1201 3rd Avenue, Suite 2600
Seattle, Washington 98101
206.287.9130

ANCHOR QEA

April 30, 2024

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

Re: Shoreline Variance Request (Grating 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 dock grating requirements, per Mercer Island City Code (MICC) 19.13.050(H)(5). Separate applications are being provided to cover variance requests for dock width, pile diameter, and fixed pier height.

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 (ADA)- 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 previously and Project drawings, is included as attachments to the Joint Aquatic Resources Permit (JARPA; Exhibit 4).

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 modernize the park to an extent consistent with other similarly sized waterfront parks on Lake Washington. This will be accomplished by optimizing public access, recreational uses, and public safety, including reconfiguring the waterfront park to better accommodate small boats and non-motorized 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.

Per MICC 19.13.050(H)(5), new docks are required to have a grated surface that allows for 40% light transmittance over 100% of the dock. The Project will meet this requirement for the south dock and the new overwater access platform adjacent to the waterfront plaza. To protect shoreline restoration ecological function from wave and wake erosion and provide adequate wave attenuation and protection for users of the south dock structure, the attenuation float installed at the central dock will be concrete with no grating. The bulk of the structure is located as far offshore as practical, in approximately 40 feet of water, to reduce the effect of shading on the lake bottom. However, a variance from MICC 19.13.050(H)(5) requirements for 40% light transmittance over 100% of the dock is requested to allow for a concrete float to be installed at the central dock.

Project elements requiring a Shoreline Variance include the central dock grating.

The central wave attenuator/mooring float is required to be a concrete float with significant weight. The goal is to protect shoreline restoration ecological functions and provide safe use and programming for the south dock. In the last decade, wake surfing has become popular in Lake Washington. The large waves this generates cause floating docks to pitch excessively. The waves affect the docks intermittently, unpredictably, and without warning. These conditions create unstable surfaces on floating docks, posing a risk to dock users and prohibiting ADA-compliant access. Where protection is unavailable, these large waves also impact the shoreline, causing erosion. South of the Project area, the City installed habitat-grade gravel and planted native plant species along the shoreline. Without protection, these areas are subject to continued erosion from these large waves hitting the shoreline.

The proposed wave attenuation float has been designed to reduce wave energy along both the south and north shorelines of the park. The float reduces wave energy from both storm waves present during winter months and large boat wakes present primarily during summer months. Wave modeling completed as part of the design process for the dock predicts that wave heights will be

reduced between 0.5 and 1.0 foot along portions of the shoreline compared to adjacent shorelines.[1] This reduction in wave height will subsequently reduce wave energy at the nearshore and along the shoreline areas of the park, thus reducing the erosion due to waves and boat wake in these areas. This will provide protection to the recently restored area that was supplemented by placement of habitat-grade gravel and large woody debris and the planting of native riparian plant species (permitted under City Permit Nos. SHL20-016 and SHL SHL21-009). In addition to providing supplemental protection to the nearshore habitat area, it is anticipated that the attenuation float will provide the following benefits:

- Provide adequate attenuation for wave action at the site and protect against the types of waves generated by the wake surfing boats that frequently operate offshore near the park.
- Provide sufficient wave attenuation to protect dock users from wave and wake action during dock programs.
- Provide sufficient access for first responders to reach firefighting standpipes and operate firefighting equipment on the central dock.
- Provide ADA-compliant access.
- Accommodate launching a variety of small craft, including one- and two-person sailboats (typical width of these boat types is up to 6 feet).

Figures 1 and 2 include graphic depictions of modeling results for both wave and boat wake modeling completed for the proposed design that demonstrate a reduction of energy at the nearshore and the waterward dock facilities from installation of the proposed wave attenuation float.

[1] Blue Coast (Blue Coast Engineering), 2022. Memorandum to: Andy Bennett and Will Cyrier, KPFF Consulting Engineers. Regarding: Luther Burbank Marina Design: Wave and Wake Modeling. Prepared by Eduardo Sierra and Kathy Ketteridge, Blue Coast Engineering. January 9, 2022. Available as Appendix E in the Critical Areas Study (Attachment 3 of Exhibit 4).

