



CITY OF MERCER ISLAND

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CRITICAL AREAS DETERMINATION

NOTICE OF DECISION

April 24, 2017

Project Number:	CAO16-002
Description:	The applicant has proposed reduction of a piped watercourse buffer, with a resulting buffer of 0 feet. The City has authorized reduction of the west piped watercourse buffer of 25 feet down to 5 feet with proposed mitigation.
Decision:	Approved subject to conditions. The reduction of the west piped watercourse buffer from 25 feet to 5 feet is approved with mitigation.
Applicant:	Suzanne Findley 514 28 th Ave E Seattle, WA 98112
Owner:	Wells Fargo Bank PO Box 21927 Seattle, WA 98111
Site Address:	8000 SE 20 th ST, Mercer Island, WA, 98040; Identified by King County Assessor tax parcel number 5452302218
Zoning District:	R-12
SEPA Compliance:	The proposal is categorically exempt from SEPA review per WAC 197-11-800(6)(E).
Exhibits:	<ol style="list-style-type: none">1. Revised (final) Critical Area Study and Mitigation Plan conducted by John Laufenberg, PWS and Niels Pederson, Senior Ecologist, of Wetlands Northwest LLC received by the City on February 14, 2017.2. Second Memorandum to the Critical Area Study and Mitigation Plan conducted by Aaron Booy, Natural Resources Specialist, and Christina Hersum, Wetland and Wildlife Ecologist, of Environmental Science Associates (ESA) received by the City on April 3, 2017.3. Site Plans received by the City on August 5, 2016.4. Project Description and Review Response Letter prepared by Niels Pederson, Senior Ecologist for Wetland Resources Inc, and received by the City on February 14, 2017.5. Application for file number CAO16-002 received by the City on August 5, 2016.6. Public Notice of Application issued by the City on October 24, 2016.

7. Existing 25-foot piped watercourse buffer illustrated with the proposed impervious surface coverage received by the City on November 30, 2016.
8. Review Letter sent to the applicant by the City on December 8, 2016.
9. ESA first review memorandum of the applicant's original Critical Areas Study and Mitigation Plan, received by the City on December 7, 2016. The ESA review was completed by Aaron Booy, Natural Resources Specialist.
10. Critical Areas Study Application Signature received by the City on August 5, 2016.
11. Preliminary Stormwater Plan received by the City on August 5, 2016.
12. Staff Site Visit photographs from November 23, 2016.

I. FINDINGS OF FACT

1. Application Description:

The request is for approval of a critical areas determination to reduce the required buffer associated with a piped watercourse from 25 feet to 0 feet, to accommodate the construction of a new home, autocourt, and garage.

2. Zoning:

The existing zoning of the subject site is Single Family Residential R-12 (12,000 square foot minimum lot area).

3. Adjacent Land Use:

The surrounding land uses consist of single family residences to the East, South, and North. The subject property is bounded by the E. Mercer Way right-of-way to the west.

4. Description of Proposed Buffer Reduction:

Mercer Island City Code (MICC) MICC 19.07.070(B)(2) allows for watercourse buffers to be reduced "in accordance with an approved critical area study when he/she determines that a smaller area is adequate to protect the watercourse, the impacts will be mitigated by using combinations of the below mitigation options, and the proposal will result in no net loss of watercourse and buffer functions. However, in no case shall a reduced buffer contain a steep slope."

Measurement of slopes presented in the site plan, Exhibit 3, indicates there are no slopes within the reduced buffer that meet the definition of steep slope per MICC 19.16.010(S). The applicant must provide mitigation as described in MICC 19.07.070(B)(2)(b).

