

# MEMORANDUM

From: Concerned Citizens For Mercer Island Parks

To: Scott Greenberg, Director Development Services Group; Evan Maxim, Planning Manager Development Services Group; and Robin Proebsting, Senior Planner Development Services Group

Copy To: City Manager Underwood; City Attorney Sand; Fire Chief Heitman; Police Chief Holmes; Parks and Recreation Director Fletcher; and City Clerk Spietz

Date: January 30, 2017

Re: Environmental Review

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## I. EXECUTIVE SUMMARY

The proposed siting of the Mercer Island Center For The Arts (“MICA”) has unearthed material environmental issues.

### A. *Design Review And Environmental Review*

Design Review and Environmental Review of the MICA proposal must be combined and integrated. *See, e.g.*, RCW 36.70.B.050(1) and WAC 197-11-030(2)(e). Despite having submitted four SEPA Checklists, MICA has not applied for or otherwise commenced the Design Review process for the MICA proposal. MICA has failed to comply with the requirements of RCW 36.70.B.050(1) and WAC 197-11-030(2)(e).

The City of Mercer Island should require MICA: (i) to commence the Design Review process for the MICA proposal and (ii) halt the Environmental Review of the MICA proposal so the Design Review process and the Environmental Review processes can be combined, integrated and run concurrently rather than consecutively. Only in this way can MICA begin to comply with RCW 36.70.B.050(1) and WAC 197-11-030(2)(e).

### B. *SEPA Required Information*

MICA is required by SEPA to provide information to the City of Mercer Island that is “sufficient to evaluate the environmental impact of [MICA’s] proposal.” *See* WAC 197-11-335.

Despite having submitting four SEPA Checklists, the information provided by MICA does not comply with WAC 197-11-335 and is not “sufficient to evaluate the environmental impact of [MICA’s] proposal.” Indeed, the information provided by MICA, in varying degrees, fails to make material disclosures, is disingenuous, is inaccurate and is incomplete.

The City of Mercer Island should require MICA to comply with WAC 197-11-335 and provide the addition, accurate and complete information that is “sufficient to evaluate the environmental impact of [MICA’s] proposal.”

## II. REVIEWS MUST BE COMBINED

The MICA proposal must undergo Design Review. *See Exhibit 6*, at page 3. *See also* Mercer Island City Code (“MICC”) 19.05.010(C).

Local project review under the Growth Management Act requires Mercer Island to “[c]ombine the environmental review process, both procedural and substantive, with the procedure for review of project permits.” (bold added). *See* RCW 36.70.B.050(1).

SEPA requires Mercer Island to “[i]ntegrate the requirements of SEPA with existing agency planning and licensing procedures and practices, so that such **procedures run concurrently rather than consecutively.**” (bold added). *See* WAC 197-11-030(2)(e).

Despite having submitting four SEPA Checklists, MICA has not applied for or otherwise commenced the Design Review process for the MICA proposal. MICA has failed to comply with the requirements of RCW 36.70.B.050(1) and WAC 197-11-030(2)(e).

### **III. MICA’S FOUR SEPA CHECKLISTS**

#### ***A. Critical Area Overview***

On February 16, 2016, a document entitled “Mercer Island Critical Area Overview” was provided to the City of Mercer Island. See Exhibit 1.

#### ***B. First MICA SEPA Checklist***

On or about February 2, 2016, MICA submitted its first SEPA Checklist together with eight attachments (collectively the “First MICA SEPA Checklist”).

#### ***C. Review Of The First MICA SEPA Checklist***

On March 7, 2016, a document entitled “The MICA Pre-Application Meeting” was provided to the City of Mercer Island. See Exhibit 2. That document, among other things, demonstrated that the information provided by the First MICA SEPA Checklist, in varying degrees, failed to make material disclosures, was disingenuous, was inaccurate and was incomplete. See Exhibit 2, at pages 3-5.

The information provided by the First MICA SEPA Checklist did not comply with WAC 197-11-335 and was not “sufficient to evaluate the environmental impact of [MICA’s] proposal.”

#### ***D. Second MICA SEPA Checklist***

On or about June 16, 2016, MICA submitted its second SEPA Checklist together with ten attachments (collectively the “Second MICA SEPA Checklist”).

#### ***E. Review Of The Second MICA SEPA Checklist***

On July 18, 2016, the City of Mercer Island sent a letter to MICA requested additional information regarding the Second MICA SEPA Checklist. See Exhibit 3. That letter, among other things, demonstrated that the information provided by the Second MICA SEPA Checklist, in varying degrees, failed to make material disclosures, was disingenuous, was inaccurate and was incomplete. See Exhibit 3, at pages 1-2.

The information provided by the Second MICA SEPA Checklist did not comply with WAC 197-11-335 and was not “sufficient to evaluate the environmental impact of [MICA’s] proposal.”

#### ***F. Third MICA SEPA Checklist***

On or about July 27, 2016, MICA submitted its third SEPA Checklist together with ten attachments (collectively the “Third MICA SEPA Checklist”).

#### ***G. Review Of The Third MICA SEPA Checklist***

On October 25, 2016, a document entitled “Overview Of Compressed Zip Flies” was provided to the City of Mercer Island. See Exhibit 4. That document, among other things, demonstrated that the information provided by the Third MICA SEPA Checklist, in varying degrees, failed to make material disclosures, was disingenuous, was inaccurate and was incomplete. See Exhibit 4, at pages 1-2.

The information provided by the Third MICA SEPA Checklist did not comply with WAC 197-11-335 and was not “sufficient to evaluate the environmental impact of [MICA’s] proposal.”

#### ***H. Traffic Peer Review Comments***

On September 8, 2016, Transportation peer review comments were submitted to the City of Mercer Island. See Exhibit 5. Those peer review comments were highly critical of the credibility of the Third MICA SEPA Checklist and MICA’s proposed Off-Site Development. See Exhibit 5, at pages 1 and 4.

#### ***I. City Manager’s Memorandum***

On September 26, 2017, the City Manager sent a Memorandum to all City Councilmembers (“City Manager Memorandum”). See Exhibit 6. The City Manager Memorandum, among other things, clearly and unequivocally: (i) required MICA to apply for and obtain a long plat (not a short plat) and (ii) required MICA to respond to all “peer review comments.” See Exhibit 6, at pages 1-2.

To date, it appears that MICA has not applied for a long plat and has not responded to all the peer review comments.

#### ***J. Traffic Analysis For Mercer Island I-90 Access***

On November 7, 2016, a Traffic Analysis for Mercer Island I-90 Access Options (“KPG Traffic Analysis”) was provided to the City of Mercer Island. See Exhibit 7. The KPG Traffic Analysis, among other things, clearly and unequivocally concluded that the East Link Project: (i) would “negatively impact traffic in and around the Town Center,” (ii) would “cause traffic delays to ... all vehicles traveling in the Town Center.” See Exhibit 7, at pages 1-2.

To date, it appears that MICA has refused to recognize that the “negative” traffic impacts cause by the East Link Project will be exacerbated by MICA’s proposal.

### ***K. Fourth MICA SEPA Checklist***

On or about January 20, 2017, MICA submitted its fourth SEPA Checklist together with eighteen attachments (collectively the “Fourth MICA SEPA Checklist”).

### ***L. Review Of The Fourth MICA SEPA Checklist***

The information provided by the Fourth MICA SEPA Checklist, in varying degrees, fails to make material disclosures, is disingenuous, is inaccurate and is incomplete.

The information provided by the Fourth MICA SEPA Checklist does not comply with WAC 197-11-335 and is not “sufficient to evaluate the environmental impact of [MICA’s] proposal.” Some examples follow.

#### **1. General Examples**

The Fourth MICA SEPA Checklist fails to address:

1. Some of the facts and issues identified in **Exhibit 1**, the Mercer Island Critical Area Overview.
2. Some of the facts and issues identified in **Exhibit 3**, the Letter from the City of Mercer Island to MICA, including providing proposed “building pads” identified in paragraph 2 of **Exhibit 3**.
3. The facts and issues identified in **Exhibit 4**, the Overview Of Compressed Zip Folders.
4. Some of the facts and issues identified in **Exhibit 5**, the Transportation Peer Review Comments.
5. The fact that MICA must apply for and obtain a long plat as required by **Exhibit 6**, the City Manager’s Memorandum To City Councilmembers.
6. The facts and issues identified in **Exhibit 7**, the KPG Traffic Analysis.
7. The fact that the proposed MICA building will be built on the SE 32<sup>nd</sup> St. public right-of-way connection between 77<sup>th</sup> Ave. SE and 76<sup>th</sup> Ave. SE. That right-of-way gives the City of Mercer Island an option to alleviate the negative traffic impacts identified in **Exhibit 7**, the KPG Traffic Analysis. That option cannot be foreclosed by the MICA proposal.

