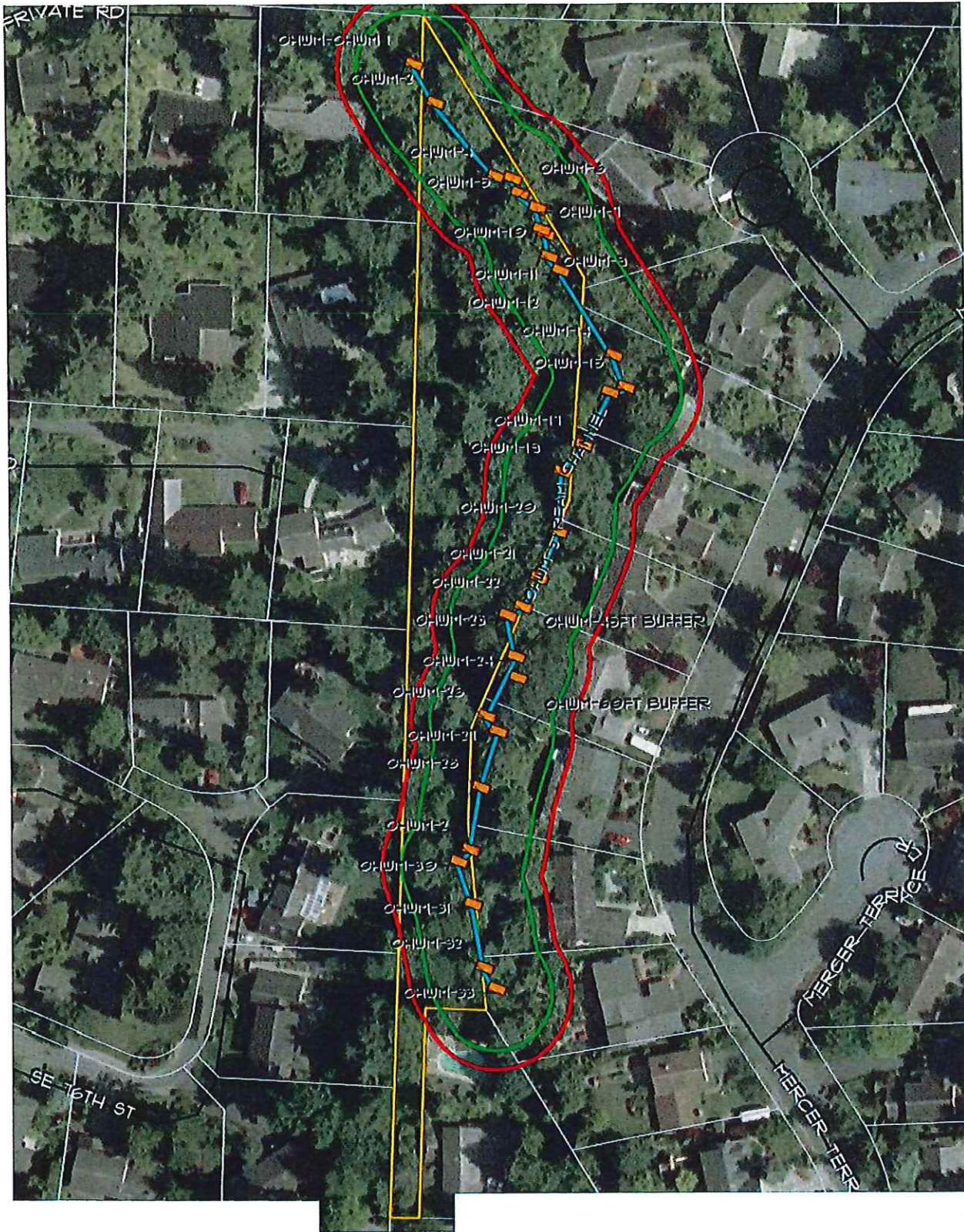
KING COUNTY IMAP
FISCHER PROPERTY
MERCER ISLAND, WASHINGTON

DESIGN	DRAWN	PROJECT
	DRI,TH	1286B
SCALE		
NTS		
DATE		
10-11-2023		
REVISED		



Z:\DRAWING\1200-1299\TAL1286B\Plans\TAL-1286B Figure 2023-10.dwg

SW 1/4 SEC. 25, TWP. 24N, RGE. 4E, W.M.



