
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | www.mercerisland.gov



DECISION

CRITICAL AREA REVIEW 2 CAO20-003

Project No:	CAO20-003
Description:	Request to reduce piped watercourse setback from 45 feet to 10 feet pursuant to MICC 19.07.180(C)(6)(d) to accommodate future construction of a single-family home.
Applicant/ Owner:	Johan Luchsinger (Baylis Architects) / Sellapriya Ramaiyah & Subu Sankara Subramanian
Site Address:	7466 E Mercer Way / Mercer Island WA 98040
Zoning District	R-8.4
Staff Contact:	Robin Proebsting, Senior Planner
Exhibits:	<ol style="list-style-type: none">1. Development Application signed October 25, 20202. Critical Area Study prepared by The Watershed Company, dated October 21, 20203. Letter prepared by Ages Engineering, LLC dated October 7, 20204. Site plan prepared by Baylis Architects, dated October 26, 20205. Memorandum prepared by ESA, dated January 15, 2021

INTRODUCTION

I. Project Description

The applicant has applied for a Critical Area Review 2 to reduce the 45-foot piped watercourse setback on the subject property to 10 feet in order to accommodate a planned single-family home (Exhibit 4).

II. Site Description and Context

The subject site is currently developed with a one-story single-family home and is within the R-8.4 zone. It is bound by E Mercer Way to the east and surrounded by single-family homes on all sides. The subject site contains mapped landslide, erosion, and seismic hazard areas, as well as portions of a dripline of a large (approx. 60 in diameter at breast height (DBH)) Redwood tree on a neighboring property.

The existing piped watercourse is conveyed under E Mercer Way to the subject property, then flows toward the southern property line of the subject property to the property to the south, where it daylights briefly south of the house on the property to the south (7618 E Mercer Way).

Findings of Fact & Conclusions of Law

III. Application Procedure

1. The application for a Critical Area Review 2 was received by the City of Mercer Island on October 27, 2020. The application was determined to be complete on November 24, 2020.
2. According to MICC 19.15.030, Table A, applications for Critical Area Review 2 must undergo Type III review. Type III reviews require notice of application (discussed below). A notice of decision is issued once the project review is complete.
3. A notice of application was issued on February 16, 2021, and the public comment period ran from February 16, 2021 to March 18, 2021. Public notice was issued via a mailing to neighboring property owners within 300 feet of the subject site, a sign posted on the subject property, and a posting in the City's weekly permit bulletin.
4. No public comment was received.

IV. SEPA finding of fact and conclusions

5. The proposal is exempt from SEPA Review pursuant to WAC 197-11-800(1)

V. Consistently with the Critical Areas Code

6. MICC 19.07.180(C)(6)(d) Piped watercourse setback widths shall be reduced to: (i) 10 feet on lots with a lot width of 50 feet or more, and (ii) five feet on lots with a width of less than 50 feet, when daylighting is determined by qualified professional(s) to result in one or more of the following outcomes:[...] ii. Increased risk of environmental damage (e.g., erosion, diminished water quality) that cannot be mitigated;

Staff Analysis: The piped watercourse is within the canopy and critical root zone of the neighboring property's Redwood tree. The Redwood tree has a DBH of 60 inches and would be considered exceptional as defined in MICC 19.16.010. As an exceptional tree, the Redwood would need to be retained under MICC 19.10.060(A)(3). The applicant's critical area study notes that daylighting the piped watercourse within the subject property would necessitate the removal of the Redwood tree, causing an environmental impact—in the form of a loss of habitat, soil stabilization, evapotranspiration functions—that could not be mitigated (Exhibit 2). Daylighting the watercourse would also increase the risk of erosion and site instability, according to the project geotechnical engineer (Exhibit 3). The City's third-party reviewer agreed that a 10-foot setback from the piped watercourse is appropriate (Exhibit 5).

CONDITIONS OF APPROVAL

1. The project proposal shall be in substantial conformance with Exhibit 4 and all applicable development standards contained within Mercer Island City Code (MICC) Chapter 19.07.
2. The applicant is responsible for documenting any required changes in the project proposal due to conditions imposed by any applicable local, state and federal government agencies.
3. Construction or substantial progress toward construction of a development for which a permit has been granted must be undertaken within three years after the approval of the permit or the permit shall terminate. The code official shall determine if substantial progress has been made.

