

From: [Dan Grove](#)
To: [Molly McGuire](#); [Gurian, Gabrielle \(BEL\)](#)
Subject: Re: Permit 2207-019 / 6950 SE Maker Street
Date: Monday, June 12, 2023 9:30:53 AM
Attachments: [Lack of CAR2.pdf](#)

[+Gurian, Gabrielle \(BEL\)](#)

Hi Molly-

I researched this extensively - please refer to the attached document, which demonstrates with a CAR2 application must be filed and processed, including the public notice and comment period for the Land Use Approval application.

Thank you,
Dan Grove

On Fri, Jun 9, 2023 at 9:51 AM Molly McGuire <molly.mcguire@mercerisland.gov> wrote:

Hi Dan,

Per MICC 19.07.090(B)(2)(b)(ii), the applicant can request consolidation of the review of geologically hazardous areas together with construction permit review. This is why there is no separate Critical Areas Ordinance Review permit. The City's third party Geotechnical Consultant is reviewing the application and providing comments on geotechnical and geologically hazardous issues using the same method that Planning and other departments review and provide comments.

Sincerely,

[Molly McGuire](#)

Planner

City of Mercer Island – Community Planning & Development

City Hall Operating Hours: Tuesday – Wednesday – Thursday, 9AM to 4PM

206-275-7712 | www.mercerisland.gov

*****City Hall [Closed](#) Until Further Notice.*****

Notice: Emails and attachments may be subject to disclosure pursuant to the Public Records Act (chapter 42.56 RCW).

The City of Mercer Island utilizes a hybrid working environment. Please see the City's [Facility and Program Information](#) page for City Hall and City service hours of operation.

From: Dan Grove <dan@grove.cx>
Sent: Tuesday, June 6, 2023 12:29 PM
To: Molly McGuire <molly.mcguire@mercerisland.gov>
Subject: Permit 2207-019 / 6950 SE Maker Street

Hi Molly-

Can you tell me whether an application Critical Area Review 2 has been filed for this project? I've looked over the mybuildingpermit.com site and the SUB1 and SUB2 submissions, and can't find it.

thank you!

Dan Grove

Ms. Molly McGuire
Mercer Island Community Planning & Development Department
RE: Lack of required Land Use Approval Application for Building Permit Application 2207-019
June 12, 2023

Ms. McGuire:

This letter is in reference to Mercer Island Building Permit Application 2207-019, which the City's GIS represents as entirely within a variety of Critical Areas. (See Appendix Figure 1)

I am writing to request that the City follow its own rules regarding Land Use Approvals under MICC. A public notice and comment period for Land Use Approval applications is required in the case of a Critical Area Review 2. No such application has been filed, and no such notice or comment period has occurred.

In what follows, I detail how the application fails to comply with relevant regulations.

Per MICC 19.07.120, non-exempt development within a Critical Area that requires a Critical Area Review 2 requires a separate Land Use Approval. Building Permit application 2207-019 lacks a Land Use Approval application despite proposing development that requires a Critical Area 2 Review. (This differs from a Critical Area Review 1, for which MICC 19.07.090 states that "the substance of the review shall take place concurrently with the building permit review and no separate land use review application is required"). Per MICC 19.07.130, the demolition of the existing structure and the construction of a new house is not a Modification, and is not eligible for review through a CAR1. A CAR2 is required.

The applicant's Initial Signed Intake Sheet clearly indicates that no concurrent application for Land Use Approval is being applied for. (See Appendix Figure 2) The bottom of Figure 2 shows the form's question "Are you applying concurrently for a Land Use Approval?" The Applicant selected "No."

Numerous pieces of information required by MICC for a complete Land Use Approval application are missing, including:

- A completed development application coversheet
- Delineation of the Critical Areas and Buffers
- An assessment of probable effects to Critical Areas and Buffers

In fact, all plans submitted in SUB1, SUB2 and SUB3 show no Critical Areas at all.

This interpretation of the application's status (applying for the Building Permit without a corresponding Land Use Approval) is supported by the City's representation of the project in its

Public Notice to the community. The Public Notice for Permit 2207-019 contained no mention of Critical Areas (see Appendix Figure 4).

