

# Transmittal

August 28, 2023

To: Paul West  
City of Mercer Island  
9611 Southeast 36th Street  
Mercer Island, Washington 98040

From: Josh Jensen, Anchor QEA, LLC

Project Number: 220159-01.04

cc: Andy Bennett and Will Cyrier, KPFF Consulting Engineers  
Noelle Higgins, Anchor QEA, LLC

## Re: Luther Burbank Park Waterfront Improvements Shoreline Permit Application Update

Please see below for shoreline permit package organization and how the four Shoreline Variance requests (dock width, grating, pile diameter, and fixed height) should be organized (last column).

Document No.	Description	Variance Package
<b>Cover Letter</b>	Cover Letter: Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, and Shoreline Variance Request for the Luther Burbank Park Waterfront Improvements	All
<b>Exhibit 1</b>	City Development Application Forms	All
<b>Exhibit 2</b>	(Four) Shoreline Variance Requests for Dock Width, Grating, Pile Diameter, and Fixed Height (Four) <b>Attachment 1</b> – Consistency with WAC 173-27-170, Review Criteria for Variance Permits	Separate into four individual variance packages
<b>Exhibit 3</b>	Analysis of Compliance with Shoreline Master Program (SSDP and SCUP)	All
<b>Exhibit 4</b>	JARPA for Luther Burbank Park Waterfront Improvements <b>JARPA Attachment D</b> <b>JARPA Attachment E</b> <b>Attachment 1</b> – Project Description and Figures <b>Attachment 2</b> – Cultural Resources Assessment <b>Attachment 3</b> – Critical Areas Study <b>Appendix A</b> – Project Description and Figures <b>Appendix B</b> – Photos <b>Appendix C</b> – Upland Geotechnical Report <b>Appendix D</b> – Dock Geotechnical Report <b>Appendix E</b> – Wave and Wake Modeling Report <b>Appendix F</b> – Tree Report <b>Attachment 4</b> – Biological Evaluation	Dock Width Grating Pile Diameter
<b>Exhibit 5</b>	JARPA for Luther Burbank Park Overwater Platform <b>JARPA Attachment E</b> <b>Attachment 1</b> – Figures <b>Attachment 2</b> – Cultural Resources Assessment	Fixed Pier Height

Document No.	Description	Variance Package
	<b>Attachment 3</b> – Critical Areas Report <b>Attachment 4</b> – Biological Evaluation	
<b>Exhibit 6</b>	Analysis of Luther Burbank Impervious Surface	All
<b>Exhibit 7</b>	Geotechnical Minimum Risk Statement	All

Notes:

JARPA: Joint Aquatic Resources Permit Application  
 SCUP: Shoreline Conditional Use Permit  
 SSDP: Shoreline Substantial Development Permit  
 WAC: Washington Administrative Code

## Comments

This transmittal outlines the shoreline permit package for the Luther Burbank Park Waterfront Improvements Project, updated per comments received from the City of Mercer Island (City) on June 26, 2023, and the City’s third-party consultant, ESA, on July 28, 2023. A summary of the comments and how they were addressed is included in the following table.

Commenter	Comment	Response
City of Mercer Island	1. SHL22-025 Shoreline Conditional Use Permit a. The applicant must demonstrate compliance with all applicable sections of the SMP regarding the new hard shoreline stabilization measure, including: MICC 19.13.050(B)(2) New structures for existing primary structures, (B)(4) New structural stabilization measures in support of water-depending development, (B)(5) New structural stabilization measures to protect projects for the restoration of ecological function, (B)(6), (B)(7), (B)(8) unless the applicant sufficiently demonstrates that any of the above sections do not apply.	The cover letter compliance table in Exhibit 3 includes a description of consistency with MICC 19.13.050(B) as applicable.
City of Mercer Island	2. SHL22-024 Shoreline Variance Permit a. The above permit must be revised to include only one of the requested variances. Three separate Shoreline Variance Permits must be applied for to include the other three remaining requested variances. Each Shoreline Variance Permit must be a stand-alone permit with their own analysis and demonstration of compliance with WAC 173-27-170 Review criteria for variance permits. The applicant must demonstrate extraordinary circumstances for each Shoreline Variance Permit, specific to the requested variance.	The cover letter attachments in Exhibit 2 include separate variance applications and a demonstration of consistency with WAC 173-27-170.