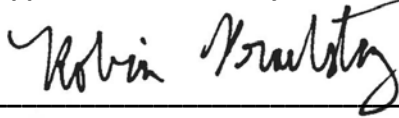
DEVELOPMENT REGULATION COMPLIANCE – DISCLOSURE

1. Compliance with all applicable codes, including but not limited to zoning, critical areas (including Fish & Wildlife Habitat Conservation Areas), and building code, will be required as part of building permit review.

DECISION / RECOMMENDATION

Based upon the above noted Findings of Fact and Conclusions of Law, Critical Area Review 2 application CAO20-003, as depicted in Exhibit 4, is hereby **APPROVED**. This decision is final, unless appealed in writing consistent with adopted appeal procedures, MICC 19.15.020(J), and all other applicable appeal regulations.

Approved this 22nd day of March, 2021



Robin Proebsting
Senior Planner
Community Planning & Development
City of Mercer Island

If you desire to file an appeal, you must submit the appropriate form, available from the department of Community Planning and Development, and file it with the City Clerk within fourteen (14) days from the date after the notice of decision is made available to the public and applicant pursuant to MICC 19.15.130. Upon receipt of a timely complete appeal application and appeal fee, an appeal hearing will be scheduled. To reverse, modify or remand this decision, the appeal hearing body must find that there has been substantial error, the proceedings were materially affected by irregularities in procedure, the decision was unsupported by material and substantial evidence in view of the entire record, or the decision is in conflict with the city's applicable decision criteria.

Please note that the City will provide notice of this decision to the King County Department of Assessment, as required by State Law (RCW 36.70B.130). Pursuant to RCW 84.41.030(1), affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation by contacting the King County Department of Assessment at (206) 296-7300.

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CITY USE ONLY

PROJECT#

RECEIPT #

Exhibit 1

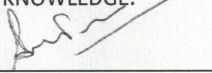
Date Received:

Received By:

DEVELOPMENT APPLICATION

STREET ADDRESS/LOCATION 7466 East Mercer Way Mercer Island, WA 98040		ZONE R-8.4	
COUNTY ASSESSOR PARCEL #'S 257950-0136		PARCEL SIZE (SQ. FT.) 10,150	
PROPERTY OWNER (required) Sellapriya Ramaiyah Subu Sankara Subramanian	ADDRESS (required) 7466 East Mercer Way Mercer Island, WA 98040	CELL/OFFICE (required) 860.990.7528 E-MAIL (required) sellapriya@yahoo.com	
PROJECT CONTACT NAME Johan Luchsinger	ADDRESS 10801 Main St Ste 110, Bellevue, WA 98004	CELL/OFFICE 425.454.0566 E-MAIL luchsingerj@baylisarchitects.com	
TENANT NAME NA	ADDRESS NA	CELL PHONE E-MAIL	

DECLARATION: I HEREBY STATE THAT I AM THE OWNER OF THE SUBJECT PROPERTY OR I HAVE BEEN AUTHORIZED BY THE OWNER(S) OF THE SUBJECT PROPERTY TO REPRESENT THIS APPLICATION, AND THAT THE INFORMATION FURNISHED BY ME IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.



 SIGNATURE

10/25/2020

 DATE

PROPOSED APPLICATION(S) AND CLEAR DESCRIPTION OF PROPOSAL (PLEASE USE ADDITIONAL PAPER IF NEEDED):

ATTACH RESPONSE TO DECISION CRITERIA IF APPLICABLE

CHECK TYPE OF LAND USE APPROVAL REQUESTED:

