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ANCHOR QEA

August 28, 2023

City of Mercer Island
Community Planning and Development
9611 Southeast 36th Street
Mercer Island, Washington 98040

Re: Shoreline Variance Request (Fixed Pier Height Requirements) for the Luther Burbank Park Waterfront Improvements Project

To Whom It May Concern:

The City of Mercer Island (City) is proposing the Luther Burbank Park Waterfront Improvements Project (Project) to repair, maintain, and enhance the waterfront program at Luther Burbank Park in the City of Mercer Island, Washington. This letter includes a request for a variance from fixed pier height requirements per Mercer Island City Code (MICC) 19.13.050(H)(6). Separate applications are being provided to cover variance requests for dock width, pile diameter, and grating.

1 Project Overview

The Project includes repairing the north dock structure and replacing and reconfiguring the central and south dock structures to accommodate waterfront programming and current and projected watercraft uses at the park. Other waterside improvements include installing a grated overwater public access platform in the nearshore to improve access to the water along the existing plaza area.

The Project also includes upgrades to the waterfront plaza and Boiler Building. These include Boiler Building repairs (i.e., new roof, seismic retrofits, and new lighting); Boiler Building restroom annex renovation to improve the restroom facilities and construct a new rooftop viewing deck; concession stand repairs; and waterfront plaza renovations and access upgrades. The Project will improve access to the waterfront by creating new Americans with Disabilities Act and universally accessible routes from the plaza to the viewing deck on the existing Boiler Building annex restroom rooftop and to the expanded north beach area, which the Project will improve with fish habitat gravel and riparian plantings. The accessible route will connect to the adjacent future south shoreline trail that will be constructed as part of a separate project. The accessible route will also connect to the existing trail that continues north of the Project area. All proposed waterfront improvements including the dock structures and gangways will also meet accessibility requirements. The waterfront plaza renovations and access upgrades will incorporate low-impact development features that will provide stormwater buffering and biofiltration functions similar to a vegetated shoreline. An irrigation intake system will also be installed at the plaza.

A project description, containing a detailed narrative of each of the elements described above and project drawings, is included as attachments to the Joint Aquatic Resources Permit Application (Exhibit 5).

2 Shoreline Master Program Compliance

The Project is located within the City's Shoreline Master Program (SMP) jurisdiction, within the Urban Park shoreline environment on Lake Washington. Per the SMP, the Urban Park shoreline environment consists of shoreland areas designated for public access and active and passive public recreation. The purpose of the Project is to optimize public access, recreational uses, and public safety, including reconfiguring the waterfront park to better accommodate small boats and nonmotorized watercraft and to improve universal access to the docks, viewing deck, and beach while avoiding and minimizing potential impacts to sensitive environments and resulting in no net loss of ecological function.

Although public access piers, docks, or boardwalks are allowed uses, the City is requesting a Shoreline Variance from MICC 19.13.050(H)(6) for fixed pier height requirements to allow the overwater access platform adjacent to the plaza to extend below the minimum height requirement of 1.5 feet above the ordinary high water mark (OHWM). This variance will support installation of the grated overwater access platform adjacent to the waterfront plaza. The proposed platform is intended to bring the public closer to the water's edge than is currently possible in the plaza area, providing the opportunity for people to touch the lake surface during the summer high water season. The proposed structure provides a fixed platform to allow greater access in an area constrained by a vertical bulkhead and deeper water due to the existing development. These site constraints are an extraordinary circumstance that make it difficult for people with mobility limitations to access the shoreline on an uneven, unstable beach surface that is separated from the upland by several feet due to a vertical bulkhead. A Shoreline Variance would improve access to a shoreline area that currently impedes public access to the water due to existing site conditions.

To provide access to the water for users at the public park, the platform structure will need to be at or below the surface of the water at higher lake levels and less than 1.5 feet above the surface of the water, as required per MICC 19.13.050(H)(5). The platform is designed with a grated surface meeting or exceeding light transmittance requirements to minimize shading of the water column and lakebed below, consistent with MICC 19.13.050(H)(5). The platform is also located over a degraded nearshore habitat that is characterized by anthropogenic debris, such as angular rock and brick materials, and adjacent to an existing vertical bulkhead and overwater structures. The degraded nature of the habitat in this area provides limited nearshore habitat value for salmonids and other aquatic species compared to other, softer shorelines located to the north and south of the promenade area. Based on these considerations, it is anticipated that installation of the platform at this location would result in negligible impacts to the nearshore habitat functions and values, as confirmed at a site visit with the City and Washington State Department of Fish and Wildlife at a November 2021 agency site visit.

3 Shoreline Variance Requirements Consistency

The City's SMP does not have specific variance criteria. However, per MICC 19.13.020(C)(2), whenever an applicant seeks a variance, the applicant shall provide the City with a plan that demonstrates that the project will not create a net loss in ecological function to the shorelands. The Critical Areas Report for the Project, included with this letter, provides a demonstration of no net loss of ecological function to the shoreline environment from the Project.

