
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT
9611 SE 36TH STREET | MERCER ISLAND, WA 98040
PHONE: 206.275.7605 | www.mercergov.org



Supplemental Notice of Violation & Civil Penalties

Pursuant to MICC 6.10.050, this Supplemental Notice of Violation and Civil Penalties is issued as follows:

Date of Notice Issuance: June 30th 2023

Location(s): 5236 West Mercer Way, Mercer Island WA 98040

Subject Property: 5236 West Mercer Way, Mercer Island WA 98040

King County Tax Parcel # 192405-9324

City of Mercer Island Compliance Case#: CE21-0043

Building Permit Number: 1709-196 (Expired on 10/02/2022)

Notification is being given to the following responsible person or persons:

1. POLLIE LLC

5355 TALLMAN AVE NW STE 207

SEATTLE, WA, 98107-3954

2. Jason Anderson as registered agent for Pollie LLC

5355 Tallman Ave NW STE 207

Seattle WA, 98107-3954

3. Daniel Suci as governor of Pollie LLC, Project manager and listed as project contact on permit records.

36058 21ST LN S

Federal Way WA, 98003

4. ID Build LLC, as Contractor Listed on permit records

36058 21ST LN S

Federal Way WA, 98003

5. Daniel Suciu as registered agent and as governor of ID Build LLC

16028 NE 184TH PL

WOODINVILLE, WA, 98072

One or more of the responsible persons named above are believed to be responsible for the following violations that have occurred or are occurring at the location(s) identified above:

1) Violation of MICC 19.07.160(F)(2)- Development standards—Additional criteria for specific activities. –

...

2. Land clearing, grading, filling, and foundation work within: (a) an erosion hazard area, when 2,000 square feet or more of site disturbance is proposed, and/or (b) a landslide hazard area are not permitted between October 1 and April 1.

a. The code official may grant a waiver to this seasonal development limitation if the applicant provides a critical area study for the site concluding that:

i. Geotechnical slope stability concerns, erosion and sedimentation impacts can be effectively controlled on site consistent with adopted storm water standards; and

ii. The proposed construction work will not subject people or property, including areas off site, to an increased risk of associated impacts.

b. As a condition of the waiver, the code official may require erosion control measures, restoration plans, an indemnification, a release agreement and/or performance bond.

c. If site activities result in erosion impacts or threaten water quality standards, the city may suspend further work on the site and/or require remedial action.

d. Failure to comply with the conditions of an approved waiver shall subject the applicant to code compliance pursuant to chapter 6.10, code compliance, including but not limited to civil penalties and permit suspension....

2) Violation of MICC 19.07.080(E)- General Provisions –

E. Seasonal limitations. Land clearing, grading, filling, and foundation work may be limited to only certain times of year, pursuant to section 19.07.160(F)(2).

3) Violation of MICC 15.09.080- Administration –

A. The city manager or his/her designee shall have the authority to develop and implement administrative procedures to administer and enforce this chapter and the program. The city manager or his/her designee shall approve, conditionally approve or deny an

application for activities regulated by this chapter.

B. Prior to the commencement of any construction on a project or "land disturbing activity," the applicant shall obtain a storm water permit from the city. A bond may be required by the city engineer in an amount sufficient to cover cost of construction of the system in accordance with approved plans and anticipated city inspection.

Upon completion of the work inspection and approval of the storm water facilities by the city,

70 percent of the bond shall be released. At the one-year inspection, the remaining 30 percent shall be released. A two-year bond may be required for vegetated storm water facilities.

C. All activities regulated by this chapter shall be subject to inspection. Projects shall be inspected at various stages of the work requiring approval to determine that adequate control is being exercised and enforcement actions taken as necessary. These inspections will include, but not be limited to, the following:

1. Prior to site clearing and construction to assess site erosion potential on sites with a high potential for sediment transport;

2. During construction to verify proper installation and maintenance of required erosion and sediment control BMPs;

3. Upon completion of construction and prior to final approval or occupancy to ensure proper installation of permanent storm water facilities and verify that a maintenance plan is completed and responsibility for maintenance is assigned for storm water facilities;

4. All permanent storm water facilities and catch basins in new residential developments that are part of a larger common plan of development or sale, every six months during the period of heaviest house construction (i.e., one to two years following subdivision approval to identify maintenance needs and enforce compliance with maintenance standards as needed).