TALASAEA
CONSULTANTS, INC.

Resource & Environmental Planning
15020 Bear Creek Road Northeast
Woodinville, Washington 98077
Bus (425)861-7550 - Fax (425)861-7549

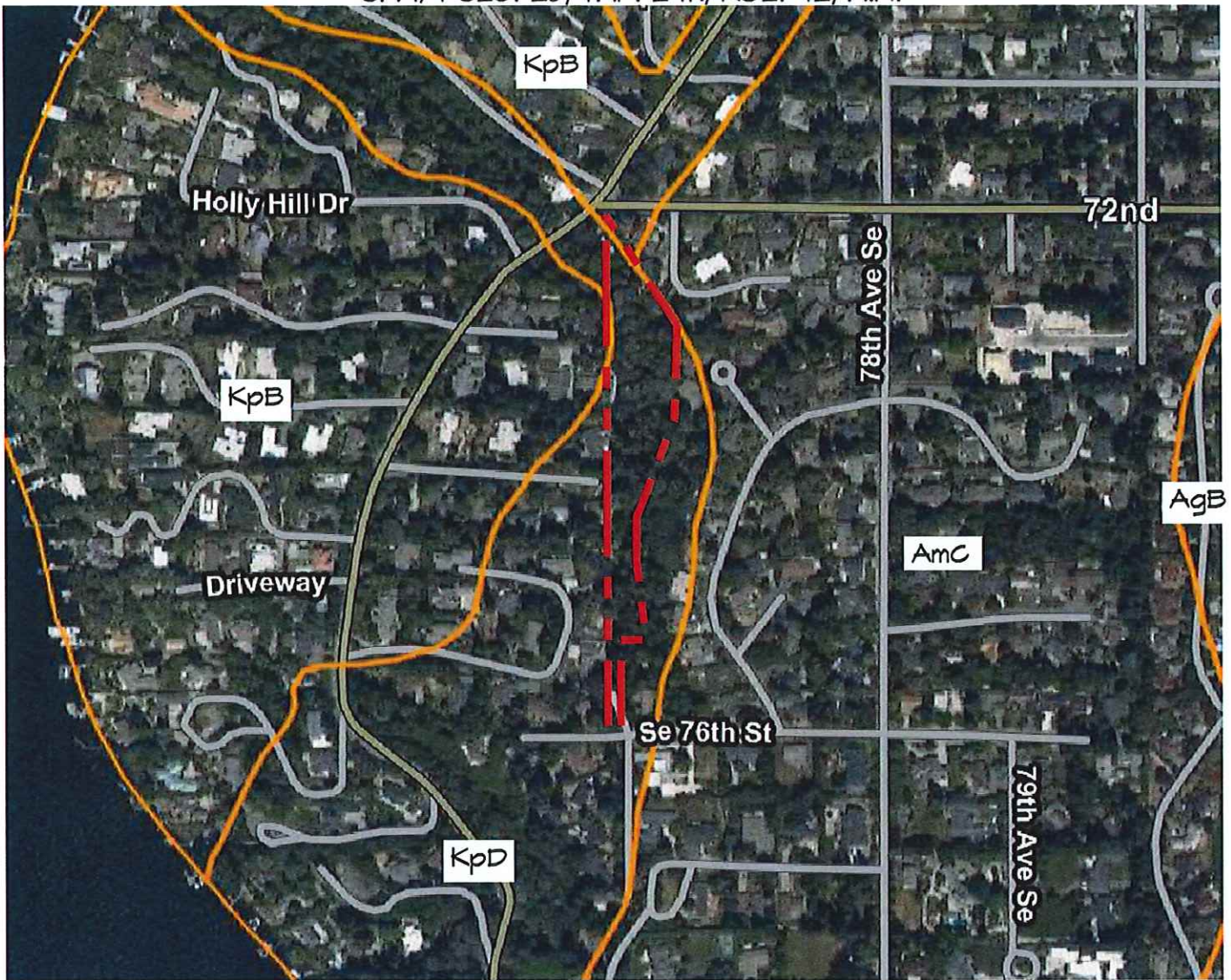
FIGURE #3

OHWM DELINEATION MAP
FISCHER PROPERTY
MERCER ISLAND, WASHINGTON

DESIGN	DRAWN	PROJECT
	DRT,TH	1286B
SCALE		
NTS		
DATE		
10-11-2023		
REVISED		

3

SW 1/4 SEC. 25, TWP. 24N, RGE. 4E, W.M.



LEGEND

TYPE	DESCRIPTION, SLOPES
AgB	ALDERWOOD GRAVELLY SANDY LOAM, 0 TO 8 PERCENT SLOPES
AmC	ARENDS, ALDERWOOD MATERIAL, 6 TO 15 PERCENT SLOPES
KpB	KITSAP SILT LOAM, 2 TO 8 PERCENT SLOPES
KpD	KITSAP SILT LOAM, 15 TO 30 PERCENT SLOPES

SOURCE: SOIL SURVEY STAFF, NATURAL RESOURCES CONSERVATION SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE, WEB SOIL SURVEY. AVAILABLE ONLINE AT [HTTP://WEBSOILSURVEY.NRCS.USDA.GOV/](http://websoilsurvey.nrcs.usda.gov/). ACCESSED (11 OCT 2023).



TALASAEA
CONSULTANTS, INC.

Resource & Environmental Planning
15020 Bear Creek Road Northeast
Woodinville, Washington 98077
Bus (425)861-7550 - Fax (425)861-7549