Commenter	Comment	Response
City of Mercer Island	<p>2. SHL22-024 Shoreline Variance Permit</p> <p>b. DOCK WIDTH VARIANCE</p> <p>i. The current hardship is stated in the application materials as “For the dock structures variance requests, wide decking, a solid wave attenuation float, and wider piles are proposed to protect the structure and its users against higher wave action”. Provide more information on how this is a hardship specifically pertaining to the maximum allowed dock width of 6 feet. The application materials also state that the dock width variance is requested for sufficient access for first responders and providing adequate ADA compliance. Tie these reasonings into the demonstration of hardship. For your reference, the hardship must be specifically related to the property, and is a 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.</p>	<p>Additional information has been provided in the variance request letter demonstrating how the SMP 6-foot dock width requirement presents a hardship related to the property and unique conditions.</p>
City of Mercer Island	<p>2. SHL22-024 Shoreline Variance Permit</p> <p>b. DOCK WIDTH VARIANCE</p> <p>ii. One of the reasons stated for justifying the requested variance is that the standards for public access docks is more restrictive than residential standards due to the fact that residential docks may be replaced or repaired so that the area, width, or length of the structure is not increased, HOWEVER if structural repair of the residential dock is involved that results in the repair of more than 50% of the structures framing elements, the new dock must comply with additional standards, including width in Table D. This section is for legally nonconforming structures to allow them to maintain legal nonconforming status, and to maintain usability of the dock. Legally nonconforming docks, including public access docks can be repaired and replaced so long as the nonconformity is not increased. If you wish to replace the existing dock as it is, this is a viable option, therefore, the standards for public access docks are NOT more restrictive than the residential dock standards and this cannot be a demonstration that the strict application of the bulk, dimensional or performance standards preclude or significantly interfere with the reasonable use of the property.</p>	<p>The referenced text related to this comment has been removed and replaced in the dock width variance application letter.</p>

Commenter	Comment	Response
City of Mercer Island	<p>c. DOCK GRATING VARIANCE</p> <p>i. Provide more specific information for this variance request, and which portion of the standard you are varying from.</p>	<p>More specific information related to this variance request has been added to the new dock grating variance application letter.</p>
City of Mercer Island	<p>c. DOCK GRATING VARIANCE</p> <p>ii. The current hardship is stated in the application materials as "For the dock structures variance requests, wide decking, a solid wave attenuation float, and wider piles are proposed to protect the structure and its users against higher wave action". Provide more information on the hardship as it pertains to the required grating standard. Refer to the hardship criteria above.</p>	<p>More specific information related to the hardship has been added to the new dock grating variance application letter.</p>
City of Mercer Island	<p>c. DOCK GRATING VARIANCE</p> <p>iii. The application materials state that "The City will work with the design engineer to evaluate the feasibility of adding grating to the structure but prefers to use solid decking as currently proposed". A Shoreline Variance Permit is to request approval to vary from a specific standard, which results in a specific alternative. This proposal would not be approvable due to the vague proposed alternative.</p>	<p>The referenced text related to this comment has been removed from the application letter. The float will be a solid float, and no grating will be installed.</p>
City of Mercer Island	<p>d. FIXED PIER HEIGHT VARIANCE</p> <p>i. The hardship stated in the application materials is that "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". Provide more information on the hardship as it pertains to the minimum fixed pier height requirement. Refer to the hardship criteria above. The reasoning in the narrative also describes the protection of degraded nearshore habitat area. Expand on this reasoning.</p>	<p>The reasoning related to this variance request has been expanded upon in the fixed pier height variance application letter.</p>
City of Mercer Island	<p>e. PILE SPACING AND PILE DIAMETER VARIANCE</p> <p>i. The application materials state that "less" distance between piles is requested and "greater" pile diameter is requested. Provide specifics of the spacing and diameter variance requested. Numbers and tables would be helpful here.</p>	<p>The design has been modified to put piles at a minimum of 18 feet on center, so a variance for pile spacing is no longer being requested.</p> <p>More specific details related to the pile diameter variance request has been added to the new pile diameter variance application letter.</p>
City of Mercer Island	<p>e. PILE SPACING AND PILE DIAMETER VARIANCE</p> <p>ii. The hardship stated in the application materials is "this requirement presents an undue hardship due to the unique design of the dock to be replaced and the need to reconstruct the dock</p>	<p>More specific information related to the hardship has been added to the new pile diameter variance application letter. Specifically, the letter expands on the hardship</p>