Figure 1
Plan View of Resulting 100-Year Significant Northerly and Southerly Wind-Wave Heights

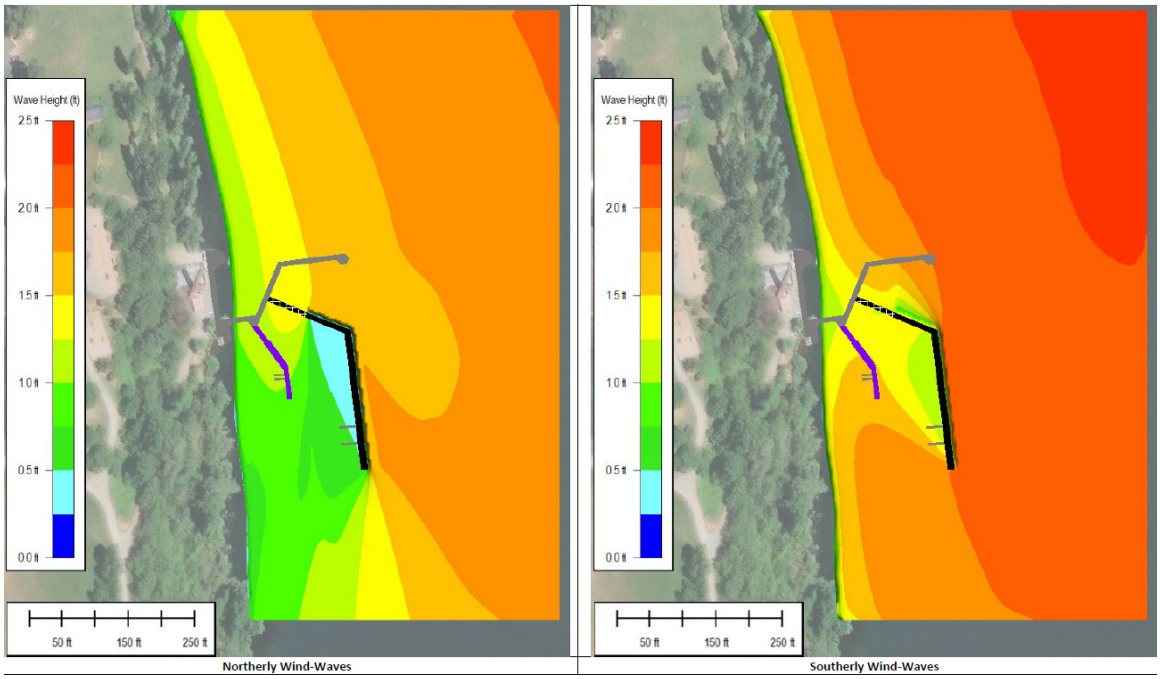
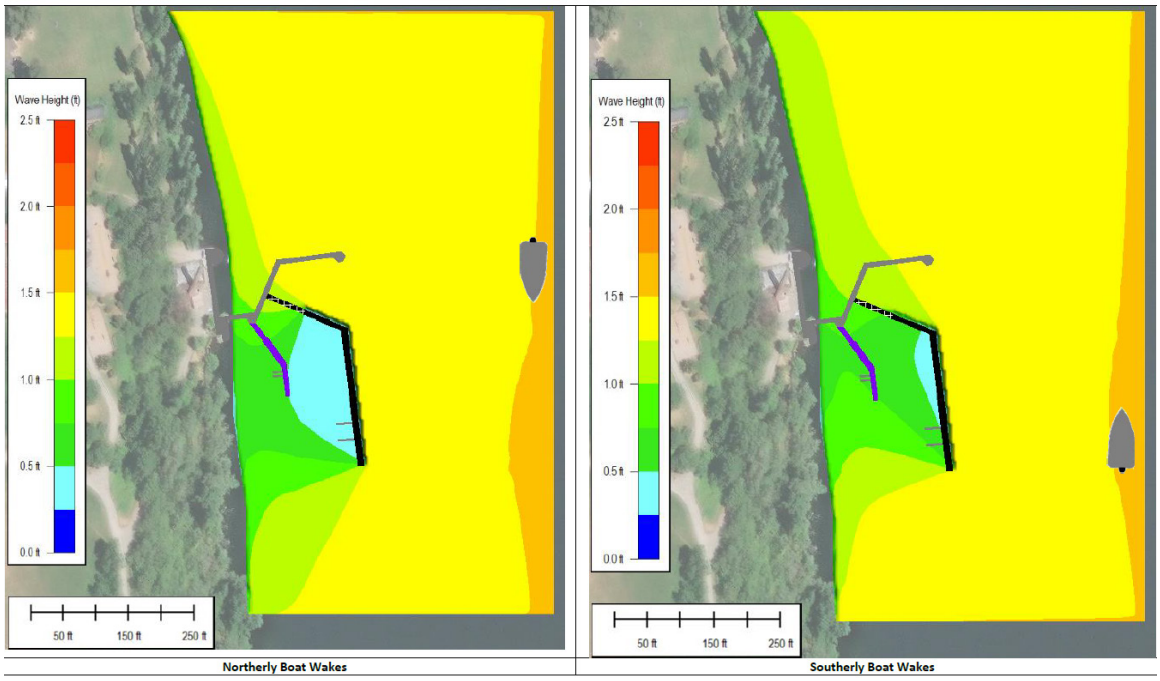