#### **2. Paragraph Examples**

The Fourth MICA SEPA Checklist does not comply with WAC WAC 197-11-335 in the following regards:

1. Paragraph A. 10 – Fails to list: (i) required approvals of proposed alterations to geologic hazard areas; (ii) required Street Vacation; (iii) required Long Plat; (iv)

- required Comprehensive Plan Amendment; and (v) required Off-Site Development approvals. See **Exhibit 1**, **Exhibit 4** and **Exhibit 6**.
2. Paragraph B. 1. g. – Calculating impervious surface in terms of the 12-acre park is disingenuous.
  3. Paragraph B. 3. a. 1. – Fails to recognize the proposed mitigation constitutes Off-Site Development. See **Exhibit 4**.
  4. Paragraph B. 3. a. 2. – Fails to recognize: (i) actual development will occur in the wetland itself; (ii) actual development will occur in the wetland buffer area itself; and (iii) the proposed mitigation constitutes Off-Site Development. See **Exhibit 4**.
  5. Paragraph B. 3. c. 1. – Fails to recognize: (i) actual development will occur in the wetland itself; (ii) actual development will occur in the wetland buffer area itself; and (iii) the proposed storm drainage constitutes Off-Site Development. See **Exhibit 4**.
  6. Paragraph B. 3. d. 1. – Fails to recognize: (i) actual development will occur in the wetland itself; (ii) actual development will occur in the wetland buffer area itself; and (iii) the proposed storm drainage constitutes Off-Site Development. See **Exhibit 4**.
  7. Paragraph B. 4. d. – Fails to recognize: (i) actual development will occur in the wetland itself; (ii) actual development will occur in the wetland buffer area itself; and (iii) the proposed mitigation constitutes Off-Site Development. See **Exhibit 4**.
  8. Paragraph B. 5. d. – Fails to recognize: (i) actual development will occur in the wetland itself; (ii) actual development will occur in the wetland buffer area itself; and (iii) the proposed mitigation constitutes Off-Site Development. See **Exhibit 4**.
  9. Paragraph B. 8. h. – Fails to recognize that in addition to being a Landslide Hazard Area, the MICA site is within or near a Seismic Hazard Area, an Erosion Hazard Area, a Geologic Hazard Area and Wetlands. See **Exhibit 1**, at pages 2-5.
  10. Paragraph B. 8. i. – Fails to recognize that the proposed zoning amendment grants special privileges to MICA. For example, public schools are required to have on-site parking. See MICC 19.05.010(D) and MICC 19.05.020(C)(2).
  11. Paragraph B. 10. b. – The statement appears to be contradicted by reality.
  12. Paragraph B. 10. c. – Fails to provide a copy of the “conceptual renderings of the proposed project” and the statement appears to be contradicted by reality.
  13. Paragraph B. 11. d. – Failure to have a lighting plan “done” now precludes meaningful environmental review.
  14. Paragraph B. 12. c. – The statement appears to be contradicted by reality.
  15. Paragraph B. 13. c. – Fails to recognize that the proposed reduction and control of the “impacts” constitutes Off-Site Development. See **Exhibit 4**.
  16. Paragraph B. 14. c. – Fails to address: (i) the fact that the MICA building will be built on the SE 32nd St. public right-of-way connection between 77th Ave. SE and 76th Ave. SE; (ii) the KPG Traffic Analysis For Mercer Island I-90 Access Options; and (iv) the emergency access, traffic and parking proposals constitute Off-Site Development. See **Exhibit 4** and **Exhibit 7**.

17. Paragraph B. 14. d. – Fails to address: (i) the fact that the MICA building will be built on the SE 32<sup>nd</sup> St. public right-of-way connection between 77<sup>th</sup> Ave. SE and 76<sup>th</sup> Ave. SE; (ii) the KPG Traffic Analysis For Mercer Island I-90 Access Options; and (iv) the emergency access, traffic and parking proposals constitute Off-Site Development. See Exhibit 4 and Exhibit 7.
18. Paragraph B. 14. f. – Fails to address: (i) the fact that the MICA building will be built on the SE 32<sup>nd</sup> St. public right-of-way connection between 77<sup>th</sup> Ave. SE and 76<sup>th</sup> Ave. SE; (ii) the KPG Traffic Analysis For Mercer Island I-90 Access Options; and (iv) the emergency access, traffic and parking proposals constitute Off-Site Development. See Exhibit 4 and Exhibit 7.
19. The SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS – Fails to address the inquiries.

### 3. Public Comment Examples

The Fourth MICA SEPA Checklist’s responses to Public Comments, in varying degrees, do not comply with WAC 197-11-335.

The below black text is copied from page 12 of Attachment Q. The below red text is in response to the black text.

#### “B.8.3 Growth Management Act Compliance

*Comments 82, 83*

*MICA fails to address GMA concurrency requirements.*

The MICA proposal does not change the Urban Growth boundary. With regard to concurrency, the MICA project is in an area already served by utilities and other city services.”

Concurrency requirements apply on each and every new development and certainly apply to the MICA project. The analysis is whether the new development will cause a decline in the level of service. Indeed, the Growth Management Act at RCW 36.70A.070 provides that the City of Mercer Island must:

prohibit **development** approval if the **development** causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the **development**.

In view of clear and unequivocal mandates of RCW 36.70A.070, it is deceptive for MICA to represent that “With regard to concurrency, the MICA project is in an area already served by utilities and other city services.” The “MICA project” is new development that is subject to RCW 36.70A.070.

## **“B.8.4 Platting**

*Comment 57*

*Why does the checklist say that there is only a possibility of a Short Plat? Isn't it required?*

“It is currently not clear whether or not a plat will be necessary, and MICA is reviewing with the City what will be required. If the City requires a plat, MICA will proceed with that process.”

**The City Manager’s Memorandum To City Councilmembers, Exhibit 6, clearly and unequivocally requires MICA to apply for and obtain a long plat. In view of the City Manager’s Memorandum To City Councilmembers, it is deceptive for MICA to assert that it is “not clear whether or not a plat will be necessary.”**

## **IV. CONCLUSION**

Despite having submitted four SEPA Checklists, MICA has not applied for or otherwise commenced the Design Review process for the MICA proposal. MICA has failed to comply with the requirements of RCW 36.70.B.050(1) and WAC 197-11-030(2)(e).

The City of Mercer Island should require MICA: (i) to commence the Design Review process for the MICA proposal and (ii) halt the Environmental Review of the MICA proposal so the Design Review process and the Environmental Review processes can be combined, integrated and run concurrently rather than consecutively. Only in this way can MICA begin to comply with RCW 36.70.B.050(1) and WAC 197-11-030(2)(e).

Despite having submitting four SEPA Checklists, the information provided by MICA does not comply with WAC 197-11-335 and is not “sufficient to evaluate the environmental impact of [MICA’s] proposal.” Indeed, the information provided by MICA, in varying degrees, fails to make material disclosures, is disingenuous, is inaccurate and is incomplete.

The City of Mercer Island should require MICA to comply with WAC 197-11-335 and provide the addition, accurate and complete information that is “sufficient to evaluate the environmental impact of [MICA’s] proposal.”



## V. LIST OF EXHIBITS

1	February 16, 2016 – Mercer Island Critical Area Overview (without Exhibits 1-19) (highlighted)
2	March 7, 2016 – Document entitled “The MICA Pre-Application Meeting” (without Exhibits 1-4) (highlighted)
3	July 18, 2016 – Letter from the City of Mercer Island to MICA (highlighted)
4	October 25, 2016 – Overview Of Compressed Zip Folders (without Compressed Zip Folders A-G) (highlighted)
5	September 8, 2016 – Transportation Peer Review Comments (without Attachments) (highlighted)
6	September 26, 2016 – City Manager’s Memorandum To City Councilmembers (highlighted)
7	November 7, 2016 – KPG Traffic Analysis For Mercer Island I-90 Access Options (highlighted)

# **EXHIBIT 1**

# MERCER ISLAND CRITICAL AREAS OVERVIEW

February 16, 2016

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## I. EXECUTIVE SUMMARY

The proposed siting of the Mercer Island Center For The Arts (“MICA”) has unearthed a number of important environmental issues, including: (i) the inadequacy of the Mercer Island Center for the Arts Wetland Delineation Study, (ii) Mercer Island’s failure to comply fully with the requirements of the Growth Management Act, (iii) Mercer Island’s failure to timely review and revise its wetland ordinance, and (iv) the apparent destruction of Mercer Island wetlands.

## II. LANDSLIDE RISKS AND OCCURRENCES

### A. *Landslide Risks On Mercer Island*

In 2014, the Mercer Island City Manager was advised that there are high risks of landslides occurring over a substantial portion of Mercer Island. The high risks of landslides on Mercer Island are caused by a number of factors, including:

- Steep slopes,
- Loose Soil Deposits,
- Historical Landslides,
- Geologic Contact Points which capture water forming springs, seepage and high groundwater,
- Earthquakes.

See Exhibit 1.

### B. *Landslide Occurrences On Mercer Island*

A significant number of landslides occur on Mercer Island every year. The most recent landslide on Mercer Island occurred on December 9, 2015. See Exhibit 2.

## III. CRITICAL AREAS AND THE PROPOSED MICA BUILDING

### A. *Landslide Hazard Areas*

The MICA building is proposed to be built on or near (i) a Landslide Hazard Area,<sup>1</sup> (ii) an area with slopes between 15% and 39%, (iii) an area with water less than 10 feet below the

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<sup>1</sup> MICC, Chapter 19.16 defines Landslide Hazard Areas as:

“Those areas subject to landslides based on a combination of geologic, topographic, and hydrologic factors, including:

1. Areas of historic failures;
2. Areas with all three of the following characteristics:
  - a. Slopes steeper than 15 percent; and

ground surface and (iv) an area in which a spring is located. See Exhibit 3<sup>2</sup> and Exhibit 7. See also Exhibit 1.