When required, special inspections and/or testing may be required to be performed at the expense of the applicant.

D. The city manager or his/her designee may order the correction or abatement of any storm and surface water facility or condition thereof, a prohibited discharge, or illicit connection constituting a violation of this Code or of the applicable manual when such facility or condition thereof has been declared to be a public nuisance. Whenever such a public nuisance is declared, a notice by certified mail shall be made to the violator directing abatement within 30 days of the receipt of the notice. If the required corrective work is not completed within the time specified, the city may proceed to abate the violation as a

public

nuisance. Summary abatement may be commenced without notice or a stop work order issued when the violation is of such a nature that it is an immediate hazard to life and/or property. Notwithstanding the exercise or use of any other remedy, the city manager or his/her designee may seek legal or equitable relief to enjoin any act or acts or practices which constitute a violation of this chapter.

E. **Civil penalty.** In addition to or as an alternative to any other penalty provided herein, or by law, any person who violates the provisions of this chapter, the applicable manual, or an approved storm water management plan shall incur a cumulative civil penalty in the amount of \$50.00 per day from the date set for correction, until the violation is corrected. In lieu of a civil penalty, the city manager or his/her designee may issue a warning notice and provide educational information on discharge practices when the violation is a first violation of this chapter, is not an intentional violation, and the discharge is determined by the city manager or his/her designee as minor. Any subsequent violation of this chapter by the same person shall not be eligible for a warning notice and shall result in a civil penalty.

F. **Notice of violation and assessment of penalty.** Whenever the city manager or his/her designee has found or determined that a violation is occurring or has occurred he/she is authorized to issue a notice of violation directed to the violator, the property owner, or the occupant. The following provisions shall apply and notice of violation shall contain:

1. The name and address of the violator, if known;
2. The street address when available or a legal description sufficient for identification of the building, construction, premises, or land upon which the violation is occurring;
3. A statement of the nature of such violation(s);
4. A statement of action required to be taken as to be determined by the city manager or his/her designee and a date of correction.

G. The notice shall notify the owner and/or violator that:

1. The owner and/or violator has 14 days to notify the city manager or his/her designee of a proposed schedule of repair or maintenance action;
2. The owner and/or violator has 30 days after the time of notification set forth in subsection (G)(1) of this section to comply with the notice, unless, for good cause shown, the period of compliance is extended.

H. In the event the owners and/or violators fail to comply with the notice, work may be done by and under the authority of the city, at the expense of the owner and/or violator and the expense shall be charged to the owner and/or violator, and shall become a lien on the property.

4) Violation of MICC 6.10.020(A)- Declaration of public nuisance- Declaration of public nuisance. All code violations are determined to be detrimental to the public health, safety, welfare and environment and are declared to be public nuisances. All conditions determined to be code violations may be subject to and enforced pursuant to the provisions of this chapter, except where specifically excluded by law or regulation.

5) Violation of MICC 19.15.270(A)(4)- Enforcement.

....

(4) It is a violation of the development code for anyone to fail to comply with the requirements of the development code, as set out in the specific sections of the code.

6) Violation of MICC 17.11- Uniform Code for the Abatement of Dangerous Buildings (UCADB), Chapter 3 - Definitions

SECTION 302 - DANGEROUS BUILDING

For the purpose of this code, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered.

5. Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

8. Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.

9. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

18. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

7) Violation of MICC 17.11- Uniform Code for the Abatement of Dangerous Buildings (UCADB), Chapter 7 - Enforcement of the Order of the Building Official

SECTION 701 - COMPLIANCE

701.1 General. After any order of the building official or the board of appeals made pursuant to this code shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a misdemeanor.

701.2 Failure to Obey Order. If, after any order of the building official or board of appeals made pursuant to this code has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the building official may (i) cause such person to be prosecuted under Section 701.1 or (ii) institute any appropriate action to abate such building as a public nuisance.

701.3 Failure to Commence Work. Whenever the required repair or demolition is not commenced within 30 days after any final notice and order issued under this code becomes effective:

1. The building official shall cause the building described in such notice and order to be vacated by posting at each entrance thereto a notice reading:

DANGEROUS BUILDING

DO NOT OCCUPY

It is a misdemeanor to occupy this building, or to remove or deface this notice.

Building Official of _____

2. No person shall occupy any building which has been posted as specified in this section. No person shall remove or deface any such notice so posted until the repairs, demolition or removal ordered by the building official have been completed and a certificate of occupancy issued pursuant to the provisions of the Building Code.