APPEALS	DEVIATIONS	SUBDIVISION SHORT PLAT
<input type="checkbox"/> Building	<input type="checkbox"/> Changes to Antenna requirements	<input type="checkbox"/> Short Plat- Two Lots
<input type="checkbox"/> Code Interpretation	<input type="checkbox"/> Changes to Open Space	<input type="checkbox"/> Short Plat- Three Lots
<input type="checkbox"/> Land use	<input type="checkbox"/> Seasonal Development Limitation Waiver	<input type="checkbox"/> Short Plat- Four Lots
<input type="checkbox"/> Right-of-Way Use		<input type="checkbox"/> Short Plat- Deviation of Acreage Limitation
CRITICAL AREAS	ENVIRONMENTAL REVIEW (SEPA)	<input type="checkbox"/> Short Plat- Amendment
<input type="checkbox"/> Critical Area Review 1 (Hourly Rate 2hr Min)	<input type="checkbox"/> SEPA Review (checklist)- Minor	<input type="checkbox"/> Short Plat- Final Plat
<input checked="" type="checkbox"/> Critical Area Review 2 (Determination)	<input type="checkbox"/> SEPA review (checklist)- Major	OTHER LAND USE
<input type="checkbox"/> Reasonable Use Exception	<input type="checkbox"/> Environmental Impact Statement	<input type="checkbox"/> Accessory Dwelling Unit
DESIGN REVIEW	SHORELINE MANAGEMENT	<input type="checkbox"/> Code Interpretation Request
<input type="checkbox"/> Pre Design Meeting	<input type="checkbox"/> Exemption	<input type="checkbox"/> Comprehensive Plan Amendment (CPA)
<input type="checkbox"/> Design Review (Code Official)	<input type="checkbox"/> Permit Revision	<input type="checkbox"/> Conditional Use (CUP)
<input type="checkbox"/> Design Commission Study Session	<input type="checkbox"/> Shoreline Variance	<input type="checkbox"/> Lot Line Revision
<input type="checkbox"/> Design Review- Design Commission- Exterior Alteration	<input type="checkbox"/> Shoreline Conditional Use Permit	<input type="checkbox"/> Noise Exception
<input type="checkbox"/> Design Review- Design Commission- New Building	<input type="checkbox"/> Substantial Development Permit	<input type="checkbox"/> Reclassification of Property (Rezoning)
WIRELESS COMMUNICATION FACILITIES	SUBDIVISION LONG PLAT	<input type="checkbox"/> Transportation Concurrency (see supplemental application form)
<input type="checkbox"/> Wireless Communications Facilities- 6409 Exemption	<input type="checkbox"/> Long Plat- Preliminary	<input type="checkbox"/> Planning Services (not associated with a permit or review)
<input type="checkbox"/> New Wireless Communication Facility	<input type="checkbox"/> Long Plat- Alteration	<input type="checkbox"/> Zoning Code Text Amendment
	<input type="checkbox"/> Long Plat- Final Plat	<input type="checkbox"/> Request for letter
	VARIANCES (Plus Hearing Examiner Fee)	<input type="checkbox"/> Temporary Commerce on Public Property
	<input type="checkbox"/> Variance	

TECHNICAL MEMORANDUM



Date: October 21, 2020
To: Subu Sankra Subramanan & Sellapriya Ramaiyah
From: Ryan Kahlo, PWS, Senior Ecologist
Project Name: Mercer Island Ramaiyah
Project Number: 200832

Subject: 7466 E. Mercer Way Critical Areas Evaluation

This memorandum describes the findings of a critical areas evaluation for the property located at 7466 E. Mercer Way (Parcel #2579500136) in the City of Mercer Island. A site inspection was conducted on September 11, 2020, to evaluate the jurisdictional status of the watercourse, which is mapped as a “piped watercourse” on the subject property by the City of Mercer Island. City GIS mapping (Mercer Island GIS Portal) also depicts an open channel, Type Np, segment of the same watercourse immediately downstream of the subject property on Parcel #3024059114. Additionally, the site was assessed for fish and wildlife habitat conservation areas, specifically related to a nearby bald eagle nest. This memorandum also includes a discussion of the regulatory implications of our findings.

Site Inspection

During the inspection, I evaluated the on-site watercourse characteristics and visually observed areas farther upstream to the extent feasible from publicly accessible areas. I have confirmed that a piped watercourse (Watercourse A) is located on the subject property (Figure 1). While Watercourse A conveys stormwater during rain events, it also conveys natural flows and is, therefore, regulated as a watercourse under Mercer Island City Code (MICC). Upstream and downstream segments of Watercourse A were flowing at the time of the inspection, which occurred during a prolonged dry period with no measurable rainfall.