### **B. Seismic Hazard Areas**

The MICA building is proposed to be built on or near a Seismic Hazard Area.<sup>3</sup> See Exhibit 4<sup>4</sup> and Exhibit 7. See also Exhibit 1.

### **C. Erosion Hazard Areas**

The MICA building is proposed to be built on or near an Erosion Hazard Area.<sup>5</sup> See Exhibit 5<sup>6</sup> and Exhibit 7. See also Exhibit 1.

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- b. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
  - c. Springs or ground water seepage;
  - 3. Areas that have shown evidence of past movement or that are underlain or covered by mass wastage debris from past movements;
  - 4. Areas potentially unstable because of rapid stream incision and stream bank erosion; or
  - 5. Steep Slope. Any slope of 40 percent or greater calculated by measuring the vertical rise over any 30-foot horizontal run.”

<sup>2</sup> Exhibit 3 is also available at: [www.mercergov.org/files/LandslideHazard2009.pdf](http://www.mercergov.org/files/LandslideHazard2009.pdf).

<sup>3</sup> MICC, Chapter 19.16 defines Seismic Hazard Areas as:

“Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction or surface faulting.”

<sup>4</sup> Exhibit 4 is also available at: [www.mercergov.org/files/SeismicHazard2009.pdf](http://www.mercergov.org/files/SeismicHazard2009.pdf).

<sup>5</sup> MICC, Chapter 19.16 defines Erosion Hazard Areas as:

“Those areas greater than 15 percent slope and subject to a severe risk of erosion due to wind, rain, water, slope and other natural agents including those soil types and/or areas identified by the U.S. Department of Agriculture’s Natural Resources Conservation Service as having a ‘severe’ or ‘very severe’ rill and inter-rill erosion hazard.”

<sup>6</sup> Exhibit 5 is also available at: [www.mercergov.org/files/ErosionHazard2009.pdf](http://www.mercergov.org/files/ErosionHazard2009.pdf).

#### **D. Geologic Hazard Areas**

The MICA building is proposed to be built in an area that is circumscribed by Geologic Hazard Areas.<sup>7</sup> See Exhibit 3, Exhibit 4, Exhibit 5 and Exhibit 7.

The Mercer Island City Code (“MICC”) 19.07.060 D. 1. provides as follows:<sup>8</sup>

“D. Site Development.

1. Development Conditions. Alterations of geologic hazard areas may occur if the code official concludes that such alterations:

a. Will not adversely impact other critical areas;

b. Will not adversely impact (e.g., landslides, earth movement, increase surface water flows, etc.) the subject property or adjacent properties;

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<sup>7</sup> The Growth Management Act defines Geologically Hazardous Areas as:

“... areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are **not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.**” (bold added). See, e.g., RCW 36.70A.030(9).

MICC, Chapter 19.16 defines Geologic Hazard Areas as:

“Areas susceptible to erosion, sliding, earthquake, or other geological events based on a combination of slope (gradient or aspect), soils, geologic material, hydrology, vegetation, or alterations, including **landslide hazard areas, erosion hazard areas and seismic hazard areas.**” (bold added).

The differences between the two above definitions are examples of Mercer Island’s failure to fully protect critical areas, public health and safety concerns.

<sup>8</sup> MICC 19.07.060 B. provides in part as follows:

“Buffers. There are **no buffers** for geologic hazard areas...” (bold added).

The lack of geologic hazard area buffers is another example of Mercer Island’s failure to fully protect critical areas. Compare MICC 19.07.060 B. with, e.g., Issaquah Municipal Code 18.10.560 (requiring “a minimum buffer of fifty (50) feet from all edges of landslide hazard areas” and further providing that an “additional fifteen (15) foot building setback shall also be established from the outer edge of the [fifty (50) foot] buffer.”

- c. Will mitigate impacts to the geologic hazard area consistent with best available science to the maximum extent reasonably possible such that the site is determined to be safe; and
- d. Include the landscaping of all disturbed areas outside of building footprints and installation of all impervious surfaces prior to final inspection.”

#### **E. Wetlands**

The MICA building is proposed to be built in an area on or near wetlands. See Exhibit 7.

### **IV. THE MICA WETLAND DELINEATION STUDY**

#### **A. The MICA Delineation Study’s Purported Classification And Delineation**

The Mercer Island Center for the Arts Wetland Delineation Study (“MICA Delineation Study”) purports to classify, categorize, type and delineate wetlands relating to the proposed MICA building. See Exhibit 6 and Exhibit 7.

The MICA Delineation Study is problematic for at least two reasons.

##### **1. Understated Wetland Size And Inaccurate Wetland Boundaries**

The MICA Delineation Study was conducted during the dry part of 2015, thus understating the size of the wetland and inaccurately locating the boundaries of the wetland.

##### **2. Use Of The Incorrect Wetland Rating System And Wetland Rating Form**

###### **a. Incorrect Wetland Rating System**

The MICA Delineation Study did not utilize the Washington State Wetland Rating System for Western Washington 2014 Update, Department of Ecology Publication no. 14-06-029 (“2014 DOE Updated Wetland Rating System”).

Instead, the MICA Delineation Study utilized the “*Western Washington Wetland Rating System* (Ecology Rating System) ( Ecology, Aug (sic) 2004, version 2).” See Exhibit 6, at page 2.

###### **b. Incorrect Wetland Rating Form**

The MICA Delineation Study did not utilize the Wetland Rating System For Western WA: 2014 Update Rating Form – Effective January 1, 2015 (“2014 DOE Updated Rating Form”).

Instead, the MICA Delineation Study utilized the “Wetland Rating Form – western (sic) Washington Version 2 Updated with new WDF definitions Oct. 2008.” See Exhibit 6, at attachment entitled “Wetland Rating Forms.”

***c. Use Of The Incorrect Rating System And Rating Form Is Fatal***

The correct classification, categorization and rating of a wetland are essential. A few examples follow.

The size of a wetland buffer depends on the classification/category/rating of the wetland. See Exhibit 9, at pages 4-6, Exhibit 10, at pages 2-3, Exhibit 11, at pages 5-6, and Exhibit 12, at page 24.

Moreover, wetland buffer building setbacks<sup>9</sup> are measured from the edge of a wetland buffer which, in turn, depends on the category/classification/rating of the wetland. See Exhibit 9, at page 9, Exhibit 10, at page 4, Exhibit 11, at page 6, and Exhibit 12, at pages 16-17.

MICA has proposed reducing the Mercer Island Wetland Ordinance current standard 50 foot wetland buffer to 25 feet and constructing the MICA building within the required current standard 50 foot wetland buffer area. It is inconceivable that constructing the MICA building within the required current standard 50 wetland buffer area could be accomplished with “no net loss of wetland and buffer functions”<sup>10</sup> since one of the buffer functions is to “protect the [wetland] from degradation.”<sup>11</sup>

Because the correct classification, categorization and rating of a wetland are essential and because the MICA Delineation Study failed to use the 2014 DOE Updated Wetland Rating System and the 2014 DOE Updated Rating Form, the MICA Delineation Study is virtually useless.<sup>12</sup>

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<sup>9</sup> The Mercer Island Wetland Ordinance is devoid of wetland buffer building setbacks which is another example of the Mercer Island Wetland Ordinance’s failure to fully protect wetlands. See Exhibit 8.

<sup>10</sup> See Exhibit 8.

<sup>11</sup> MICC, Chapter 19.16 defines a buffer as:

“A designated area adjoining a critical area intended to protect the critical area from degradation.”

<sup>12</sup> The Mercer Island Wetland Ordinance provides in part as follows:

“Reduction of Wetland Buffer Widths. The code official may allow the standard wetland buffer width to be reduced to not less than the minimum buffer width in accordance with an approved critical area study



## V. THE GMA AND MERCER ISLAND WETLANDS

### A. *Classifying, Delineating, Designating And Inventorying Wetlands*

The Growth Management Act (“GMA”) requires Mercer Island, utilizing the best available science, to classify, delineate, designate and inventory wetlands located on Mercer Island. *See, e.g.*, RCW 36.70A.170(1)(d), RCW 36.70A.172, RCW 36.70A.175, RCW 36.70A.180, WAC 365-190-040 and WAC 365-190-090.

It appears<sup>13</sup> that Mercer Island has not complied fully with these GMA requirements.

### B. *Protecting The Functions And Values Of Wetlands*

The GMA requires Mercer Island, utilizing the best available science, to adopt development regulations to protect the functions and values of wetlands located on Mercer Island (“Wetland Ordinance”). *See, e.g.*, RCW 36.70A.040(3), RCW 36.70A.060(2), RCW 36.70A.172, WAC 365-190-040, WAC 365-190-080, WAC 365-190-090 and WAC 365-195-900 and WAC 365-196-830.