The Washington State Department of Ecology (Ecology) promulgates the Shoreline Management Act at a state level and reviews Shoreline Variances once they are approved by the local jurisdiction. To support City and Ecology review, the table in Attachment 1 describes the Project's consistency with Shoreline Variance criteria in the Washington Administrative Code (WAC) 173-27-170.

4 Conclusion

A Shoreline Variance is being requested due to extraordinary circumstances that present a hardship at the site, including an area constrained by a vertical bulkhead and deeper water due to the existing development. Other extraordinary circumstances at the site are related to consistently increasing use of Luther Burbank Park and the need to provide safe access and improve accessibility for those with mobility limitations that visit the park. It is expected that the new Sound Transit light rail line, which will include a stop near the park, will increase park visitors and further the need for appropriate public access improvements and safety upgrades related to this variance request. The overwater access platform that will be installed lower than the fixed pier height requirements of 1.5 feet above the OHWM will comply with Shoreline Variance criteria as described in the previous sections and in Attachment 1.

The Project will adequately offset temporary construction impacts and avoid or minimize long-term impacts consistent with MICC 19.13.020(C) and critical areas mitigation sequencing requirements per MICC 19.07.100. The Project minimizes impacts to the nearshore environment through the use of grated surfacing to the maximum extent feasible. Although the Project proposes solid surface decking for the wave attenuator/mooring float in the deeper water (a variance from grating requirements is covered under separate application), impacts to salmonids are diminished for deeper water cover because the habitat is less suitable for predators and light and dark shadows are diminished in deeper water. Overall, it is anticipated that the Project will result in no net loss of shoreline ecological function as demonstrated in the Critical Areas Report provided with this application.

Through implementation of avoidance and minimization measures, it is expected that the Project will comply with MICC 19.13.040 for allowed activities, including public parks and open space, and restoration of ecological functions including shoreline habitat and natural systems enhancement. Therefore, we believe that the Project as proposed meets the intent of the SMP and complies with Shoreline Variance and SCUP criteria per WAC 173-27-160 and WAC 173-27-170.

Thank you in advance for your attention to this project. Please feel free to contact me by phone at (206) 903-3374 or by email at jjensen@anchorqea.com with any questions.

Sincerely,

Josh Jensen
Senior Managing Environmental Planner
Anchor QEA, LLC

cc: Paul West, City of Mercer Island

Attachment

Attachment 1 Analysis of Compliance with Shoreline Variance Requirements (WAC 173-27-170)

Attachment 1
Analysis of Compliance with Shoreline Variance Requirements (WAC 173-27-170)

Consistency with WAC 173-27-170, Review Criteria for Variance Permits

Code Reference	Development Standard Compliance
1) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.	The City is seeking a variance from the **fixed pier height conditions** of MICC 19.13.050(H)(6) requiring a minimum 1.5-foot distance between the water surface and bottom structural beam. This variance would allow the overwater access platform located adjacent to the waterfront plaza to extend from the plaza edge into the water. The platform is another major public access component of the Project. The dock structure and platform are located within a shoreline environment that was previously used as a steam plant and is heavily modified from natural conditions, including shoreline fill and overwater development and structures. The proposed structure provides a fixed platform to allow greater access in an area constrained by a vertical bulkhead and deeper water due to the existing development. These site constraints are an extraordinary circumstance that make it difficult for people with mobility limitations to access the shoreline on an uneven, unstable beach surface that is separated from the upland by several feet due to a vertical bulkhead. A Shoreline Variance would improve access to a shoreline area that currently impedes public access to the water due to existing site conditions. Other extraordinary circumstances at the site are related to consistently increasing use of Luther Burbank Park and the need to provide safe access and improve accessibility for those with mobility limitations that visit the park. It is expected that the new Sound Transit light rail line, which will include a stop near the park, will increase park visitors and further the need for appropriate public access improvements and safety upgrades related to this variance request. Consistent with RCW 90.58.020, the Project is compliant with statewide standards for shoreline protection. The City is committed to incorporating environmental enhancements and avoidance and minimization measures into the Project to demonstrate no net loss of ecological functions. Measures include reducing net overwater coverage, installing functional grating to the extent practicable, and shoreline landscaping and riparian plantings. Additionally, BMPs will be implemented during construction to reduce potential impacts to the shoreline environment. Overall, the Project will improve public access and safety at the dock and plaza area and enhance the user experience. The Project is consistent with the approved master plan for Luther Burbank Park and is supported by the City's