Watercourse A originates from two tributaries located in wetlands approximately 600 feet northwest of the subject property on Parcel #2579500190. Watercourse A flows southeast towards the subject property alternating open channel and piped segments before being piped beneath E. Mercer Way and the access drive serving the subject and neighboring properties. As the watercourse is conveyed beneath E. Mercer Way, the flow is combined with untreated stormwater runoff from the road. Watercourse A is then piped in a southwestern direction at the base of a steep slope immediately west of

the subject residence before continuing southeast towards the southern property boundary. Watercourse A continues as a piped watercourse towards the southeast, eventually daylighting and flowing east along the southern property line on Parcel #3024059114, where it discharges into Lake Washington approximately 150 feet southeast of the subject property. I did not observe an open channel segment immediately south of the subject property as depicted on the City GIS map; the open channel begins immediately south of the primary residence on Parcel #3024059114 (Figure 1).

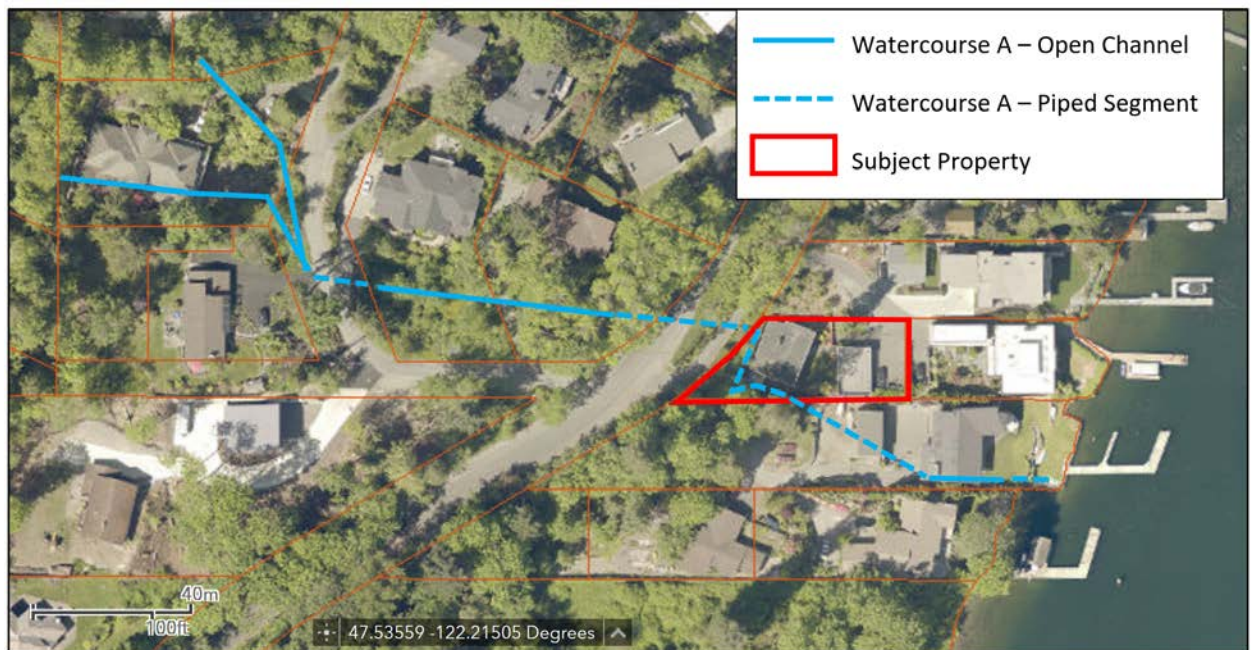


Figure 1. Approximate location of Watercourse A

Exhibit 2



Figure 2. Watercourse A on the subject property, facing southeast (9/11/20)



Figure 3. Location where open channel segment of Watercourse A is mapped south of subject property, facing southeast (10/16/20).

No wetlands or fish and wildlife habitat conservation areas were observed on-site or within the immediate vicinity. A bald eagle nest was verified in Clarke Beach Park approximately 325 feet southwest of the subject property. Bald eagle nests are classified as a fish and wildlife habitat conservation area under MICC. The nest, which is located on top of a western hemlock tree in relatively poor health, is visible from the subject property. The precise location was verified in the Park and recorded (Figure 4).



Figure 4. Bald eagle nest location relative to subject property.



Figure 5. Bald eagle nest viewed through spotting scope from subject property (10/16/20).