3. The building official may, in addition to any other remedy herein provided, cause the building to be repaired to the extent necessary to correct the conditions which render the building dangerous as set forth in the notice and order; or, if the notice and order required demolition, to cause the building to be sold and demolished or demolished and the materials, rubble and debris therefrom removed and the lot cleaned. Any such repair or demolition work shall be accomplished and the cost thereof paid and recovered in the manner hereinafter provided in this code. Any surplus realized from the sale of any such building, or from the demolition thereof, over and above the cost of demolition and of cleaning the lot, shall be paid over to the person or persons lawfully entitled thereto.

8) Violation of MICC 17.11- Uniform Code for the Abatement of Dangerous Buildings (UCADB), Chapter 8 - Performance of Work of Repair or Demolition

SECTION 801 - GENERAL

801.1 Procedure. When any work of repair or demolition is to be done pursuant to Section 701.3, Item 3, of this code, the building official shall issue an order therefor to the director of public works and the work shall be accomplished by personnel of this jurisdiction or by private contract under the direction of said director. Plans and specifications therefor may be prepared by said director, or the director may employ such architectural and engineering assistance on a contract basis as deemed reasonably necessary. If any part of the work is to be accomplished by private contract, standard public works contractual procedures shall be followed.

801.2 Costs. The cost of such work shall be paid from the repair and demolition fund, and may be made a special assessment against the property involved, or may be made a personal obligation of the property owner, whichever the legislative body of this jurisdiction shall determine is appropriate.

Facts Supporting Violation(s):

- On 10/6/2022, Don Cole, Building Official, was contacted by a neighbor about their concerns that there had been no progress at the project site at 5236 West Mercer Way, Mercer Island WA 98040.
- On 10/7/2022, Mr. Cole visited the project site and found that erosion control and slope stability measures were not complete and that the project appeared to have stalled. He attempted to contact Daniel Suciu by telephone and email to discuss the project but there was no response.
- On 10/07/2022, Code Compliance Officer David Henderson attempted to contact the project contacts and responsible parties Daniel Suciu, Jason Anderson by telephone including the real estate agent listed contact information posted at the site. No response to date.
- On 10/11/2022, 10/14/2022, and 10/28/2022, Mr. Cole again attempted to contact the project contact, Daniel Suciu by telephone and email. He also attempted to contact Jason Anderson by telephone and email. Mr. Cole received no response from either Mr. Suciu or Mr. Anderson.
- On November 4th, 2022, Mr. Cole conducted a site investigation and deemed the site and

project under permit number 1709-196 did not comply with approved plans and geotechnical engineer recommendations for erosion control and slope stability measures, as required per the Conditions of Permit Approval. **The failure to follow the required recommendations of the Project Geotechnical Engineer of Record within permit records, and the required Building permit conditions under 1709-196 are violation(s) of city code as follows:**

- **MICC 19.07.160(F)(2)a** - The person(s) responsible did not obtain the required waiver to the seasonal development limitation, which constitutes a code violation.
 - **MICC 19.07.160(F)(2)d** - The person(s) responsible did not comply with the approved plans and conditions of permit approval or obtain the required waiver, which constitutes a code violation.
 - **MICC 6.10.020** – The city has determined that the concerns about compromised slope stability, inadequate erosion control measures, and project abandonment render the project to be a public nuisance, and that the violations have potential detriment to public health, safety and welfare.
 - **MICC 15.09.080** – Installed protection measures have failed with sediment leaving the site, erosion control measures have been removed, deteriorated, or are no longer functioning as required to meet stormwater/ erosion control requirements (e.g. - plastic soil covering, straw bales and silt fencing have been removed, deteriorated or blown away and are ineffective), which is a violation of MICC Chapter 15.09.
 - **MICC Ch. 17.11, UCADB Section 302 (5, 8 and 9)** - The near vertical excavations on site and remaining voids behind the soldier pile wall (not backfilled) result in a weakened condition with potential for soil collapse adversely affecting adjacent property, personal injury, etc. The lack of effective erosion control may further decrease soil strength. Without the intended backfill, the retaining structure provides inferior slope protection than intended by design.
- On 11/14/2022, Mr. Cole again attempted to call the project contact, Daniel Suciu, again with no response to date. Also, he made an additional attempt to call and email Jason Anderson but again, received no response.
 - On 11/15/2022, Mr. Henderson issued a Notice of Violation & Civil Penalties to named responsible parties explaining safety code violations including slope stability and erosion control, along with corrective actions with a compliance date of 11/25/2022. This compliance date passed without any corrective actions being taken and without any response to the City response from any of the responsible parties listed on that the November 15, 2022 NOV.