It appears<sup>14</sup> that Mercer Island has not complied fully with these GMA requirements. *Compare Exhibit 8* (Mercer Island Wetland Ordinance) *with, e.g., Exhibit 9* (Bainbridge Island Wetland Ordinance), *Exhibit 10* (Bellevue Wetland Ordinance), *Exhibit 11* (Issaquah Wetland Ordinance) and *Exhibit 12* (Pullman Wetland Ordinance).

### C. *Reviewing And Revising The Mercer Island Wetland Ordinance*

It appears<sup>15</sup> that the time for Mercer Island to review and revise its Wetland Ordinance is overdue. *See Exhibit 13.*

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when he/she determines that a smaller area is adequate to protect the wetland functions, the impacts will be mitigated consistent with MICC 19.07.070(B)(2), and the proposal will result in no net loss of wetland and buffer functions.” *See Exhibit 8.*

It is respectfully submitted that Mercer Island should retain independent, expert professionals in order to acquire the skill sets necessary: (i) to review and analyze wetland documents prepared and submitted to Mercer Island by professionals (such as ecologists, geologists and hydrologists) and (ii) to make accurate, correct and error free determinations regarding proposed reductions to wetland buffer widths.

<sup>13</sup> Because Mercer Island is in possession of the relevant wetland and critical area information, only Mercer Island can confirm this statement to an absolute certainty.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

## ***D. Destruction Of Mercer Island Wetlands***

### **1. Northern Boundary**

The MICA Delineation Study purports to delineate a wetland with a northern boundary that abruptly stops at the edge of a large man-made asphalted area. See Exhibit 6, at page 3, and Exhibit 7. Water streams from the northern boundary of that delineated wetland onto the man-made asphalted area.<sup>16</sup> See Exhibit 14, Exhibit 15 and Exhibit 16.

It appears<sup>17</sup> that a large area currently covered by asphalt was a wetland before that area of wetland was destroyed by the construction of the man-made asphalted area. See Exhibit 6, at page 3, Exhibit 7, Exhibit 14, Exhibit 15 and Exhibit 16.

The destruction of that wetland area diminishes the remaining wetlands' hydrologic functions of reducing flooding and erosion.

### **2. Eastern Boundary**

The MICA Delineation Study delineates a wetland with an eastern boundary that abruptly stops at a man-made culvert and a man-made asphalted walk. See Exhibit 6, at page 3, and Exhibit 7. Water streams from the eastern boundary of that delineated wetland through the man-made culvert and under the man-made asphalt walkway.<sup>18</sup> See Exhibit 17, Exhibit 18 and Exhibit 19.

It appears<sup>19</sup> that the area in which the man-made culvert and the man-made asphalt walkway are located was a wetland before that wetland was destroyed by the construction of the man-made culvert and the man-made asphalt walkway. See Exhibit 6, at page 3, Exhibit 7, Exhibit 17, Exhibit 18 and Exhibit 19.

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<sup>16</sup> The streaming occurs even when it is not raining.

<sup>17</sup> See *supra* note 13.

<sup>18</sup> The streaming occurs even when it is not raining.

<sup>19</sup> See *supra* note 13.

## VI. LIST OF EXHIBITS

1	April 23, 2014 – Memorandum Regarding “Landslide Risks On Mercer Island” (Highlighted)
2	December 16, 2015 – MI Weekly Regarding “Landslide Recap And Information” (Highlighted)
3	Mercer Island Landslide Hazard Area Map
4	Mercer Island Seismic Hazard Area Map
5	Mercer Island Erosion Hazard Area Map
6	May 21, 2015 – “Mercer Island Center For The Arts Wetland Delineation Study”
7	August 18, 2015 – “50-ft Buffer Wetland and Premises Delineation”
8	Mercer Island Wetland Ordinance
9	Bainbridge Island Wetland Ordinance
10	Bellevue Wetland Ordinance
11	Issaquah Wetland Ordinance
12	Pullman Wetland Ordinance
13	February 3, 2016 – Mercer Island Reporter City Briefs (Highlighted)
14	Photograph Of Water Streaming From Delineated Wetland North Boundary
15	Photograph Of Water Streaming From Delineated Wetland North Boundary
16	Photograph Of Water Streaming From Delineated Wetland North Boundary
17	Photograph Of Water Streaming From Delineated Wetland East Boundary
18	Photograph Of Water Streaming From Delineated Wetland East Boundary
19	Photograph Of Water Streaming From Delineated Wetland East Boundary

# **EXHIBIT 2**

# THE MICA PRE-APPLICATION MEETING

March 7, 2016

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## I. EXECUTIVE SUMMARY

On February 2, 2016, the Mercer Island Center for the Arts (“MICA”) submitted a Draft SEPA Environmental Checklist at a pre-application meeting. The Draft SEPA Environmental Checklist was the only document MICA submitted at that February 2, 2016, pre-application meeting.<sup>1</sup>

A review of the MICA pre-application meeting files and the Draft SEPA Environmental Checklist reveals numerous problematic issues, including: (i) MICA’s apparent failure to schedule and attend a required pre-design meeting, (ii) MICA’s failure to address development and design review at the February 2, 2016, pre-application meeting, (iii) MICA’s failure to submit required development and design review documents at the February 2, 2016, pre-application meeting, (iv) the inaccuracy of the Draft SEPA Environmental Checklist, (v) the incompleteness of the Draft SEPA Environmental Checklist, (vi) MICA’s failure to comply fully with the Growth Management Act, (vii) MICA’s failure to comply fully with the State Environmental Policy Act (“SEPA”), and (viii) MICA’s failure to comply fully with the Mercer Island City Code.

## II. REVIEW OF THE PROPOSED MICA CENTER FOR THE ARTS

### A. Required Town Center Development And Design Standards Review

The planning and permitting processes for the proposed MICA Center for the Arts (“MICA Center”) require MICA to comply with, among other things, Chapter 19.11 MICC, Town Center Development and Design Standards. *See* Mercer Island City Code (“MICC”) 19.05.010(C).

### B. Required Pre-Design Meeting

MICC 19.05.040(F)(2)(b)(i) provides that: “A predesign meeting must be scheduled with staff from the development services group (DSG) prior to formal project development and application.” *See* Exhibit 1.

It appears<sup>2</sup> that MICA failed to comply with the requirements of MICC 19.05.040(F)(2)(b)(i).

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<sup>1</sup> *See* Exhibit 3 and Exhibit 4.

<sup>2</sup> Because Mercer Island is in possession of the relevant information, only Mercer Island can confirm this statement to an absolute certainty.

### **C. February 2, 2016, MICA Pre-Application Meeting**

On February 2, 2016, MICA attended a pre-application meeting with Mercer Island. The only document MICA submitted at that February 2, 2016, pre-application meeting was a “Draft SEPA Environmental Checklist.” See Exhibit 3 and Exhibit 4.

### **D. Environmental Review And Project Review Must Be Combined**

Local project review under the Growth Management Act requires Mercer Island to “[c]ombine the environmental review process, both procedural and substantive, with the procedure for review of project permits.” (bold added). See RCW 36.70.B.050(1).

SEPA requires Mercer Island to “[i]ntegrate the requirements of SEPA with existing agency planning and licensing procedures and practices, so that such **procedures run concurrently rather than consecutively**.” (bold added). See WAC 197-11-030(2)(d).

It appears<sup>3</sup> that MICA failed to comply with the requirements of RCW 36.70.B.050(1) and WAC 197-11-030(2)(d) by not addressing the Town Center Development and Design Standards at the February 2, 2016, pre-application meeting. See Exhibit 3 and Exhibit 4.

### **E. Required Pre-Application Meeting**

MICC 19.05.040(F)(2)(c)(i) provides that: “A complete application on forms provided by the development services group (DSG) and **all materials pertaining to the project shall be submitted at a formal preapplication meeting with DSG staff**.” (bold added). See Exhibit 1.

It appears<sup>4</sup> that MICA failed to comply with MICC 19.05.040(F)(2)(c)(i) by not addressing the Town Center Development and Design Standards at the February 2, 2016, pre-application meeting. See Exhibit 3 and Exhibit 4.

### **F. Required Pre-Application Meeting Materials**

Some of the materials that must be submitted at the required pre-application meeting are:

1. Site survey
2. Vicinity maps
3. Site plans
4. Architectural plans—including elevations, sections, roof plans
5. Renderings and/or models
6. Landscaping plan
7. Tree plan
8. Parking plan

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

9. Photographic examples of colors and materials of the proposed project
10. Site photographs of the existing condition
11. SEPA checklist
12. Traffic study
13. Pedestrian and vehicle circulation plans.
14. Written narrative describing the project proposal and detailing how the project is meeting the applicable design objectives and standards established in Mercer Island City Code 19.11 or 19.12
15. Submittal of lighting and sign master plans may be deferred to final design review.
16. All other information deemed necessary by DSG staff to determine if the proposal complies with Mercer Island City Code

See Exhibit 2. See also MICC 19.05.040(F)(2)(c)(i).

It appears<sup>5</sup> that MICA failed to submit the materials required by MICC 19.05.040(F)(2)(c)(i) at the February 2, 2016, pre-application meeting. See Exhibit 3 and Exhibit 4. Compare Exhibit 2 with Exhibit 4.