Regulations

Per MICC 19.07.180.C.6.b, piped watercourses require a 45-foot setback. Per MICC 19.07.180.C.6.c, piped watercourses setback widths shall be reduced to a 15-foot buffer when the portion of the piped watercourse on the applicant's property is daylighted and where the watercourse has been restored to an open channel, provided a restoration plan demonstrates:

- i. The watercourse channel will be stable and is not expected to cause safety risks or environmental damage; and

- ii. No additional impact nor encumbrance by watercourse buffer or critical area setback is added to properties neighboring the applicant(s) property.

Per MICC 19.07.180.C.6.d, piped watercourse setback widths shall be reduced to 10 feet on lots with a lot width of 50 feet or more, when daylighting is determined by qualified professional(s) to result in one or more of the following outcomes:

- i. Increased risk of landslide or other potential hazard that cannot be mitigated;
- ii. Increased risk of environmental damage (e.g., erosion, diminished water quality) that cannot be mitigated;
- iii. The inability of a legally established existing lot to meet the vehicular access requirements of this title; or
- iv. The inability of a legally established existing lot to meet the building pad standards in MICC 19.09.090.

The piped segment of Watercourse A is located beneath the canopy of and within the critical root zone of an old-growth California redwood tree (*Sequoia sempervirens*) on the adjacent property to the south (Parcel #3024059114) (Figure 6). Based on visual estimates from the subject property, the redwood tree has a diameter at breast height of greater than 60 inches. Daylighting Watercourse A would necessitate the removal of this tree. The City prioritizes the retention of exceptional trees, and a redwood tree of this size and age is generally irreplaceable. The removal of the tree would represent an unnecessary risk of environmental damage due to the irreplaceable loss of habitat, soil stability, and evapotranspiration functions provided by this rare, old-growth tree, which conflicts with the requirements of MICC 19.07.180.C.6.d.ii. The environmental benefit of daylighting this short watercourse segment would not compensate for the loss of this tree, and it is not possible to completely mitigate the loss of this tree. Additionally, the redwood tree is not located on the subject property, meaning its removal would cause an additional impact on a neighboring property, which is in conflict with the requirements of MICC 19.07.180.C.6.c.ii. Daylighting Watercourse A would also create a watercourse buffer on the adjacent property where none currently exists, which conflicts with the same provision.



Figure 6. Watercourse A with old-growth redwood tree in background, facing southeast (9/11/20)

The portion of Watercourse A located immediately adjacent and upslope of the existing residence is at the base of a steep slope and retaining wall. It seems likely that creating an open channel in this location could risk slope stability and structural stability of the residence. The Watershed Company does not provide geotechnical analysis, but it is our understanding that a geotechnical engineer will assess the associated risk of this potential action.

Based on the environmental damage resulting from the removal of an old-growth redwood tree, both on the subject property and the adjacent property, as well as the additional buffer encumbrance daylighting Watercourse A would create on the neighboring property, it is our opinion that daylighting Watercourse A is not feasible or environmentally beneficial at this location. Therefore, in accordance with MICC 19.07.180.C.6.d, a 10-foot setback should be required for Watercourse A.

The following may be allowed in the critical area setback (MICC 19.07.180.C.8):

- a. Landscaping;
- b. Uncovered decks less than 30 inches above existing or finished grade, whichever is lower;
- c. Building overhangs if such overhangs do not extend more than 18 inches into the setback area;
- d. Hardscape and driveways; provided, that such improvements may be subject to requirements in Chapter 15.09 MICC, Storm Water Master Program;
- e. Split-rail fences;
- f. Trails, consistent with the requirements of this chapter; and
- g. Subgrade components of foundations; provided, that any temporary impacts to building setbacks shall be restored to their previous condition or better.

Under MICC 19.07.170.A.3, “Areas used by bald eagles for foraging nesting and roosting, or within 660 feet of a bald eagle nest” are regulated as a fish and wildlife conservation area. A bald eagle nest has been verified within 660 feet of the subject property. The general review requirements under 19.07.170.B.1 include the following:

- a. *Identification of the species referenced in subsection A of this section that has a primary association with the habitat on or in the vicinity of the site;*

A bald eagle (*Haliaeetus leucocephalus*) nest has been confirmed approximately 325 feet southwest of the subject property and approximately 350 southwest of the existing residence. Active use of the nest was not confirmed during the October 16, 2020, site inspection, and no eagles were observed. However, the site

inspection did not coincide with the nesting season, and eagles may return to nests after several years of inactivity.

