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CITY OF MERCER ISLAND
HEARING EXAMINER

The Carol Ann Cook Revocable Living Trust		No. APL21-004 (Ref. No. CAO20-004)
	Appellant	
v.		
City of Mercer Island	Respondent	DECLARATION OF PATRICK J. TOGHER
		HEARING EXAMINER JOHN E. GALT

I, Patrick J. Togher, do hereby declare and state as follows:

1. I am over the age of 18, competent to testify, and make this declaration based upon professional knowledge.
2. I am a Professional Wetland Scientist (PWS) currently working as the Senior Scientist/Senior Project Manager with PBS Engineering and Environmental in Seattle, Washington. I have 27 years of consulting experience (primarily in the environmental field), including 21 years as a wetland scientist. I have been a Professional Wetland Scientist since 2006.
3. My education and background include a bachelor's degree from Northeastern Illinois University in Information Science and Physical Geography, master's

1 degree in Environmental Studies, also from Northeastern Illinois University, and
2 a Certificate in Wetland Science and Management from the University of
3 Washington. Additionally, over the last 15 years I have supplementary training
4 and education from the following:

- 5 • WSDOT Biological Assessment Author Training, 2018.
- 6 • Ordinary High Water Mark Determination. Washington State
7 Department of Ecology, 2004 and 2017.
- 8 • NEPA – Documenting Categorical Exclusions. Washington State
9 Department of Transportation, October 22, 2015.
- 10 • Revised Wetland Rating, System for Western Washington. Washington
11 State Department of Ecology, 2005 and 2014.
- 12 • Swiftwater Safety Rescue. International Rescue Instructors Authority,
13 2013.
- 14 • Wetland Mitigation, Construction & Installation. Portland State
15 University, 2007.
- 16 • Advanced Soils and Hydrology for Delineators. Portland State
17 University, 2006.

18 4. I hold Certifications as a Professional Wetland Scientist #1659 and Certified
19 Erosion and Sediment Control Lead, CESCL EF8183190, as well as being a
20 Qualified Consultant to write Biological Assessments for WSDOT.

21 5. I have provided technical review of proposed development submittals to ensure
22 consistency with the local critical area ordinance requirements for the following:

- 23 • City of Lynnwood (2017-2019, as 3rd Party review for Sound Transit
24 Lynnwood Link Extension).
- 25 • City of Mill Creek, Washington (On-call, 2000 - 2004).
- 26 • City of Pacific, Washington (On-call, 2000 - 2004).
- City of Sumner, Washington (On-call, 2000 - 2004).

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2 6. I have been hired by The Carol Ann Cook Revocable Living Trust to evaluate
3 whether the existing water feature located to the west of the property at 7025
4 N. Mercer Way is a “Type Ns” watercourse. I have previously provided a
5 memorandum with my findings.
6

7 7. In addition, I have reviewed the memorandum provided by ESA that was
8 included in the City of Mercer Island’s Notice of Decision and the
9 communications included with the City’s exhibits. I disagree with ESA’s
10 conclusions. First, there is no definition of “aboveground channel system”¹
11 found anywhere in the City of Mercer Island Code, Washington Administrative
12 Code, or in guidance from the Department of Natural Resources (“DNR”), who
13 developed the water-typing system. Second, based on my review of these
14 communications, it is apparent that the WDFW comments ESA’s memorandum
15 are a general statement, based on a single example outside of the City of
16 Mercer Island, rather than specific to this water feature. Finally, the City has
17 incorporated a new stream type (“Piped”) in their ordinance, which is not
18 present in the “DNR” system. As a result of these factors, the applicability of the
19 ‘personal communication’ to the City of Mercer island buffer requirements is
20 unclear.
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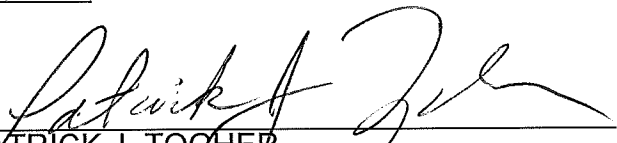
25 ¹ The Mercer Island City Code uses “aboveground” but WAC 222-16-030 uses “above-ground”
26 – regardless, these are not defined within the Mercer Island City Code, Washington Administrative
Code or the Department of Natural Resources.

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8. I stand by my original findings that the existing water feature located to the west of 7025 N. Mercer Way would meet the City's definition of "watercourse" but would not meet the definition of a "Type Ns" given its connection to the underground pipe which discharges directly into Lake Washington.

I CERTIFY and Declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 26 day of April 2021.



PATRICK J. TOGHER
Professional Wetland Scientist
Senior Project Manager, PBS