- On 11/22/2022, the City received a neighbor's complaint regarding their concern about conditions at the project site. Mr. Cole visited the site to find that erosion control measures were not complete and failed with mud/silt from the site starting to extend just over the edge of the eastern travel lane of West Mercer Way. After failed attempts to call the listed project contacts to remedy the situation (Daniel Suciu and Jason Anderson), Mr. Cole contacted the City roads maintenance staff to clean the road and provide protective measures within the City right of way. The City completed this work later that afternoon.
- On 01/18/2023, Mr. Henderson again attempted to contact the project contacts Daniel Suciu and Jason Anderson responsible parties via telephone. Again, Mr. Henderson did not receive any response.
- On 4/5/2023, Mr. Cole visited the project site and found that erosion control and slope stability measures were not complete and that the project appeared to have abandoned. He attempted to contact the project contact, Daniel Suciu, and Jason Anderson by telephone. Again, Mr. Cole did not receive a response.
- On April 25, 2023, Mr. Cole visited the site along with a Washington State licensed geotechnical engineer to inspect the abandoned project to review safety and erosion control concerns at the derelict site. This geotechnical engineer investigated the current project and site conditions and found that immediate slope stability and erosion control measures are warranted. Detailed findings, conclusions, and recommendations were provided within the geotechnical engineer's report dated May 24, 2023, by WSP USA Environment & Infrastructure Inc. (attached as Exhibit "A" and incorporated herein by reference).
- As of the date of issuance of this Supplemental NOV, the site has been abandoned for more than 6 months, constituting a dangerous situation and a public nuisance. MICC 17.11, UCADB Section 302(18).

The Responsible Person(s) are Ordered to Complete the Corrective Actions as Follows:

1. The responsible person(s) shall immediately contact the owner's Project Geotechnical Engineer of Record and receive recommendations as to slope stability and temporary and permanent erosion control measures. At a minimum, the Project Geotechnical Engineer of Record's recommendations shall address the conclusions, findings, and recommendations of the geotechnical report dated June 8th, 2023 by WSP USA Environment & Infrastructure Inc. (attached as Exhibit "A").

2. Within twenty-one (21) days of the issuance of this notice, the responsible person(s) shall submit a permit application to the building official for his review which shall include work to address temporary and permanent erosion control, slope stability measures, and other work proposed by the responsible person(s) Project Geotechnical Engineer of Record (see corrective action #1). The compliance date for this Corrective Action(s) is July 20th, 2023.
3. The responsible person(s) shall obtain the required permit within 30 days of issuance of this notice. The compliance date for this Corrective Action(s) is July 30th, 2023.
4. The responsible person(s) shall complete all required work within forty-five (45) days of issuance of this notice, which shall include a satisfactory special inspection by their Project Geotechnical Engineer of Record and an approval of a final inspection by the city inspector. The compliance date for this Corrective Action(s) is August 14th, 2023.

The compliance date for satisfactory resolution of the Corrective Actions above is August 14th, 2023. If the violations are not corrected on or before this date and this notice is not appealed, the determination is final, and additional daily penalties shall begin to accrue, pursuant to MICC Ch. 6.10.

Notice of Civil Penalties:

The City's Notice of Violation and Civil Penalties issued November 15, 2022, to the responsible parties was not timely appealed and is final. Accordingly, civil penalties are due pursuant to MICC Ch. 6.10 as follows:

MICC 6.10.050(D)1

D. Civil penalties.

1. Civil penalties. A civil penalty for violation of the terms and conditions of a notice of violation, stop work order or voluntary correction agreement shall be imposed at the rate of \$100.00 per day for each violation, accruing for every day after the compliance date listed in the notice of violation. Thirty days after the compliance date, the penalty will increase to a rate of \$250.00 per day for each violation. Sixty days after the compliance date, the penalty will increase to a rate of \$500.00 per day for each violation, up to a maximum total penalty of \$50,000.00 for each violation.