### **G. Draft SEPA Environmental Checklist**

#### **1. Unlawful Parking Proposal**

Attachment G to the Draft SEPA Environmental Checklist proposes parking that fails to acknowledge let alone comply with MICC 19.05.010(D) and MICC 19.05.020(B)(4).

#### **2. Omission Of Material Documents**

The Draft SEPA Environmental Checklist did not attach important documents such as a Transportation Impact Study and Architectural Plans. See Exhibit 4. Compare Exhibit 2 with Exhibit 4.

#### **3. Evasive Responses**

The Draft SEPA Environmental Checklist is evasive and disingenuous.

For example, when asked to describe the “total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill.” the Draft SEPA Environmental Checklist provides the following responses: (i) “Excavation: *Will be required at hillside (cubic yards tbd by civil)*” and (ii) “Fill: *Some fill will be used to shape grade below the first floor. (cubic yards tbd by civil; fill source by contractor).*” See Exhibit 4, page 6, at Section B(1)(e). (italics in the original).

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<sup>5</sup> *Id.*



By way of another example, when asked “how many additional parking spaces ... the completed project [would] have,” the Draft SEPA Environmental Checklist provides the following response: “There will be accessible parking available on SE 32<sup>nd</sup> Street.” See Exhibit 4, page 17, at Section B(14)(d). This response fails to acknowledge let alone address the requirements of MICC 19.05.010(D) and MICC 19.05.020(B)(4).

#### **4. Incorrect Documents**

The Draft SEPA Environmental Checklist attached the following eight documents:

1. Attachment A – “Proposed Lease Boundary”
2. Attachment B – “Proposed Building Footprint”
3. Attachment C – Hart Crowser “Geotechnical Engineering Design Report”
4. Attachment D – Hart Crowser “Supplemental Memorandum.”
5. Attachment E – “Wetland Delineation Report”
6. Attachment F – “Conceptual Mitigation Plan”
7. Attachment G – “Parking and Access Sketch”
8. Attachment H – “Phase 1 Environmental Review”

Of the eight documents attached to the Draft SEPA Environmental Checklist, the following five documents did not address the proposed current site but addressed the proposed old site:

1. Attachment C – Hart Crowser “Geotechnical Engineering Design Report”
2. Attachment D – Hart Crowser “Supplemental Memorandum”
3. Attachment E – “Wetland Delineation Report”
4. Attachment F – “Conceptual Mitigation Plan.”
5. Attachment G – “Parking and Access Sketch”

See Exhibit 4.

The Draft SEPA Environmental Checklist exemplifies a lack of good faith and impedes any meaningful review (environmental or otherwise) of the proposed MICA Center.

### **III. LIST OF EXHIBITS**

1	Design Commission Process (Highlighted)
2	Submittal Checklist For Design Review
3	February 29, 2016 – E-Mail From City Clerk (Highlighted)
4	February 2, 2016 – Draft SEPA Environmental Checklist

# **EXHIBIT 3**



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**CITY OF MERCER ISLAND**

9611 SE 36<sup>th</sup> Street • Mercer Island, WA 98040-3732  
(206) 275-7605 • FAX (206) 275-7726  
www.mercergov.org

July 18, 2016

Lesley Bain  
Framework Cultural Placemaking  
1429 12<sup>th</sup> Avenue, Suite D  
Seattle, WA 98122

Sent via e-mail

RE: Request for Information - File Nos. SEP16-015/ZTR16-002  
Mercer Island Center for the Arts  
3205 77<sup>th</sup> Avenue SE  
Mercer Island, WA 98040;  
King County Tax Parcel # 1224049068

Dear Ms. Bain:

Thank you for your submittal of the subject application, received by the City on June 16, 2016. City staff have reviewed the submitted materials and have determined that additional information or clarification is needed for complete applications. **Please provide the following:**

1. MICC 19.16.010 defines “subdivision” as: *“The division or platting of, or the act of division or platting of, land into two or more lots for the purpose of transfer of ownership, building development, or **lease**, whether immediate or future, and shall include all resubdivision of land.”* (emphasis added) Please modify the submitted SEPA Checklist to include a short subdivision (short plat) as part of the project.
2. MICC 19.09.090 requires designation of a building pad for each lot in a short plat. **The designated building pads need to be shown as part of the supporting materials for the SEPA Checklist to allow evaluation of any environmental impacts.** Please submit supporting information showing how the proposed building pads comply with MICC 19.09.090:

MICC 19.09.090      Building Pads

A. **Designation. New subdivisions must designate a building pad for each lot as follows:**

1. The applicant must determine the location of a building pad by considering vegetation, topography, critical areas, and the relationship of the proposed building pad to existing/proposed homes. Access to the building pad must be consistent with the standards for driveway access contained in MICC 19.09.040.
2. Building pads shall not be located within yard setbacks, rights-of-way and critical areas or its buffers; provided, however, building pads may be located within landslide hazard areas when all of the following are met: (a) a qualified professional determines that the criteria of MICC 19.07.060(D), Site

Development, is satisfied; (b) building pads are sited to minimize impacts to the extent reasonably feasible; and (c) building pads are not located in steep slopes or within 10 feet from the top of a steep slope, unless such slopes, as determined by a qualified professional, consist of soil types determined not to be landslide prone.

3. No cross-section dimension of a building pad shall be less than 20 feet in width.

3. Please submit additional plans and information for projected work outside of the proposed lease area, as mentioned on page 3 of the SEPA Checklist. Update the SEPA Checklist and supporting materials as needed to reflect this new information.
4. Please complete the last portion of the SEPA Checklist "Supplemental Sheet for Non-Project Actions." This is needed to support the proposed Zoning Code Text Amendment, which is a non-project action.
5. Attachments C and D (geotechnical information) need to be updated or supplemented to reflect the currently proposed plans.
6. Attachment F (wetland mitigation proposal) needs to be updated or supplemented to reflect the currently proposed plans and proposed mitigation.
7. Attachment H (Zoning Code Text Amendment) needs to be clarified to show which text is proposed for addition to MICC 19.05.010 in the Zoning Code Text Amendment. Typically, underlined text is an addition, but the proposal also shows red, non-underlined text that also appears to be an addition.
8. Attachment H (Zoning Code Text Amendment) would allow all public facilities (as defined in MICC 19.16) plus the primary uses listed in the proposal in all public parks. As submitted, we would need more information regarding the probable environmental impacts of the proposal. However, based on prior discussions, we do not believe that is your intent. Narrowing the scope of the proposed code amendment could eliminate the need for this additional information.

Should you have any questions, please contact me at 206-275-7706 or via e-mail at [scott.greenberg@mercergov.org](mailto:scott.greenberg@mercergov.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott Greenberg", is displayed on a light blue rectangular background.

Scott Greenberg, Director  
City of Mercer Island Development Services Group

# **EXHIBIT 4**

# OVERVIEW OF COMPRESSED ZIP FOLDERS

October 25, 2016

## **INADEQUACIES**

The contents of the seven compressed zip folders lettered A through G and further described and addressed below support the propositions: (i) that MICA is proposing activities that are unlawful, (ii) that MICA has attempted to circumvent the law, (iii) that MICA is seeking special privileges (iv) that there is insufficient information for the City to make a SEPA threshold determination, (v) that the City should require MICA to submit more information, (vi) that the City should require a subsequent environmental analysis by MICA, (vii) that as a result of substantial changes to MICA's proposal, significant new information regarding MICA's proposal, and lack of material disclosure regarding MICA's proposal, the City should withdraw any SEPA threshold determination issued based upon MICA's July 27, 2016 environmental checklist, and (viii) that the City should require MICA to submit a subsequent environmental checklist.

## **INACCURATE AND INCOMPLETE INFORMATION**

The contents of the compressed zip folder entitled "A – Inaccurate And Incomplete Information" support the proposition that **the various applications and information submitted by MICA to the City are in varying degrees inaccurate and incomplete.**

## **PLATTING**

The contents of the compressed zip folder entitled "B – Platting" support the propositions: (i) **that MICA must obtain an approved final long plat (not a short plat), and (ii) that the lease cannot be executed until MICA obtains an approved final long plat (not a final short plat).**

## **STREETS AND RIGHTS-OF-WAY**

The contents of the compressed zip folder entitled "C – Streets And Rights-Of-Way" support the propositions: (i) **that a portion of the MICA proposal will be constructed in a City Right-Of-Way,** and (ii) that in order to do so, MICA must have that City Right-Of-Way vacated.

## **OFF-SITE DEVELOPMENT**

The contents of the compressed zip folder entitled "D – Off-Site Development" support the propositions: (i) **that the MICA proposal requires 18,292 square feet of off-site development,** (ii) that MICA chose a "FIRE LANE/PATH" that begins at 34<sup>th</sup> Street

and contains approximately 6,986 square feet of off-site development, (iii) that MICA rejected a “FIRE LANE/PATH” that begins at 32<sup>nd</sup> Street and contains approximately 1,540 square feet of off-site development, and (iv) that the difference between a “FIRE LANE/PATH” that begins at 34<sup>th</sup> Street and a “FIRE LANE/PATH” that begins at 32<sup>th</sup> Street is approximately 5,446 square feet of off-site development.