FIGURE #4

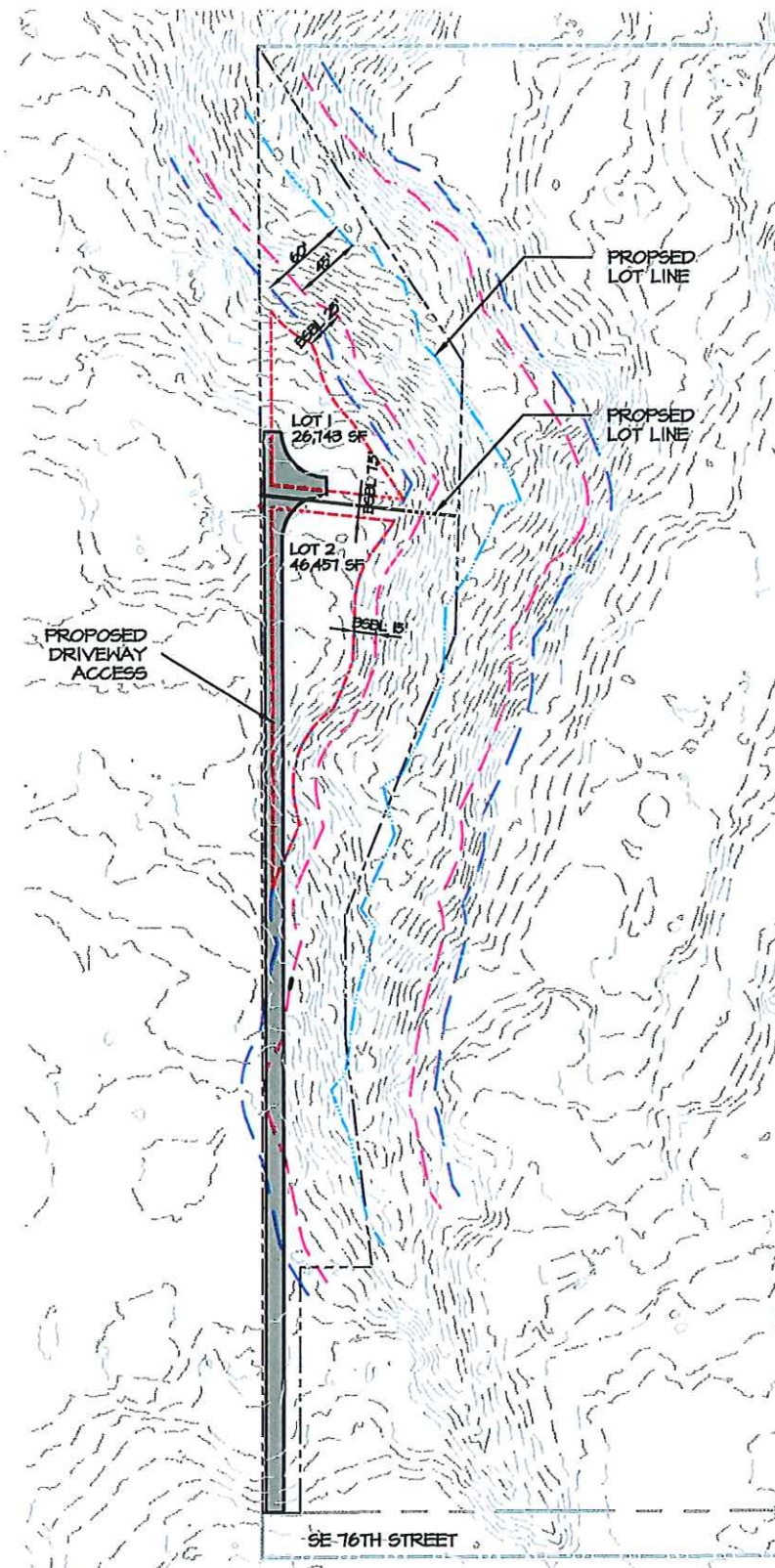
NRCS SOILS MAP
FISCHER PROPERTY
MERCER ISLAND, WASHINGTON

DESIGN	DRAWN	PROJECT
	DRT,TH	1286B
SCALE		
NTS		
DATE		
10-11-2023		
REVISED		



Z:\DRAWING\1200-1299\TAL1286B\Plans\TAL-1286B Figure 2023-10.dwg

SW 1/4 SEC. 25, TWP. 24N, RGE. 4E, W.M.

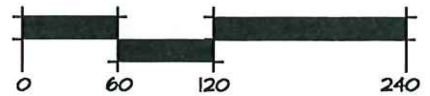


LEGEND

- PROPERTY LINE
- PARCEL LINE
- EXISTING CONTOURS IN 2' (FROM LIDAR)
- STREAM CENTER LINE
- STREAM BUFFER - STANDARD
- STREAM BUFFER - REDUCED



GRAPHIC SCALE
(IN FEET)



SCALE: 1"=120'



TALASAEA
CONSULTANTS, INC.

Resource & Environmental Planning
15020 Bear Creek Road Northeast
Woodinville, Washington 98077
Bus (425)861-7550 - Fax (425)861-7549

FIGURE #5

CONCEPTUAL SITE PLAN
FISCHER PROPERTY
MERCER ISLAND, WASHINGTON

DESIGN	DRAWN	PROJECT
	DRT,TH	1286B

SCALE
NTS
DATE
10-11-2023
REVISED



Z:\DRAWING\1200-1299\TAL1286B\Plans\TAL-1286B Figure 2023-10.dwg

William T. Lynn
Direct: (253) 620-6416
E-mail: wlynn@gth-law.com

December 11, 2009

Katie Knight
City Attorney
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040

Steve Lancaster, Director
Development Services-Building and Planning
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040

Re: Mercer Terrace - Tract A

Dear Ms. Knight and Mr. Lancaster:

We represent Viola Fischer, the owner of Tract A in the Plat of Mercer Terrace. Our client will be submitting applications for residential development on this tract in the near future and we want to confirm its status as a lawful residential tract available for development consistent with the current zoning. We are writing this letter because our client has heard informally from the City that the property is considered some kind of open space or other restricted tract.