MICC 6.10.050(D)2

D. Civil penalties

2. Priority Violations. In addition to the penalties described in subsection (D)(1) of this section, any person that is responsible for a violation of the provisions of the following regulations will be subject to additional penalties. These penalties for priority violations, as described below, will be assessed one time and will not accrue daily.

Violation	Penalty
Damage or removal of trees in violation of Chapter 19.07 MICC	Triple value damages, plus the cost of remediation.19.10.160 MICC
Failure to meet storm water, erosion control requirements in violation of Chapter 15.09 MICC	Up to \$10,000.00, plus the cost of remediation.
Violation of stop work order or voluntary compliance agreement in violation of MICC 6.10.060 or 6.10.070	Up to \$10,000.00.

When the potential penalty amount is listed as a range, the director will set the penalty based on the following criteria:

- a. The significance and severity of the violation and its impact on the public and the environment.
- b. The difficulty and time involved in resolving the violation and mitigating or remediating the area impacted by the violation.
- c. The resulting ill-gotten economic benefit and savings of construction costs realized by the person responsible for the violation.

Pursuant to MICC 6.10.050.D, penalties for noncompliance with the November 15, 2022 NOV are as follows:

Priority Violation Penalty:

- 1). Failure to meet storm water, erosion control requirements in violation of Chapter 15.09 MICC, up to \$10,000.00, plus the cost of remediation.

Enforcement Penalty Evaluation Criteria	Minimum Points	Maximum Points	Assigned Points
1. Health/Environment	0	3	3
2. Difficulty/Time	0	3	3
3. Ill-gotten benefit	0	3	0
4. Repeated (36 months)	2X (above) 2 nd + may suspend/revoke business license	5X (above) 3 rd + may suspend/revoke business license	NA
5. Deliberate	0	2X (entirety)	NA
6. Removed SWO sign	Separate violation	Separate violation	NA

Note- This matrix intend to provide guidance for determining civil penalties. However, cases may have severe public health or environmental concerns that justify neglecting matrix guidance and utilizing the maximum penalties available.

Evaluation Basis (MICC 610.050 D(2)a.b.c.):

- A. The significance and severity of the violation and its impact on the public and the environment:
High/3
- B. The difficulty and time involved in resolving the violation and mitigating or remediating the area impacted by the violation:

High/3

- C. The resulting ill-gotten economic benefit and savings of construction costs realized by the person responsible for the violation: NA
- D. Repeated: NA
- E. Deliberate: NA
- F. SWO removed: NA

Priority Violation Base calculation is as follows: 6 of 9 = .66%; yields 66% of \$10,000 = \$6,666.66

Total of Civil Penalty Due is as follows:

Priority Violation MICC 6.10.050(D)2 –	\$6,666.66
Civil Penalty Issued x2-violations on 6.10.050(D)1 MICC 11/15/22	\$100,000.00
Total Civil Penalty Ordered to Pay	\$106,666.66

Suspension; Revocation or Limitation of a permit; Hold on future permits; Notice on title:

Under MICC 6.10.050, the City may suspend, revoke, and/or place a hold on future permit applications and/or file a notice with the King County recorder’s office to notify the public of the presence of an unresolved Notice of Violation on the property if the penalty is not paid. Additionally, unpaid penalties will be sent to a collection agency for the purposes of collecting penalties and costs assessed pursuant to MICC 6.10.100 and RCW 19.16.500. The collection agency may add fees or interest charges to the original amount assigned to collections as allowed by law.

Appeal Procedure:

- Pursuant to MICC 6.10.050(B)(5) and MICC 6.10.090, you have the right to appeal this Supplemental Notice of Violation & Civil Penalties before a hearing examiner. An appeal must be filed with the City Clerk and the appeal fee paid within 14 days of the service of this Notice. Failure to appeal within 14 days shall render this Notice a final determination that the conditions described therein existed and constitute a code violation, that assessed and accrued civil penalties are due, and that the named party or parties is liable as a person responsible. An Appeal form can be found at: <https://www.mercerisland.gov/cpd/page/appeals>

If you would like to discuss the resolution of this code case or schedule a compliance inspection, please contact me by email at David.Henderson@mercergov.org Thank you for your cooperation.

Sincerely,
David Henderson
Code Compliance Officer
City of Mercer Island, Community Planning and Development

Exhibit A:
WSP Final Letter Site Recommendations
Dated June 8th, 2023.