### **CRITICAL AREA DEVELOPMENT**

The contents of the compressed zip folder entitled “E – Critical Area Development” support the propositions: (i) that the MICA proposal includes alterations to the wetland, and (ii) that the MICA proposal includes alterations to the wetland buffers.

### **PROPOSED ZONING TEXT AMENDMENT**

The contents of the compressed zip folder entitled “F – Proposed Zoning Text Amendment” support the propositions: (i) that MICA’s proposed zoning text amendment applies to a single parcel of property, and (ii) that MICA is seeking special privileges.

### **UNLAWFUL ACTIVITIES REGARDING ALCOHOL**

The contents of the compressed zip folder entitled “G – Unlawful Activities Regarding Alcohol” support the proposition that MICA is proposing activities that are unlawful.



# **EXHIBIT 5**

N #	Page/Sheet/Section	Comment	Notes/Response
1	Parking Management Plan	<ol style="list-style-type: none"> <li>1. Pg. 2 – Location 8 reflects 40 and 48 parking spaces on the east and west side of 77<sup>th</sup> Ave. SE. These space <u>do not exist.</u></li> <li>2. Pg. 3 – The two graphs are confusing. Please provide a written explanation of what they are intended to convey. The first graph is titled, “Top 50 Lots by Average Availability”. Please indicate whether these are within ¼ (or other distance) of the site. It would be helpful to include a map to accompany the graphs to put the graphs into context. Parts of the watermark (“DRAFT”) is in the background of the graph. Please remove. It is unclear in the second graph what the black bars depict vs the grey ones.</li> <li>3. Pg. 4 – (ADA Parking) The proposed ADA parking stalls take over an existing parking pullout in the right of way used primarily by Parks Maintenance crews and patrons of Mercerdale Park. Converting this to ADA will require providing replacement parking for Parks Maintenance large enough to accommodate a truck with trailer (total vehicle length of 40 feet). This might need to be located on site if space is not conveniently available on the street.</li> <li>4. Pg. 4 – (Drop-off/Pick-up Management) – Provide a more detailed discussion regarding drop-off/pick-ups including where the loop will be located, how it will be managed, and the approximate capacity. It should be as close as possible to the building entrance. The project team previously indicated that it would have a capacity of 20 to 30 vehicles. Page 5 indicates that new on-street parking on 77<sup>th</sup> Ave. SE in front of Farmer’s Insurance will have time-limited parking for short term drop-offs and pick-ups. Is this your proposal or are you</li> </ol>	

N #	Page/Sheet/Section	Comment	Notes/Response
		<p>saying that the City has already approved this? Who will enforce the parking restriction? It indicates that 10 stalls will be provided. That means approximately 200' of the street will be used for this, which reduced the amount of proposed on-street (longer term) parking available.</p> <p>5. Pg. 6 – (Enforcement &amp; Coordination Strategies) – The second paragraph indicates that if additional signage and enforcement is necessary, MICA will coordinate with the City. This seems to put the responsibility on the City. MICA must be proactive and actively monitor the use of adjacent streets south and southeast of the site. There is a statement indicating that MICA will “strongly discourage” the use of on-street parking near the Thrift shop. How will this be done?</p> <p>6. Pg. 6 (Deployment Strategy) – Indicates that MICA/tenant staff “could” assist with drop-off, check-in, and pick-up and reinforce posted parking time limits as well as be on-site to assist with drop-off on the street frontage before performances. These statements should be more affirmative, such as “will, as needed...”.</p> <p>7. As the area changes over time, the use of the private parking lots and their availability might change. The parking management plan shall be updated annually and parking agreements shall be in place before the project is occupied. Add a note in the plan stating who will be in charge of managing these agreements and updating the parking management as needed and when during the year the update will occur.</p>	
2	Restriping of 77th Ave SE & SE 32nd Street	The plan shows restriping of 32nd Avenue to allow for on-street and accessible parking. The City engineer previously provided comments on this plan on July 26, 2016 to the project traffic	

N #	Page/Sheet/Section	Comment	Notes/Response
3	Accessible Parking Access	<p>engineer. These comments must be addressed and the plan updated. The July 26<sup>th</sup> comments are attached. Although the restriping of 77<sup>th</sup> Ave. SE to provide on-street parking is part of the City's long-term plan, it is not currently included in the Six-Year Transportation Improvement Program. Therefore, all costs associated with creating on-street parking will likely be the responsibility of MICA.</p> <p>Accessible parking is planned on street along SE 32nd Street. The closest accessible ramp is the crosswalk at 77th Avenue SE, approximately 70 feet west of the closet stall. Install new accessible ramps at the proposed parking area so that wheelchairs do not need to travel in the roadway to access the sidewalk.</p>	
4	TIA	Refer to the redlined copy of the TIA for comments.	
5	TIA pg. 17 (Pick-Up/Drop-Off Trips/Plan)	<p>This section is not specific enough. The plans submitted for the project depict the building, site improvements, an even on-street parking but do not show even a conceptual drop-off/pick-up area. Provide a plan that depicts and describes how pick-ups/drop-offs will be addressed, especially after school for the programs focused on children at the site. Show specifically where this will occur, how it will be managed daily (i.e. where cars will queue, if flaggers or other staff will be managing traffic flow so that it does not impede through traffic on 77th Avenue SE and SE 32nd Street), and how it interacts with on street parking including ADA parking. The project team previously described it as a "loop" with a capacity of at least 20 to 30 vehicles. The appendix shows that the peak occurrence of pick-up/drop-off is at 9:00 p.m. Show that there is adequate illumination throughout the proposed pick-up/drop-off zone so</p>	

N #	Page/Sheet/Section	Comment	Notes/Response
6	SEPA Checklist	that drivers are able to see pedestrians as they negotiate the parked and moving cars.	
	Miscellaneous	<p>Refer to my comments on the checklist</p> <p>It appears that the Fire Dept. access, stormwater detention system, above-ground bioretention area, and the drop-off/pick-up loop are outside of the proposed lease boundaries. The City Council will ultimately need to determine whether the lease boundaries need to encompass some or all of these improvements.</p>	

# **EXHIBIT 6**



# MEMORANDUM

*City Manager's Office*

**TO:** City Councilmembers  
**FROM:** Pam Bissonnette, City Manager  
**DATE:** September 26, 2016  
**RE:** Tentative MICA Review Process & Schedule

The proposed Mercer Island Center for the Arts (MICA) project requires several review processes by different decision-makers. The following describes projected dates and review schedules for all land-use and zoning related elements of the project: State Environmental Policy Act (SEPA) review, zoning code amendment, critical area determination and long plat.

## **SEPA REVIEW**

**Peer review comments to staff.** MICA's geotechnical, traffic and wetland studies have been sent to outside consultants for a peer review. Staff has received preliminary peer reviews from our wetland and traffic consultants and should have the preliminary geotechnical peer review by the end of September.

**Final peer review comments to staff.** Staff will review the consultant work and send comments to our consultants by October 7. Staff has already begun this process.

**Transmittal of final peer review comments to MICA.** When the final peer review comments for each discipline are submitted and accepted by City staff, the comments will be sent to MICA for review and response.

**City staff review of MICA responses.** Within a week, City staff will review the responses from MICA regarding comments from the public, City staff and peer reviewers. If elements of the project are changed or if further clarification is needed, another round of City staff comments will be compiled and sent to MICA.

**SEPA Determination issued.** Once all information is submitted to enable a determination of environmental impact, a SEPA Determination can be issued on a Monday (for publication in the weekly permit bulletin). A SEPA Determination is

appealable to the Planning Commission within 14 days of the issuance of the determination. An appeal would delay the remaining steps by approximately 45-60 days. Future SEPA review is also required once detailed project plans are submitted to the City for review and processing.

### **LEASE APPROVAL & EXECUTION**

Per the Memorandum of Understanding (“MOU”), dated February 22, 2016, between MICA and the City, the full SEPA review and any related appeals must be concluded prior to the City Council’s consideration of approval of the Lease Agreement.

### **CODE AMENDMENT**

**Planning Commission public hearing on proposed code amendment. (Public Input).** This will be scheduled once we have issued the SEPA determination.

**Planning Commission deliberation and recommendation on code amendment to City Council. (Possible Public Input, if allowed by Planning Commission)** This would probably occur 2-3 weeks after the public hearing. The Commission can decide whether to accept additional public comment prior to deliberation and recommendation.

**City Council first reading of proposed code amendment. (Possible Public Input, if allowed by City Council)** Once Planning Commission makes its recommendation on the code amendment, the City Council could have the code amendment at its first meeting after the Commission’s recommendation.

**City Council second reading of proposed code amendment. (Possible Public Input, if allowed by City Council)** Second reading could occur at the next meeting following first reading. The Council’s action is appealable to the Central Puget Sound Growth Management Hearings Board.

### **LONG PLAT**

The timing of this review depends on when the long plat application is submitted by MICA. The proposed long plat process is needed to create a lot synonymous with the proposed lease area. Generally, a long plat decision is issued within 120 days of the submittal of a complete application. A long plat requires an open record hearing. The review and decision on the application is made by the Planning Commission and the City Council. A long plat is required rather than a short plat because Mercerdale Park exceeds 4 acres in area.