Figure 2
Plan View of Resulting Boat Wake Heights Relative to Northerly and Southerly Boat Wakes



The float material will be concrete. This includes heavier-than-typical float components, including the floats and structural bracing, to provide adequate protection against anticipated wave energy. By design, the float cannot incorporate functional grating due to the underlying structural components that would prohibit light penetration.

Although public access piers, docks, or boardwalks are allowed uses, the City is requesting a Shoreline Variance from MICC 19.13.050(H)(5) dock grating requirements to allow the central wave attenuator/mooring float structure to provide less light transmittance than is allowed by the code (the code requires 40% light transmittance over 100% of the dock). The variance is being requested to install a central wave attenuator/mooring float that provides adequate attenuation for wave action at the site and to protect against the types of waves generated by the wake surfing boats that frequently operate offshore near the park. The wave attenuator cannot be retrofitted with functional grating due to the size and underlying structural components required for the structure. This is a unique condition experienced at the site that could impact user health and safety if not addressed.

The proposed design acknowledges that the nearshore area (up to a water depth of 12 feet) provides habitat opportunities for migrating juvenile Chinook salmon. The bulk of the structure is located as far offshore as practical (the closest point is approximately 115 feet from the ordinary high water mark [OHWM]) and in deeper water (approximately 40 feet) to reduce the effect of shading on the lake bottom. Reducing overwater cover in or relocating structures away from these areas will reduce areas for predatory fish to congregate and improve light and dark transitions and habitat conditions for the migrating salmonids. In deeper water, where adult Chinook salmon and juvenile sockeye salmon are found, the design has fewer impacts to habitat because overwater cover in deep water is less likely to harbor predator species, and there would be less impact on light penetration and shadowing to the substrate. Additionally, the underpier structure would be composed of solid materials and would not allow for light penetration to occur, even if the float decking were grated. Adding grated to a solid underpier structure would not provide the intended function and would result in long-term maintenance issues to remove debris that would get lodged between the grating and the float. The proposed design aims to minimize impacts to the nearshore area, with the use of grated overwater surfacing where practicable, and proposes strategies to further reduce impacts from overwater cover in the entire Project area while resulting in no net loss of shoreline ecological function, as demonstrated in the Critical Areas Study (attached to the JARPA in Exhibit 4).

3 Reasonable Use

Per Washington Administrative Code (WAC) 173-27-170(2)(a), the applicant must demonstrate 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." "Reasonable use" has been defined broadly by the courts, so further clarification is necessary to understand what a reasonable use of the property is in the context of this project. Based upon the

needs of the Project applicant and the character and scale of the subject parcels and other similar urban waterfront parks in the vicinity, the denial of a solid wave attenuation float for this project precludes "reasonable use" of the property. As such, the following discussion will establish how the notion of "reasonable" has changed over time and how the Project, as proposed, will result in a reasonable use of the parcel.