- b. *Extent of wildlife habitat areas, including acreage, and required buffers based on the species;*

Federal bald eagle management guidelines recommend 330-foot and 660-foot projection areas for bald eagles, depending upon the scope of the proposed project and the existing conditions surrounding the nest. MICC stipulates that all areas within 660 feet of a bald eagle nest are regulated as fish and wildlife habitat conservation areas.

- c. *Vegetative, faunal, and hydrologic conditions;*

The nest is located near the top of a western hemlock tree in Clarke Beach Park. The area immediately surrounding the nest, within the park, is well vegetated, native forest dominated by Douglas-fir (*Pseudotsuga menziesii*) and bigleaf maple (*Acer macrophyllum*) trees. Beyond the park, the landscape is single-family residential interspersed with individual mature redwood, Douglas-fir, and western red cedar (*Thuja plicata*) trees. Any of the taller trees in the area could be used for perching and foraging.

- d. *Evaluation of direct and indirect potential impacts on habitat provided by the project, including impacts to water quality;*

The proposed project is to demolish and reconstruct an existing single-family residence. There are no trees on the property that could be used for nesting, perching, or foraging. The closest large tree to the subject property is the aforementioned mature redwood immediately south of the property. The only potential risk to this tree, which could be used for perching/foraging, would be if Watercourse A is daylighted. By not daylighting Watercourse A, the tree will be preserved. Therefore, the project will have no direct impacts on bald eagle habitat. Indirect impacts are limited to visual and auditory disturbances during construction activities. Indirect impacts are expected to be minor, since any nesting birds in this location are already tolerant of residential land uses. Significant noise disturbances during the egg-laying/incubation period could lead to nest abandonment, although this risk is reduced near or after hatching, or nest flushing that could leave unattended eggs, resulting in loss of moisture and

cooling of the eggs. Noise and visual impacts, when occurring after the incubation periods, could lead to flushing and potentially missed feedings.

- e. *A discussion of any federal, state, or local special management recommendations, including Washington State Department of Fish and Wildlife habitat management recommendations that have been developed for the species or habitats; and*

Bald eagles are no longer considered a priority species by Washington Department of Fish and Wildlife (WDFW). As such, WDFW does not maintain its previous management recommendations and, instead, directs individuals to the federal management recommendations from the U.S. Fish and Wildlife Service (USFWS). For building construction, one or two story, with a project footprint of ½-acre or less, and if the activity will be visible from the nest, USFWS recommends 660 feet, or as close as existing tolerated activity of similar scope; landscape buffers are recommended. For temporary noise-generating uses, such as use of heavy machinery, USFWS recommends limiting these activities to outside of the breeding season.

Single-family residential land uses occur within approximately 200 feet of the eagle nest, and proposed construction activities will be approximately 350 feet from the nest. It is not possible to construct the new residence farther from the nest given the location of the lot. The nest-building and egg-laying/incubation periods are the most sensitive periods for bald eagles. In the Pacific region, these activities generally occur from January through April. Temporary noise-generating activities, such as loud machinery, can be conducted outside of these times without causing disturbance.

- f. *A discussion of avoidance, minimization, and mitigation of impacts pursuant to MICC 19.07.100.*

The construction of a new single-family residence on the subject property will avoid all direct impacts to bald eagle habitat. Indirect effects, including visual and auditory disturbance, will be minor. By adhering to the timing restrictions identified by USFWS, when nests are at their most vulnerable (January through April), the project will minimize potential adverse effects to nesting bald eagles.

The information contained in this memorandum is based on the application of technical guidelines currently accepted as the best available science. All discussions, conclusions and recommendations reflect the best professional judgment of the author(s) and are based upon information available to us at the time the study was conducted. All work was completed within the constraints of budget, scope, and timing. The findings of this report are subject to verification and agreement by the appropriate local, State and Federal regulatory authorities. No other warranty, expressed or implied, is made.