### **CRITICAL AREAS DETERMINATION**

Staff review and decision on a critical area determination to reduce the required wetland buffer from 50 feet to 25 feet, depends on when the application is submitted by MICA.



Generally, a critical area determination is issued within 120 days of the submittal of a complete application. A critical area determination requires public notice and a 14-day written public comment. The decision is made by staff and is appealable to the Planning Commission.

### **DESIGN REVIEW**

**Design Commission review and decision on the Design Review for the MICA project depends on when the application is submitted by MICA.** Generally, preliminary Design Review is complete within 120 days of the submittal of a complete application. There is not a public comment opportunity (written or oral) on preliminary Design Review. However, public comments are solicited for final Design Review, and the Design Commission holds a public hearing. The decision is made by the Design Commission and is appealable to the Hearing Examiner.

# **EXHIBIT 7**

# KPG Traffic Analysis for Mercer Island I-90 Access Options

## Nov 7, 2016



### Introductory Statement

On August 5, 2016, the City received a changed decision by the Federal Highway Administration (FHWA) regarding Mercer Island access to I-90 via the Island Crest Way Westbound HOV ramp. (see August 5, 2016 FHWA Letter at: [www.mercergov.org/files/2016-08-05\\_FHWA\\_Letter\\_to\\_City\\_and\\_WSDOT.pdf](http://www.mercergov.org/files/2016-08-05_FHWA_Letter_to_City_and_WSDOT.pdf))

The City immediately commissioned KPG to analyze the worst case impacts on local Mercer Island traffic based on the FHWA decision when the center roadway closes in June 2017 and when East Link becomes operational after 2023. This is new data because the scenario created by the FHWA decision was not previously envisioned by any of the parties.

The attached *KPG Traffic Analysis for Mercer Island I-90 Access Options* provides a traffic analysis that evaluates impacts to the Mercer Island streets, intersections and I-90 ramps once the I-90 center roadway is closed and includes the restriction of Mercer Island SOVs from using the future R8A Lanes and Island Crest Way westbound HOV on-ramp.

KPG was not commissioned to develop or analyze mitigations to local traffic impacts at this time, and was not asked to analyze impacts on I-90. As was reported at the November 7, 2016 Mercer Island City Council meeting, the impacts are significant, and were not covered in the East Link Light Rail FEIS because, again, this scenario was not envisioned.

The results of the KPG traffic analyses and the evaluation of the I-90 Access Alternatives will be used by Mercer Island in the continued negotiations with Sound Transit, WSDOT and FHWA to achieve the mobility goals of Mercer Island residents.

(See I-90 Access Alternatives at: [www.mercergov.org/files/MI\\_I-90\\_AccessAlternatives\\_7Nov2016.pdf](http://www.mercergov.org/files/MI_I-90_AccessAlternatives_7Nov2016.pdf))

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## Technical Memorandum

**To:** Pam Bissonnette, City of Mercer Island  
**From:** Michael Lapham and John Davies, KPG  
**Date:** November 3, 2016  
**Re:** Traffic Analysis for Mercer Island I-90 Access Options

KPG recently assisted the City of Mercer Island to update the Transportation Element of the Comprehensive Plan. The Transportation Element update analyzed traffic operations for 2014 existing conditions and 2035 future conditions during both the AM and PM peak hours.

Next June (2017), the East Link Project is scheduled to close the I-90 reversible center roadway to begin construction on the light rail line. To replace the loss of the I-90 center roadway, the I-90 mainline between Mercer Island and Seattle will be restriped from 3-lanes to 4-lanes in each direction. These new I-90 lanes are referred to as R8A lanes. The traffic analysis for the East Link Project assumed that the R8A lanes would be designated as HOV lanes and that single occupancy vehicles (SOVs) traveling to or from Mercer Island would be allowed to use these lanes.

Recently, the Federal Highway Administration (FHWA) informed the City of Mercer Island about the potential restriction of Mercer Island SOVs from the I-90 R8A lanes. This may also lead to the restriction of SOVs from using the Island Crest Way on-ramp to westbound I-90 because it would connect to a HOV lane. The potential SOV restriction at the Island Crest Way westbound on-ramp would result in traffic being diverted to other I-90 on-ramps. This diversion would increase traffic volumes on Mercer Island local streets and **negatively impact traffic operations in and around the Town Center.**

This technical memo focuses on the traffic impacts to Mercer Island streets and intersections from the potential SOV restriction at the Island Crest Way westbound on-ramp and does not address the traffic operations of the I-90 mainline. The analysis evaluates 2017 conditions during construction and 2035 conditions after the completion of the light rail line and the new R8A lanes.

### **Changes to I-90 Ramps with Closure of the Center Roadway**

The I-90 center roadway will be closed in 2017 with the start of light rail construction. The closure of the I-90 center roadway will result in the following changes to Mercer Island's access to and from I-90.

- **The reversible ramp at 77th Avenue SE to/from the I-90 center roadway will be closed.**
- The Island Crest Way westbound on-ramp to the center roadway will be closed and the on-ramp connecting to the I-90 mainline will be restriped to connect with the R8A lanes.
- **The 76th Avenue SE on-ramp to westbound I-90 will be widened to include a metered general-purpose lane and a HOV bypass lane.**
- The Island Crest Way eastbound off-ramp from the I-90 center roadway will be relocated to serve the new I-90 R8A lanes.

A map at the end of the memo shows the ramp changes that will occur with the closure of the I-90 center roadway.

### **Potential Restrictions of Mercer Island SOVs from I-90 R8A lanes and Island Crest Way Westbound On-Ramp**

The traffic analyses for both the East Link Project *Final I-90 Interchange Justification Report* (IJR) and *Final Environmental Impact Statement* (EIS) assumed that Mercer Island SOVs would be allowed to use the new R8A lanes between Mercer Island and Seattle. This assumption and traffic analysis were also used to identify the traffic impacts and corresponding mitigation for Mercer Island local streets. The proposed mitigation is described on pages 3-99 and 3-100 of the EIS. The EIS states that with these mitigation improvements the AM and PM peak hour intersection operations would be the same or better than no-build conditions.

In an August 5, 2016 letter, the FHWA states that Mercer Island SOVs may be restricted from using the future I-90 R8A lanes between Seattle and Mercer Island, because the current plan is for the R8A lanes to be designated as HOV lanes. The letter also states that SOVs may be restricted from using the Island Crest Way westbound on-ramp. This on-ramp connects to the left side of the I-90 mainline. These potential restrictions of SOVs from the R8A lanes and westbound on-ramp were not part of the East Link FEIS analysis.

### **Reductions to Westbound I-90 On-Ramp Capacity for the Town Center and Island Crest Way**

Traffic volumes onto westbound I-90 are highest during the morning commute. **Currently, during the morning commute, the Town Center and Island Crest Way have SOV access onto westbound I-90 from three on-ramps at 76th Avenue SE, 77th Avenue SE and Island Crest Way. These three westbound SOV on-ramps would be reduced to a single on-ramp at 76th Avenue SE** with the closure of the I-90 center roadway and the potential restriction of SOV access to the Island Crest Way on-ramp. With these two ramp changes, the 76th Avenue SE on-ramp would carry almost 1,200 vehicles during the AM peak hour.

The 76th Avenue SE on-ramp would not be able to support this level of traffic and would result in extensive queuing, travel delays and potential for traffic to divert to other westbound on-ramps such as West Mercer Way. The additional traffic diverting to the 76th Avenue SE westbound on-ramp would likely warrant a new traffic signal at the 76th Avenue SE/N Mercer Way intersection; however, a signal would not address the queues that would back up from the ramp meter through the intersection. Traffic simulation analysis indicates that vehicle queues from the ramp meter would extend east to the N Mercer Street/77th Avenue SE intersection and south to the SE 24th Street/76th Avenue SE intersection, negatively impacting downtown traffic circulation during the AM commute.

On Mercer Island, the AM peak hour of traffic typically occurs between 7:30 AM and 8:30 AM. The 76th Avenue SE on-ramp is also expected to be over capacity during the 30 minutes before and after the peak hour. These shoulder periods carry more than 80 percent of the AM peak hour volumes.

Currently, the 76th Avenue SE westbound on-ramp carries 180 vehicles during the AM peak hour. The number of additional westbound vehicles that would be diverted to the 76th Avenue SE on-ramp include the following:

- 420 vehicles from the reversible ramp at 77th Avenue SE to the I-90 center roadway.
- 530 SOVs from the Island Crest Way on-ramp that accesses the I-90 center roadway.
- 60 SOVs from the Island Crest Way on-ramp that accesses the I-90 outer roadway.

The AM peak hour analysis includes a reduction of 80 vehicles that reflect non-Mercer Island vehicles that currently exit westbound I-90 at either East Mercer Way or Island Crest Way and travel on local streets to access the westbound center roadway at the 77th Avenue SE on-ramp.

During the PM peak hour, the restriction of SOVs from the Island Crest Way westbound on-ramp would cause approximately 200 vehicles to divert primarily to the 76th Avenue SE on-ramp. This would increase the 76th Avenue SE on-ramp volume to approximately 800 vehicles during the PM peak hour.