The preclusion of "reasonable use" of a parcel dates back to the original variance criteria found in the Shoreline Management Act of 1971 (SMA). However, the term "reasonable use" or "reasonable" is not defined by the SMP, the SMA, or within WAC 173-26 or RCW 90.58. Merriam-Webster defines the word "reasonable" as "moderate, fair" and "not extreme or excessive." In addition, the term has been the subject of several Shoreline Hearings Board (SHB) cases, including the following:

- Garrett v. Ecology (2005):
  The determination of whether strict application of a shoreline plan precludes or interferes with "reasonable use" of property is always a fact-specific inquiry that examines a number of factors. The Board will look at the uses of adjacent and nearby lots, the reasonable expectations of the owners, and the unique attributes of the lot.
- Buechel v. Ecology (1994):
  The size, location, and physical attributes of a piece of property are relevant when deciding what is a reasonable use of a particular parcel of land.

Luther Burbank Park was established in 1968 by King County, and the public dock was built in 1974 as a regional park facility. The dock is located within the largest park and is also the largest dock on Mercer Island. The dock has always been a focal point of waterfront programming at the park and is used by the public for water-based programming such as use by small motorized and non-motorized watercraft users that require safe access to the water. There is a high and growing public demand for kayak and sailing programs at Luther Burbank Park. This demand was expressed in the 2006 Luther Burbank Park Master Plan, which envisioned this waterfront complex as a small craft boating center. The master plan, the result of a 2-year planning process with high public involvement, represents reasonable use of this site. The proposed project is a direct result of the master plan.[2] The dock is the only public dock that provides this type of programming on Mercer Island and is part of the limited inventory of day use moorage on Lake Washington. A 2015 study found that there are 237 day use slips on Lake Washington, and 54% of these are in Kirkland. The dock is located on the shoreline of Lake Washington, in a unique waterfront environment that experiences challenging wave and wake conditions, particularly given recent increases in ski and wake surfing boats on the lake.

Additional park amenities include a fishing pier and swimming beach that are located to the south of the dock. These features of the park do not provide similar programming as the dock, so waterfront

[2] The Berger Partnership, 2006. Luther Burbank Park Master Plan, City of Mercer Island, Washington. April 2006. Available at: https://www.mercerisland.gov/parksrec/page/luther-burbank-park-master-plan-2006.

access to small motorized and non-motorized watercraft is not provided. These features also do not have shoreline restoration areas adjacent to heavy use areas of the park. In the immediate vicinity of the dock are public trails that extend from the parking lot and lead to the promenade and steam plant building. This area provides a central meeting point for groups of watercraft and other park users to congregate and access the water.

The Seattle metro area population has doubled since the park was built in 1974 and is expected to grow another 10% by 2035. A statistical survey of users of Luther Burbank Park found that 60% did not live on Mercer Island. The park is a 2-minute drive from I-90, a 7-minute walk from transit, and is bordered by the Mountains to Sound Regional Trail. The regional nature of this park means that an increasing population will result in an increase in demand for this park. This includes more people using the dock for recreational activities such as small watercraft use. Another City survey of waterfront visitors in 2018 found that 10% come by boat. The new Sound Transit 2 light rail line will include a stop near the park. Luther Burbank Park is one of only three shoreline locations within a 10-minute walk of a Sound Transit light rail station. This will also increase park visitors and the need for waterfront public access improvements and programming at the site. This anticipated increase in park use requires that safety measures and ADA-accessible features be incorporated into the dock design to support increased use of the park's waterfront facilities. It is generally recognized in public lands management that providing users with appropriate access facilities reduces impacts on nearby critical areas. The boating facility, a swim beach, and pocket beaches at Luther Burbank Park serve to protect the remaining 3/4 mile of undeveloped, unarmored shoreline.

There are relatively few large waterfront public parks on Lake Washington. The few that do exist are regulated under the SMA and some include solid decking in deeper areas. For example, the Meydenbauer Bay Park dock in Bellevue includes a transition from grated decking in the nearshore to solid decking as it transitions to deeper areas of the lake, similar to what this project proposes.

Just as design and construction capabilities and budgetary constraints have changed in the preceding decades, so has the perception of what is "reasonable" within a shoreline setting. The Project area was initially developed for public park uses around 50 years ago. The initial programming included motorized craft, but non-motorized watercraft use has been more recently introduced to the park in this area. Similarly, there has been an increase in safety regulations and requirements to provide improved accessibility to public structures, necessitating the need for pier infrastructure to improve access and safety for all public users.