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	<p>in a similar manner to support public programs at the park". Refer to the hardship criteria above. The design of the dock is not a hardship, but geological conditions at the site that require specific pile spacing and diameters may be.</p>	<p>related to wave and wake conditions modeled at the site and geological conditions.</p>
<p>City of Mercer Island (Geotechnical)</p>	<p>The geotechnical engineer of record indicated that they reviewed the 60% plan submittal. Please provide an updated statement of risk for review of a completed, approved plan set. This can be provided after the final review cycle is completed.</p>	<p>An updated statement of risk for review of a completed, approved plan set has been provided with this submittal.</p>
<p>City of Mercer Island (Geotechnical)</p>	<p>The geotechnical engineer of record shall provide a report addendum presenting the pin pile capacity, embedment, refusal criteria, etc. recommendations. Pin pile load testing shall be required. Please include note to that effect. ASTM D1143 quick test required on minimum 3% of piles up to 5 piles maximum (1 minimum).  Note: this can be provided during the building permit review phase of this project.</p>	<p>A report addendum will be provided during the building permit review phase of this project with the requested information.</p>
<p>ESA</p>	<p>The analysis of the compliance of the shoreline stabilization measures should discuss how the proposed rock revetment and sheet pile wall is either consistent with or not applicable to each of the points listed in MICC 19.13.050(B)(2) and MICC 19.13.050(B)(4) through MICC 19.13.050(7). While some of these requirements are repeated, for example in MICC 19.13.050(B)(4) and MICC 19.13.050(B)(5), consistency with each point should be listed separately for the clarity of the application.</p>	<p>The cover letter compliance table in Exhibit 3 includes a description of consistency with MICC 19.13.050(B) as applicable.</p>
<p>ESA</p>	<p>The submitted Shoreline Variance Permit should be revised to include only one of the requested variances (for example, MICC 19.13.050(H)(4) Dock width requirements). Additional separate Shoreline Variance Permits, each with their own analysis and demonstration of compliance with WAC 173-27-170(1) and (2) – Review criteria for variance permits, should be submitted for each requested variance. The justification for each variance should not be related to any other project element, but rather should be specifically linked to the demonstration of hardship related to the property that "is a 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".</p>	<p>The cover letter attachments in Exhibit 2 include separate variance applications and a demonstration of consistency with WAC 173-27-170.</p>
<p>ESA</p>	<p>In the request for variance for the width of the dock, the hardship faced should be tied more closely to the specific limitations of the site, rather than to the purpose of the project.</p>	<p>Additional information has been provided in the variance request letter demonstrating how the SMP 6-foot dock width requirement</p>

Commenter	Comment	Response
		presents a hardship related to the property and unique conditions.
ESA	In the request for variance for the light transmittance condition of the dock, the hardship faced should be tied to the specific limitations of the site, rather than to the design or materials of the proposed dock. A specific alternative design should be provided as a part of this variance request.	More specific information related to the hardship has been added to the new dock grating variance application letter. An alternative design with grating is no longer being considered, and the referenced text related to this comment has been removed from the application letter. The float will be a solid float, and no grating will be installed.
ESA	In the request for variance for the height of the dock, the applicant may describe how the topography of the shoreline limits access to the dock, or other applicable reasoning, as the hardship faced based on the limitations of the site.	The reasoning related to this variance request has been expanded upon in the fixed pier height variance application letter.
ESA	In the request for variance for pile spacing and pile diameter, the hardship faced should be more closely tied to the geological conditions at the site, rather than to the design of the dock. A table of pile sizes and distances would be helpful to clarify the exact number and spacing of piles with the requested variance.	The design has been modified to put piles at a minimum of 18 feet on center, so a variance for pile spacing is no longer being requested. More specific details related to the pile diameter variance request has been added to the new pile diameter variance application letter.
ESA	While the Wave Report was reviewed as a part of the Critical Areas Report submittal, a more thorough geotechnical review may be required.	Comment noted.

Notes:

- ADA: Americans with Disabilities Act
- MICC: Mercer Island City Code
- SMP: Shoreline Master Program
- WAC: Washington Administrative Code