Ages Engineering, LLC

A Geotechnical & Environmental Services LLC

P.O. Box 935
Puyallup, WA. 98371
Main (253) 845-7000
www.agesengineering.com

October 7, 2020
Project No. A-1562

Sella Ramaiyah
7466 E. Mercer Way
Mercer Island, WA. 98040

Subject: Watercourse Evaluation
Ramaiyah Residence
7466 E. Mercer Way
Mercer Island, Washington
PN: 2579500136

Reference: Preliminary Geotechnical Report, Ramaiyah Residence, Prepared by Ages Engineering, LLC, dated July 10, 2020

Dear Ms. Ramaiyah,

As requested, we are providing additional information for the subject site. Based on our discussion with you, we understand the City of Mercer Island is considering returning the existing watercourse on the site to an overland flow. Currently, the water course flows to the approximate middle of the site where the existing building wall is located. The surface water becomes groundwater that flows around the building walls and the site retaining wall to the center of the south side of the house where it crops out onto the ground surface and is immediately collected in a catchbasin and conveyed off site. We have been requested to evaluate the plan and provide recommendations for maintaining site stability.

Based on our evaluation, it is our opinion the watercourse should not be returned to an overland flow. The potential risk for site erosion to increase and for site stability to decrease is very high. The watercourse should remain in a closed conduit across the subject site.



We trust this information is sufficient for your current needs. If you have any questions, or require additional information, please call.

Respectfully Submitted,
Ages Engineering, LLC

Bernard P. Knoll, II, P.E.
Principal
BPK/bpk



10-7-2020



5309 Shilshole Avenue NW
Suite 200
Seattle, WA 98107
206.789.9658 phone
206.789.9684 fax

memorandum

date January 15, 2021

to Robin Proebsting, Senior Planner- City of Mercer Island

from Scott Olmsted, Senior Ecologist and Rachelle Tews, Ecologist
Environmental Science Associates

subject 7466 East Mercer Way (Tax Parcel 2579500136) Critical Areas Evaluation (CAO-20-003) Third Party Review

Environmental Science Associates (ESA) prepared this memorandum on behalf of the City of Mercer Island (City) to provide third party review of the critical areas evaluation submitted for the property located at 7466 E. Mercer Way (Parcel # 2579500136). The project proposes to demolish and rebuild the residence and garage located on the property.

The purpose of this memorandum is to verify the accuracy of the findings within the critical areas evaluation prepared by the applicant's consultant, The Watershed Company (TWC), titled *7466 E. Mercer Way Critical Areas Evaluation* (Memo) and dated October 21, 2020. This review assessed whether physical site constraints and rationale used to reduce the piped watercourse setback are consistent with the requirements of Mercer Island City Code (MICC) Chapter 19.07—Environment. Additionally, this review evaluated the accuracy of TWC biologist's assessment of fish and wildlife habitat conservation areas, specifically related to an offsite bald eagle nest.

Document Review

ESA reviewed information available in the public domain including: Washington Department of Fish and Wildlife (WDFW) web-mapping tools (Priority Habitats and Species [PHS] mapping and Salmonscape), U.S. Fish and Wildlife Service (USFWS), National Wetland Inventory (NWI) maps, King County's GIS mapping website (iMap), and City of Mercer Island critical areas mapping. Online maps indicate that there are no priority habitats and species, streams accessible to fish, or wetlands present on the parcel. The City of Mercer Island critical areas mapping shows a piped watercourse mapped on the site, classified as type "NP" (non-fish).

According to the memo submitted by TWC, a watercourse is piped on the subject property. In addition, the memo documents an exceptional tree located on the neighboring property, adjacent to the piped watercourse. Mercer Island City Code (MICC) typically requires a 45-foot setback for piped watercourses (MICC 19.07.180.C.6.b). The memo notes that per MICC 19.07.180.C.6.c, piped watercourse setback widths can be reduced to a 15-foot buffer when the portion of the piped watercourse on the applicant's property is daylighted and where the watercourse has been restored to an open channel, provided a restoration plan demonstrates that:

- i. The watercourse channel will be stable and is not expected to cause safety risks or environmental damage; and
- ii. No additional impact nor encumbrance by watercourse buffer or critical area setback is added to properties neighboring the applicant(s) property.

Additionally, the memo states that according to MICC 19.07.180.C.6.d, piped watercourse setback widths can be reduced to 10 feet on properties with a lot width of 50 feet or more, which is applicable to the subject property, when daylighting is determined by qualified professional(s) to result in one or more of the following outcomes:

- i. Increased risk of landslide or other potential hazard that cannot be mitigated;
- ii. Increased risk of environmental damage (e.g., erosion, diminished water quality) that cannot be mitigated;
- iii. The inability of a legally established existing lot to meet the vehicular access requirements of this title; or
- iv. The inability of a legally established existing lot to meet the building pad standards in MICC 19.09.090.