The aforementioned other public waterfront park on Lake Washington, which has been recently updated to more current public use and safety and mobility guidelines, establish a modern concept of "reasonableness" for parks of this type. Therefore, the proposed Project seeks to fully establish a reasonable use of the subject property, through the installation of infrastructure that provides protective measures to the park and shoreline features and that aligns with the general scale,

character, and dimensions of those found at these other parks. Thus, strict application of the dimensional standards of the City's SMP preclude reasonable use of the property. The applicant therefore proposes use of current design and construction techniques in order to redevelop the existing dock to what would today be considered a reasonable use of the shoreline property.

4 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 Study for the Project, included with this application, 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 SMA 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 WAC 173-27-170.

5 Conclusion

A Shoreline Variance is being requested due to extraordinary circumstances that present a hardship at the site, including wave and wake conditions that can be addressed through the design of the Project. 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 the need for appropriate public access improvements and safety upgrades related to this variance request. The proposed solid decking of the wave attenuation float 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, 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 Study 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 criteria per 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

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 following criteria in the SMP per MICC 19.13.050(H) for public access docks or boardwalks. The City is seeking a variance from the **light transmittance conditions** of MICC 19.13.050(H)(5) requiring public access docks to be grated with materials that allow a minimum of 40% light transmittance over 100% of the surface area. The variance is specifically for the central float that will serve as an attenuation structure to protect facilities and shoreline restoration areas from wave and wake conditions at the site. The wave and wake conditions at the site present extraordinary circumstances that can be addressed through the design of the Project. These improvements will also help to bring the park up to standards that are consistent with those that are present in other, more recently updated, waterfront parks on Lake Washington. The float reduces wave energy from both storm waves present during winter months and large boat wakes present primarily during summer months. The attenuation structure will have concrete decking and no grated surfaces. If the decking were grated, light transmittance would be inhibited by structural components required to allow the wave attenuator/mooring float to provide critical safety functions for public use of the dock, including ADA accessibility, and protection of shoreline ecological functions. 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 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 include reducing net overwater coverage, installing functional grating to the extent practicable, and shoreline landscaping and riparian plantings.

Code Reference	Development Standard Compliance
	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 parks, recreation, and open space plan adopted in 2022.[3] The Project will not 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)©, 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: b) 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; c) 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; d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area; e) That the variance requested is the minimum necessary to afford relief; and f) That the public interest will suffer no substantial detrimental effect.	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 the necessity to ensure that the park provide publicly accessible features consistent with the modern standard for urban waterfront parks on Lake Washington. For the dock structure variance request, a concrete decking wave attenuation float is proposed to protect shoreline restoration ecological functions and users against higher wave and wake action experienced at the site, which present extraordinary circumstances that can be addressed through the design of the Project. The structure will also support ADA accessibility. c) The Project includes replacing an existing dock and providing waterfront improvements that are compatible with existing authorized uses and programs at the park. These improvements are also consistent with similar features found at other, more recently updated, urban waterfront parks on Lake Washington. Improvements are also consistent with the comprehensive plan and SMP and will result in no net loss in ecological function at the site. d) The existing dock structure does not currently provide wave and wake protection to the shoreline or existing dock infrastructure. The new dock will protect shoreline habitat restoration along the south shoreline area. The structure will also protect against wave and wake conditions at the site that have the potential to impact user safety if not addressed through structural methods. The variance will provide needed safety at a public dock and ADA accessibility in a unique waterfront environment and is not expected to constitute a grant of special privilege not enjoyed by the