Code Reference	Development Standard Compliance
	parks, recreation, and open space plan adopted in 2022.[1] The Project is not anticipated to result in any detriment to the public interest.
2) Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(c), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following: 1. That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property; 2. That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions; 3. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment; 4. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area; 5. That the variance requested is the minimum necessary to afford relief; and 6. That the public interest will suffer no substantial detrimental effect.	Not applicable. Variance permits are not being requested for upland development or uses. For compliance with WAC 173-27-170(3), in-water activities must demonstrate compliance with WAC 173-27-170(2)(b-f). These activities are consistent with these standards described as follows: b) The hardship on the applicant for meeting the standards of this SMP is specifically related to the property and unique conditions. The variance from fixed pier height conditions is proposed for the overwater access platform that extends from the upland plaza to provide access to the water. A variance is being requested due to the unique interface between built and natural environments in this area that currently prohibits public access to the water, including users experiencing limited mobility. These site constraints present extraordinary circumstances that can be addressed through the design of the Project. c) The Project includes replacing an existing dock and providing waterfront improvements that are compatible with existing authorized uses and programs at the park. This includes installing the proposed overwater access platform to increase accessibility to the water. This is consistent with the comprehensive plan and SMP and will result in no net loss in ecological function at the site. d) The proposed overwater access platform is designed specifically to accommodate park programming, which is unique to the area. The variance is being requested to support a public dock and programming in a unique waterfront environment and is not expected to constitute a grant of special privilege not enjoyed by the other properties in the area. e) The requested variance is the minimum necessary to afford relief. f) The variance is being requested to support and improve access to the shoreline for all users, including those with limited mobility, in a unique waterfront environment, and it is expected that the public will benefit from the proposed waterfront improvements.

[1] City of Mercer Island, 2022. City of Mercer Island Parks, Recreation & Open Space Plan. March 2022. Available at: https://www.mercerisland.gov/parksrec/page/pros-plan-2022.

Code Reference	Development Standard Compliance
3) Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(c), or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following: a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property; b) That the proposal is consistent with the criteria established under subsection (2)(b) through (f) of this section; and c) That the public rights of navigation and use of the shorelines will not be adversely affected.	A variance for dimensional and performance standards for development located waterward of the OHWM is being requested in response to WAC 173-27-170(1) and (2). The strict application of the bulk dimensional standards set forth in the City's SMP interferes with the reasonable use of the property by requiring structural height requirements that limit the City's ability to install a platform structure in a manner that accommodates the unique waterfront environment and improves access to the shoreline for users, including for park users that have limited mobility. A variance for dimensional standards is being requested to allow the City to install an overwater access platform that extends waterward from the plaza area to increase public access opportunities. This would require a variance from the requirement to provide a minimum 1.5-foot clearance between the water surface and bottom of structural bracing per MICC 19.13.050(H)(6). The strict application of the dimensional standards interferes with the City's ability to provide reasonable and safe public use of the property in an area that is currently constrained by existing development. The vertical bulkhead adjacent to the shoreline in this area currently restricts access to the water. The hardship described in this section is specifically related to the property and unique conditions. The existing location of the waterfront plaza, which is elevated due to underlying fill used to construct the steam building and appurtenances, does not provide direct public access to the water and is currently fenced off to the public. The proposed platform would provide public access directly to the water, including for park users with limited mobility but is currently limited by strict application of the shoreline code. The proposed public access improvements and use of the shoreline are included in the 2006 *Luther Burbank Park Master Plan*, which is cited in the most recent comprehensive plan. The *Luther Burbank Park Master Plan* was used to guide the design process, which provides a vision of a waterfront activity center that is centered around small boats. The dock structure and platform are located within a shoreline environment that was previously used as a steam plant and is heavily modified from natural conditions, including shoreline fill and overwater development and structures. Consistent with RCW 90.58.020, the Project is compliant with statewide standards for shoreline protection. The City is committed to incorporating environmental enhancements and avoidance and minimization measures into the Project to demonstrate no net loss of ecological functions. Measures

Code Reference	Development Standard Compliance
	include reducing net overwater coverage, installing functional grating to the extent practicable, and shoreline landscaping and riparian plantings. Additionally, BMPs will be implemented during construction to reduce potential impacts and result in no net loss of shoreline ecological functions, as described in the Critical Areas Report and Biological Evaluation included with the JARPA (Exhibit 5). The variance is being requested by the City to provide safe access to users who frequent the Luther Burbank Park dock area. The variance is for a public facility and is not being requested to grant special privilege that could not be enjoyed by other properties in the area, and it would allow the minimum necessary to afford relief. Overall, the Project will improve public access and safety at the Luther Burbank Park dock and waterfront plaza. The Project is supported by the City and park users and is not anticipated to result in any detriment to public interest.
4) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.	The City is not aware of other variances that have been issued in the area for similar circumstances.
5) Variances from the use regulations of the master program are prohibited.	Not applicable. A variance from the use regulations of the SMP is not being requested for the Project.

Notes:
BMP: best management practice
City: City of Mercer Island
JARPA: Joint Aquatic Resources Permit Application
MICC: Mercer Island City Code
OHWM: ordinary high water mark
Project: Luther Burbank Park Waterfront Improvements Project
RCW: Revised Code of Washington
SMP: Shoreline Master Program
WAC: Washington Administrative Code