As a concerned neighbor whose property borders the Development Proposal Site for Permit 2207-019, I inquired about this missing component. I was informed by the City via email that the “applicant had requested consolidation of the review of geologically hazardous areas together with construction permit review.”

There appears to be some confusion over what it means to “consolidate” or file permits for concurrent review. WAC 365-196-845 requires that relevant entities enable applicants to consolidate permits pursuant to particular procedural and substantive requirements.“ WAC 365-196-845 (2): “Consolidated permit review process. (a) Counties and cities must adopt a permit review process that provides for consolidated review of all permits necessary for a proposed project action.” These project permitting procedures support an important goal of processing permits “in a timely and fair manner.” WAC 365-196-845 (1).

Accordingly, Mercer Island has enabled such consolidation: “[T]he applicant may request consolidation of the review of geologically hazardous areas together with construction permit review.” MICC 19.07.090(B). Mercer Island Permit forms enable this consolidation through what is referred to as “concurrent review.” (See Appendix Figure 3)

Concurrent review permits simultaneous permit review but requires that applicants acknowledge in writing that the permit submittals may be “reviewed concurrently” but the “land use application must be approved prior to the issuance of the permit.” (Figure 3) As the language in Figure 3 demonstrates, the outcome of the Land Use Approval application is rendered independently of other applications that are part of the concurrent review. For this reason, the City even requires that applicants acknowledge that the outcomes may not align and applicants must “hold the City harmless” in the event “the land use action is denied.”

Whether known as concurrent or consolidated review, the unified process is intended to increase efficiency, not to circumvent the substantive requirements of the permitting process. Consolidation does not obviate the need for underlying permits; it merely unifies their processing. All necessary permits remain required under consolidated procedures. Consequently, if an application lacks necessary elements, it is incomplete, regardless of whether it purports to consolidate certain permits. If an applicant does not submit an application for a specific permit, that permit cannot be deemed completed and consolidated even if other submitted parts of the application are consolidated. An incomplete application cannot be cured by consolidation. If it were otherwise, applicants would all have a perverse incentive to seek consolidation in order to circumvent application requirements. The required public notice and comment process would be effectively sidestepped.

Omitting requirements associated with Critical Area permitting review is potentially hazardous. Thus the omission of a Land Use Approval application associated with Building Permit application 2207-019 are especially problematic and contrary to code. The lack of the proper

permit applications prevents public engagement with plans that are risky. Indeed, they have become increasingly risky because of material changes to the scope of the development that implicate Critical Area review.

Since the original SUB1 (July 2022), there have been drastic changes proposed to the critical areas and buffers. Figure 5 in the Appendix shows SUB1 with Critical Areas overlaid. In SUB1, there are large changes proposed to the Seismic and Landslide Critical Areas, but there are no changes proposed for the Steep Slope and Steep Slope Buffer Areas (shown in Orange and Red, respectively).

Figure 6 in the Appendix shows that large changes are proposed for the Steep Slopes and Steep Slope Buffer areas in SUB3 (June 2023).

These substantial changes make the lack of a Land Use Approval application even more problematic.

A May, 2023 example that follows MICC requirements is found in the [Concurrent Review Request](#) for [Land Use Application CAO23-008](#) and [Construction Permit Application 2302-105](#) . These were noticed to the public separately in [the May 8, 2023 Permit Bulletin \(for the Land Use Application\)](#) and in [the May 1, 2023 Permit Bulletin \(for the Construction Permit Application\)](#). The same process should be followed here.

In order to correct this omission and to clarify the correct interpretation of “consolidation,” the City must ensure that the Applicant follows the proper process for a Land Use Approval on this site, including all requirements for a Type III Review of the Critical Area Review 2.