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

Code Reference	Development Standard Compliance
	other properties in the area, including similarly sized waterfront parks on Lake Washington, including Meydenbauer Bay Park. e) The requested variance is the minimum necessary to afford relief. The solid float structure is proposed to provide safe programming to users of the dock and also to protect nearby habitat restoration areas along the shoreline. The proposed solid decking features are consistent with those found at other, more recently updated, waterfront parks on Lake Washington. f) The variance is being requested to support a structure designed to protect shoreline restoration ecological functions and public dock users from wave and wake conditions in a unique waterfront environment, and it is expected that the public will benefit from the proposed waterfront improvements. Overall, there will be no substantial detrimental effect to the public interest.
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, as described earlier 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 grating requirements that limit the City's ability to replace the existing structure in a manner that is consistent with conditions found at similar waterfront parks on Lake Washington and that accommodates the unique waterfront environment, including challenging wave and wake conditions present at the site, and adequately protects the safety of public users while improving access to the shoreline. For example, standard SMP conditions include specific light transmittal requirements, which would significantly reduce the attenuation float intended functions, including protecting facilities and the shoreline restoration area against wind and wake conditions experienced at the site; limiting the width available for small sailboat trailers to be able to access the float; increasing the potential for tipping users off of the float during high wake or wave events; and providing insufficient wave attenuation for adequate protection of the small finger floats intended to provide public access to stand-up paddle boards, kayaks, and small sailboats. a) A variance for dimensional and performance standards is being requested to allow the City to waive grating requirements for the wave attenuation/mooring float below the 40% functional grating requirement

Code Reference	Development Standard Compliance
	over 100% of the surface area for public moorage facilities per MICC 19.13.050(H)(5). To support a safe float design, the 40% grating requirement is structurally infeasible due to the need to install heavier-than-typical float components, including the float and structural bracing, to provide adequate protection against anticipated wave and wake energy. The proposed dock repairs to improve public access 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 is 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 include reducing net overwater coverage, installing functional grating to the extent practicable, and shoreline landscaping and riparian plantings. Additionally, the floats have been intentionally located in deeper water to reduce obstructions and overwater cover in the nearshore habitat area. 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 Study and Biological Evaluation included with the JARPA (Exhibit 4). The variance is being requested by the City to provide safe access and operation to users who frequent the Luther Burbank Park dock and to protect shoreline ecological function of habitat restoration areas. 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, including similarly sized waterfront parks on Lake Washington, including Gene Coulon Park, Marina Park, and Meydenbauer Bay Park. As described in Section 3 – *Reasonable Use*, in the body of this document, there are relatively few large waterfront public parks on Lake Washington. The few that do exist are regulated under the SMA and all include docks that are

Code Reference	Development Standard Compliance
	greater than 6 feet wide that offer similar programming as the Luther Burbank Park dock. For example, the Meydenbauer Bay Park dock in Bellevue includes a dock that ranges from 10 to 22.5 feet wide. Marina Park in Kirkland includes a 12-foot-wide dock. Further south, Gene Coulon Park in Renton includes an up to 16.5-foot-wide dock. These docks require greater widths to support ADA-access and safe programming to park visitors. Just as design and construction capabilities and budgetary constraints have changed in the preceding decades, so has the perception of what is "reasonable" within a shoreline setting. The Project area was initially developed for public park uses around 50 years ago. The initial programming included motorized craft, but non-motorized watercraft use has been more recently introduced to the park in this area. Similarly, there has been an increase in safety regulations and requirements to provide improved accessibility to public structures, necessitating the need for wider pier infrastructure to improve access and safety for all public users. The aforementioned other public waterfront parks on Lake Washington, each of which has been recently updated to more current public use and safety and mobility guidelines, establish a modern concept of "reasonableness" for parks of this type. Therefore, the proposed Project seeks to fully establish a reasonable use of the subject property through the installation of docks with appropriate widths, each of which align with the general scale, character, and dimensions of those found at these other parks. Thus, strict application of the dimensional standards of the City's SMP preclude reasonable use of the property. The applicant therefore proposes use of current design and construction techniques in order to redevelop the existing dock to what would today be considered a reasonable use of the shoreline property. b) See previous response for 2) above. c) The Project replaces the existing dock structures with similar infrastructure to support current and future programming at the site. With no overall increase in length compared to existing conditions, public rights to navigation will not be adversely affected.

Code Reference	Development Standard Compliance
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. Luther Burbank Park is the only large public waterfront park in the City; therefore, like actions are not anticipated.
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
ADA: Americans with Disabilities Act
BMP: best management practice
City: City of Mercer Island
JARPA: Joint Aquatic Resources Permit Application
MICC: Mercer Island City Code
Project: Luther Burbank Park Waterfront Improvements Project
RCW: Revised Code of Washington
SMP: Shoreline Master Program
WAC: Washington Administrative Code