The Plat of Mercer Terrace was recorded in 1963 when the property was in unincorporated King County. The property was owned by Mrs. Fischer and her husband, Leo Fischer, now deceased. They lived in the property on what became Lot 18. In addition to the lots, the Plat of Mercer Terrace created Tract A, which includes a pipe stem connecting the balance of the tract to Southeast 76th Street. At that time, the property lying west of Mercer Terrace was undeveloped, and the owners' recollection is that Tract A was reserved because it made more sense to develop that tract in conjunction with a future development of that adjacent property. That is why the pipe stem was included. For some reason lost to memory, the joint development that did not occur, and Tract A was left undeveloped from 1963 to the present.

Reply to:

Tacoma Office
1201 Pacific Ave., Suite 2100 (253) 620-6500
Tacoma, WA 98402 (253) 620-6565 (fax)

Seattle Office
600 University, Suite 2100 (206) 676-7500
Seattle, WA 98101 (206) 676-7575 (fax)

GORDON THOMAS HONEYWELL LLP

December 11, 2009

Page 2

There is absolutely no indication whatsoever that Tract A was intended as an open space, buffer area or other restricted property. Certainly no such language is found in the plat nor was any open space or buffer required by the zoning and subdivision rules in effect at the time. We have reviewed all available files and found no hint of a restriction. Nor was the property conveyed in undivided interests to the individual lot purchasers, or to an association. It was retained by the developers of the plat, further supporting the intention that future development was expected. We have reviewed a number of plats recorded in King County in this same time frame. Where parks or open spaces were intended, appropriate restrictive terms were used on the plats, and the properties were conveyed to the lot owners. We have found no other example where a tract was created without any restrictive language, and was retained by the developer.

It should be alone enough that there is no restriction on this property on the face of the plat. Clearly no restriction can be implied from the fact that this was created as a "tract" rather than a "lot". All that meant is that it was not at that time developed as a residential lot as were the other "lots" created by Mercer Terrace. The fact that Mercer Island current uses the term "tract" in some other way in conjunction with restrictions is of no relevance. What does matter is what was done in 1963 by King County.

By law, the absence of a restriction means that none can be inferred. *Hobart v. Marque*, 5 Wn.App. 222, 486 P.2d 1140 (1971). If a restriction is intended, it must be expressed.

"The basic rule in land use law is still that, absent more, an individual should be able to use his land as he sees fit.

Norco Construction, Inc. vs. King County, 97 Wn.2d 680, 684, 649 P.2d 103 (1982).

Although the fact that there is no restrictive language should be dispositive, we note a number of other factors that do confirm the viability of this land for residential development. The property has been carried on King County's tax records as residential property consistently since the 1960's. Certainly the fact that King County (which created the tract in the first place) regards it as residential land (and not some kind of park or open space area) is persuasive evidence that was always the intent.

Moreover, the property was included as a part of a ULID created in King County to provide sewer utility service to the area. Under statutory and constitutional law, that ULID process very specifically requires that each parcel be assessed to confirm that the utilities will add a value consistent with the assessments made against the property. Bringing utilities would obviously not have enhanced the value of open space at all. Therefore, this represents a further recognition by King County that this property was and is appropriately designated for residential development.

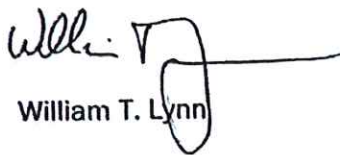
GORDON THOMAS HONEYWELL^{LLP}

December 11, 2009

Page 3

This property is and always has been intended for residential development and we have seen nothing in the record to suggest in any way, shape or manner that a restriction was even intended let alone imposed. We would welcome an opportunity to discuss this with you face to face. We will be requesting that the City make a final and appealable decision on this matter so that it can be resolved formally and finally through whatever processes may be appropriate.

Very truly yours,

A handwritten signature in black ink, appearing to read "William T. Lynn", with a long horizontal line extending to the right from the end of the signature.

William T. Lynn

WTL:fto

cc: ~~Viola Fischer~~
Brett Allen