The Island Crest Way interchange with I-90 was constructed consistent with WSDOT design guidelines that recommend providing on- and off-ramps for all four directions of travel at a single location. This maximizes efficiency, consolidates the impacts of the high traffic volumes accessing the freeway to a single location, and meets driver's expectations of exiting the freeway at one location and returning to the same location. The WSDOT Design Manual, Interchange Design Chapter 1360.02 states "provide complete ramp facilities for all directions of travel whenever possible". The potential SOV restriction at the Island Crest Way westbound on-ramp would require drivers to travel a half mile to access on the on-ramp at 76th Avenue SE.

### **Impacts to Local Streets**

Island Crest Way is a Principal Arterial and carries 23,000 vehicles per day approaching I-90. Mercer Island's transportation system is based on Island Crest Way forming the primary north-south transportation spine providing access between I-90 and the southern three-quarters of the island. Currently, vehicles traveling between Island Crest Way and Seattle have direct access to westbound I-90 via a tunnel. **The SOV restriction would require westbound SOVs on Island Crest Way to exit the high speed arterial and drive an additional half mile on local streets to reach the 76th Avenue SE on-ramp. The majority of the vehicles are expected to travel on either North Mercer Way or the Town Center streets.**

The added traffic volumes would increase the potential for pedestrian-vehicle conflicts in the Town Center, particularly at pedestrian crossings near the future light rail station, Park and Ride and parking garage.

Transit operations would be impacted by increased volumes on N Mercer Way. With the 2017 closure of the I-90 center roadway, buses are expected to use the 76th Avenue SE on-ramp for westbound travel from Mercer Island. The additional congestion may cause delays to transit operations, even with the planned transit/HOV by-pass lane on the westbound on-ramp. With the opening of the Mercer Island light rail station, King County Metro and Sound Transit are planning to terminate many of the east side bus routes at Mercer Island. A roundabout is proposed at the N Mercer Way/77th Avenue SE intersection to facilitate the return trip of buses back to the east side. The increased traffic on N Mercer Way from the Island Crest Way SOV on-ramp restriction would negatively affect the operation of the roundabout, resulting in impacts to transit operations and overall traffic flow in the area.

**Intersection Operations**

Level of service (LOS) is a measurement of the quality of traffic flow or traffic congestion. Intersection LOS is defined by the seconds of delay experienced by vehicles traveling through the intersection. The intersection delay takes into account the delay caused by the traffic signals, vehicle queues and delays from turning movements that block through traffic. The intersection LOS grading ranges from A to F, with LOS A assigned when minimal delays are present and LOS F when lengthy delays occur. The table below shows the LOS criteria for signalized and unsignalized intersections.

**Level of Service Criteria for Signalized and Unsignalized Intersections**

Level of Service	Signalized Average Delay per Vehicle (seconds)	Unsignalized Average Delay per Vehicle (seconds)
A	0 to 10	0 to 10
B	10 to 20	10 to 15
C	20 to 35	15 to 25
D	35 to 55	25 to 35
E	55 to 80	35 to 50
F	> 80	> 50

Source: 2010 Highway Capacity Manual

The traffic analysis evaluates 2014 existing conditions, 2017 conditions during construction, and 2035 conditions with the completion of the East Link Project. The attached tables compare the traffic conditions with and without SOV access to the Island Crest Way westbound on-ramp. The tables list the AM and PM peak hour LOS for 12 key intersections affected by the potential SOV restriction.

The City of Mercer Island LOS standard for intersections in and nearby the Town Center is LOS C, except for WSDOT-controlled intersections where WSDOT allows a LOS E standard.

2017 Operations

The 2017 analysis evaluates conditions when the I-90 center roadway is closed for construction of the light rail. The City of Mercer Island has not received plans from Sound Transit to implement the traffic mitigation improvements proposed in the East Link FEIS that are not required to be completed until 2023, therefore these improvements are not included in the 2017 analysis.

The potential SOV restriction at the Island Crest Way westbound on-ramp would increase traffic along N Mercer Way and Town Center streets as the majority of vehicles are expected to divert to the 76th Avenue SE on-ramp. The higher traffic volumes will increase vehicle delays and lead to longer queues at intersections. Three intersections are forecasted to fall below the adopted LOS standard. The I-90 westbound on-ramp/76th Avenue SE intersection is forecasted to operate at LOS F. Vehicle queues from the 76th Avenue SE westbound on-ramp, are expected to adversely impact the operation of the nearby intersections at SE 24th Street/76th Avenue SE and N Mercer Way/77th Avenue SE. Traffic simulation indicates that these two intersections would fall below the City's LOS standard.

## 2035 Operations

The 2035 analysis represents conditions with the completion of the light rail and includes the mitigation improvements identified in the East Link EIS. The proposed East Link mitigation for Mercer Island includes revised westbound channelization at the I-90 westbound on-ramp/76th Avenue SE intersection and three new signals at the intersections of N Mercer Way/77th Avenue SE, I-90 eastbound off-ramp/77th Avenue SE, and SE 27th Street/80th Avenue SE. The 2035 traffic levels includes traffic growth from new development, the new light rail station, and the bus intercept strategy. The potential restriction of SOV traffic from the Island Crest Way westbound on-ramp would divert traffic to N Mercer Way and Town Center streets, increasing delays and vehicle queues at intersections and freeway on-ramps.

Even with the East Link EIS mitigation measures in place, the additional traffic from the Island Crest Way SOV restriction would result in six intersections operating below the LOS standard either in the AM or PM peak hours. A map showing the six intersections is included at the end of the memo. Three of these intersections, I-90 westbound on-ramp/76th Avenue SE, I-90 westbound off-ramp/Island Crest Way and SE 28th St/80th Avenue SE are forecasted to operate at LOS F. Three additional intersections, at SE 24th Street/76th Avenue SE and N Mercer Way/77th Avenue SE and SE 28th Street/Island Crest Way, are forecasted to operate below the City's LOS standard.

**The increase in traffic volumes would cause traffic delays not just to vehicles destined for I-90, but would be experienced by all vehicles traveling in the Town Center and along N Mercer Way.** This would impact Town Center commercial and residential traffic, vehicles traveling to the Park and Ride, and bus operations serving the light rail station.

### **Access to North Mercer Island Neighborhoods**

SE 26th Street, 81st Avenue SE and 76th Avenue SE are the primary connections between the north Mercer Island neighborhoods and the Town Center, Park and Ride, and access to I-90. The potential SOV restriction at the Island Crest Way on-ramp would substantially increase traffic volumes along N Mercer Way at these three intersections. The higher traffic volumes would cause increased delays, queues and blocking issues. As described in the previous section, the two intersections at I-90 westbound on-ramp/N Mercer Way/76th Avenue SE and I-90 westbound off-ramp/N Mercer Way/Island Crest Way are forecasted to not meet the LOS E standard. The analysis results also indicate that westbound queues from the N Mercer Way/80th Avenue SE signalized intersection would likely block turning movements at the nearby N Mercer Way/81st Avenue SE intersection.

### **Travel Time Analysis**

The potential restriction of the Island Crest Way westbound on-ramp to only HOV traffic would increase travel times for vehicles traveling to westbound I-90. During the AM peak hour, the majority of the 590 vehicles from Island Crest Way would divert to N Mercer Way and Town Center streets to access westbound I-90 at 76th Avenue SE. Without additional improvements, congestion and queuing would increase the 2017 and 2035 AM peak hour travel times for SOV traffic between Island Crest Way and westbound I-90 by more than 5 minutes. The traffic simulation modeling showed extensive queuing along N Mercer Way, with backups continuing onto Island Crest Way and into the Town Center.



## Conclusions

The closure of the I-90 center roadway and the potential SOV restriction at the Island Crest Way westbound on-ramp are scheduled to occur in June of 2017. The traffic mitigation improvements proposed in the East Link FEIS assumed the continued use of the Island Crest Way westbound on-ramp for both SOV and HOV traffic. The City of Mercer Island has not received plans to implement the mitigation improvements and these improvements are not expected to be in place when the center roadway is closed.

The potential restriction of SOV traffic from the Island Crest Way westbound on-ramp would create significant impacts to the Mercer Island local streets and Town Center that were not identified in the East Link FEIS. This SOV on-ramp restriction would cause the majority of westbound traffic to divert to the on-ramp at 76th Avenue SE, increasing traffic volumes and delays on N Mercer Way and Town Center streets. These added traffic volumes would also increase the potential for pedestrian-vehicle conflicts in the Town Center and impact bus operations around the light rail station.

The SOV restriction at the Island Crest Way westbound on-ramp is forecast to result in six intersections operating below the adopted LOS standard during either the AM or PM peak hours.

- I-90 westbound on-ramp/76th Avenue SE
- SE 24th Street/76th Avenue SE
- N Mercer Way/77th Avenue SE
- SE 28th Street/80th Avenue SE
- I-90 westbound off-ramp/Island Crest Way
- SE 28th Street/Island Crest Way

These changes to intersection operations should also be reviewed for consistency with air quality standards.

In addition to intersection impacts, the SOV restriction at the Island Crest Way on-ramp would reduce the number of westbound SOV on-ramps serving the Town Center and Island Crest Way from 3 to 1 during the morning commute. The 76th Avenue SE on-ramp would not be able to support the expected increase in traffic volumes and would result in extensive queuing, affecting nearby intersections and traffic circulation.