Thank you,
Dan Grove

Appendix

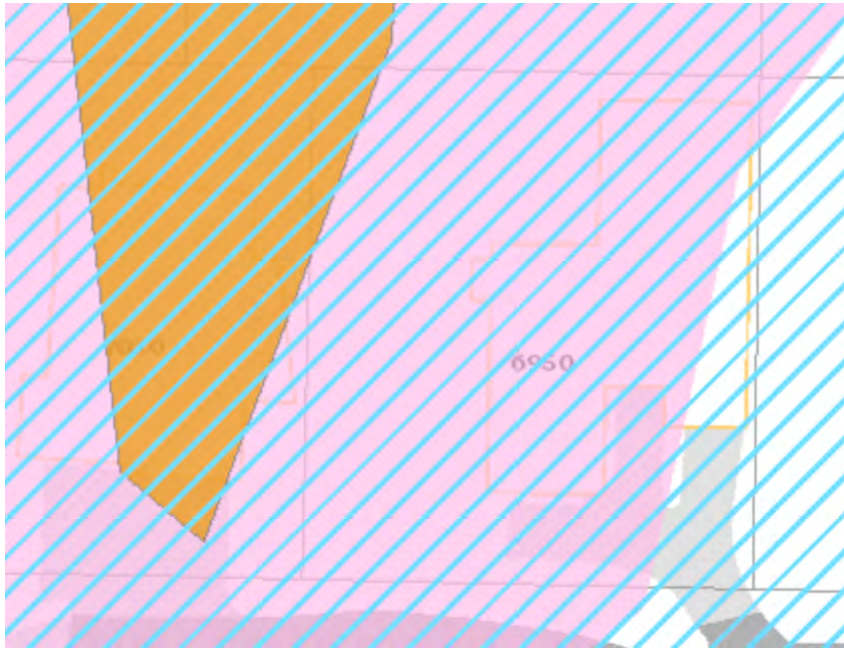


Figure 1: City's GIS represents 2207-019 as entirely within a variety of Critical Areas

PROJECT INFORMATION	
Name of Owner	DOROTHY STRAND
Owner Address	6950 SE MAKER ST
Owner Email	kcra2005@yahoo.com
Owner Phone	425.802.1455
Project Address	6950 SE MAKER ST
Parcel #	935090-0620
Project Description	NEW SINGLE FAMILY RESIDENCE TO REPLACE EXISTING
Will the building footprint expand by 500 square feet or more?	YES <input type="checkbox"/> sq. ft. NO <input checked="" type="checkbox"/>
Will impervious surface increase by 500 square feet or more (net) on the project site?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Does your project alter a critical area or critical area buffer such as a wetland, watercourse, steep slope hazard, potential slide hazard, or seismic hazard? Check the Environmental Layers found on our Online Map Portal to see if your project is located near a mapped critical area.	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Will you be modifying more than 40% of the existing exterior wall?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
Are you applying concurrently for a Land Use Approval? If so what type(s) of Land Use Approval(s) and what is/are your project #(s)?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
PROJECT CONTACT	

Figure 2: Signed Intake Sheet

CONCURRENT REVIEW

I am requesting that my permit submittal be accepted and reviewed concurrently during the review of our land use action (File # _____). I fully understand that the land use application must be approved prior to the issuance of the permit. I take full responsibility for all fees incurred for the permit review and understand that the fees are payable to the City of Mercer Island regardless of the land use outcome. I hold the City harmless for any actions arising from the concurrent review of the permit application, including but not limited to the potential denial of the permit if the land use action is denied.

Signature

Date

Figure 3: City of Mercer Island Concurrent Review Form

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | www.mercerisland.gov



PUBLIC NOTICE OF APPLICATION

NOTICE IS HEREBY GIVEN that the City of Mercer Island has received the application described below:

File No.:	2207-019
Permit Type:	Type 3
Description of Request:	This is a request for a building permit to demolish existing single family residence and rebuild a 4287 sq ft single family residence with a 440 sq ft attached garage.
Applicant/ Owner:	Jeffrey Almeter / Strand Family Trust
Location of Property:	6950 SE MAKER ST, Mercer Island, WA 98040 Identified by King County Assessor tax parcel number: 9350900620
SEPA Compliance:	The proposal is categorically exempt from SEPA review per WAC 197-11-800.
Project Documents:	Please follow this file path to access the associated documents for this project: https://mieplan.mercergov.org/public/2207-019
Written Comments:	Written comments on this proposal may be submitted to the City of Mercer Island either by email or by mail to the City of Mercer Island, 9611 SE 36th Street, Mercer Island, WA 98040-3732. Anyone may comment on the application, receive notice, and request a copy of the decision once made. Only those persons who submit written comments or participate at the

Figure 4: Public Notice of Application for 2207-019