The memo states that because the piped watercourse is located within the critical root zone of the significant tree growing on the adjacent property, daylighting the piped watercourse would require tree removal. Tree removal would not only result in the loss of an exceptional tree, increasing risk of environmental damage (MICC 19.07.180.C.6.(d)(ii)), but would also impact the neighboring property and result in a new buffer encumbrance on that property, which is counter to MICC 19.07.180.C.6(c)(ii). Additionally, a steep slope is located immediately up-gradient from the piped section of watercourse and daylighting would affect slope stability. Therefore, the memo suggests daylighting the stream does not provide adequate environmental benefits to compensate for the environmental damage associated with tree removal and is not consistent with multiple sections of code. The applicant has requested a 10-foot setback from the piped watercourse that is to remain in-place.

Review of Site Conditions

ESA ecologists Scott Olmsted and Rachelle Tews conducted a site visit on December 16, 2020. The field visit included observations of 1) a publicly accessible area located up-gradient and west of the subject property, 2) the subject property, including the piped watercourse, and 3) an eagle nest located south of the subject property.

Based on the site visit, ESA agrees that Watercourse A flows within an open channel on Parcel #2579500190, which is located west of the subject property, before discharging to a culvert located beneath E. Mercer Way. The watercourse flows within the pipe from the road crossing, through several properties, including the subject property, until it briefly daylight and then returns to a pipe prior to discharging to Lake Washington.

During the site visit, a piped Watercourse A was observed beneath the canopy and within the critical root zone of an old growth California redwood (*Sequoia sempervirens*). The tree was visually confirmed to have a diameter greater than 60 inches at breast height. Exceptional trees with diameters of more 24 inches are prioritized for retention within the City (MICC 19.10.060). While tree removal may not be necessary to daylight the stream, daylighting could impact the critical root zone of the tree. Damage to the critical root zone of an exceptional tree could degrade tree health and ultimately result in tree death. Loss of the tree would degrade environmental functions both onsite and offsite. ESA agrees that the potential environmental damage caused by daylighting the

watercourse is not consistent with City code and therefore, a 10-foot setback from the piped watercourse is appropriate.

The applicant hired a geotechnical engineer to assess slope stability of the onsite steep slope and whether the watercourse should be daylighted. The engineer submitted their evaluation and recommendations in a separate review, titled *Watercourse Evaluation* and prepared by Ages Engineering, LLC on October 7, 2020, and indicated that the piped watercourse should not be daylighted.

No wetlands or fish and wildlife habitat conservation areas were observed onsite or in the immediate vicinity. However, a bald eagle (*Haliaeetus leucocephalus*) nest was observed approximately 325 feet southwest of the subject property and a mature bald eagle was seen flying and perching in a tree just south of the nest. Under MICC 19.07.170.A.3, all areas within 660 feet of a bald eagle nest are regulated as fish and wildlife habitat conservation areas. The proposed project will have no direct impact on bald eagle habitat in the form of tree removal and indirect impacts (e.g., visual and auditory disturbances) would likely be minor. ESA agrees that temporary, indirect impacts could be mitigated if the applicant adheres to construction timing restrictions outlined by the U.S. Fish and Wildlife Service (during the nesting season from January through April).

The property is located within 200 feet of Lake Washington's shoreline and the lake is regulated as a shoreline of statewide significance. Projects proposed within the shoreline jurisdiction (e.g., within 200 feet of the shoreline) must comply with the City of Mercer Island's Shoreline Master Program (SMP) as outlined in MICC 19.13. The critical areas evaluation does not discuss compliance with the City's SMP; ESA recommends that the memo address these regulations.

Conclusions

Based on our review of the memo and our observations made during the December 16, 2020 site visit, we agree that the 10-foot setback from the piped watercourse on the property is appropriate and consistent with City code MICC 19.07.180.C.6.d, and believe USFWS construction timing restrictions should be followed to mitigate potential indirect impacts to nearby bald eagle habitat, and recommend the applicant's consultant address SMP compliance.