The applicant's Critical Areas Study, buffer reduction and site analysis (Exhibits 1 and 3) indicate that a reduced buffer is adequate to protect the piped watercourse. The review response letter (Exhibit 5) prepared by John Laufenberg, PWS and Niels Pederson, Senior Ecologist, of Wetlands Northwest LLC states, "... the applicant purposes to install a green roof and pervious materials, to remove a portion of an existing bulkhead, and to install a sandy beach. These actions are intended to offset the increase in impervious surface that will result from this project as a whole, and will modestly improve opportunities for juvenile salmon in Lake Washington...As an added benefit, green roof and pervious surfaces represent a "combination of mitigation options" from the list that appears in MICC 19.07.070 (B)(2)(b)(i-x)." Furthermore, the review response letter (Exhibit 4) states that "the proposed development, being equivalent to the existing condition, will result in no net loss of watercourse and buffer functions." The Critical Area Study and Mitigation Plan (Exhibit 1) states "to improve ecological conditions within the property, the applicant proposes the following: to

construct a green roof totaling 1,081 square feet, to install pervious driveway totaling 1,200 square feet, to remove 89 lineal feet of existing bulkhead, and to construct 570 square feet of sandy beach.” The City’s peer reviewer ESA, recommended approval with conditions of the applicant’s design (Exhibit 2).

5. SEPA Review:

The proposal is categorically exempt from SEPA review per WAC 197-11-800(6)(e).

6. Public Noticing and Comments:

There is no public hearing requirement for a critical areas determination (an administrative action) per MICC 19.15.010(E) and 19.15.020(F)(1). On October 24 2016, City staff sent a Public Notice of Application to all property owners within 300 feet of the subject property and placed the Public Notice of Application in the City Weekly Permit Bulletin (Exhibit 6). Additionally, the site was posted with a public notice sign, in a location that is visible to the public right-of-way, on October 24 2016, as required by MICC 19.15.020(E)(4)(a). A public comment period ran from October 24, 2016 through 5:00 P.M. on November 7, 2016. The City received no public comment letters.

7. Watercourse Designation and Typing.

MICC 19.07.070(A) states watercourses shall be designated as Type 1, Type 2, Type 3 and Restored according to the following criteria:

1. Type 1 Watercourse. Watercourses or reaches of watercourses used by fish, or are downstream of areas used by fish.
2. Type 2 Watercourse. Watercourses or reaches of watercourses with year-round flow, not used by fish.
3. Type 3 Watercourse. Watercourses or reaches of watercourses with intermittent or seasonal flow and not used by fish.
4. Restored or Watercourse. Any Type 1, 2 or 3 watercourses created from the opening of previously piped, channelized or culverted watercourses.

Staff Analysis:

The applicant provided a critical areas study (Exhibit 1), which states, “all watercourses observed within the project area were located in the field and are depicted on the attached maps 9Appendix D),” which can be found in Exhibit 1. In addition, the study states “the storm pipe is classified as a piped watercourse and requires a 25-foot protective buffer.” This is consistent with the City’s GIS mapping system which designates this watercourse as a piped watercourse. The City’s peer reviewer, ESA, confirmed the watercourse status (Exhibit 9).

8. Watercourse Buffer Widths.

Standard watercourse buffer widths shall be as follows (MICC 19.07.070(B)(1):

Watercourse Type	Standard (Base) Buffer Width (feet)	Minimum Buffer Width with Enhancement (feet)
Type 1	75	37
Type 2	50	25
Type 3	35	25
Restored or Piped	25	Determined by the code official

Staff Analysis:

As stated above, the City's mapping resources, the applicant's critical areas study (Exhibit 1), and the City's peer review (Exhibit 9), identify the existing watercourse as a piped watercourse. Piped watercourses are subject to a 25-foot regulated buffer that may be reduced to a minimum buffer width determined by the code official through an approved critical areas determination.

9. Reduction of Watercourse Buffer Widths.

The code official may allow the standard buffer width to be reduced a minimum width determined by the code official in accordance with an approved critical area study when he/she determines that a smaller area is adequate to protect the watercourse, the impacts will be mitigated by using combinations of the below mitigation options, and the proposal will result in no net loss of watercourse and buffer functions. However, in no case shall a reduced buffer contain a steep slope (MICC 19.07.070(B)(2)(a)).

Staff Analysis:

The applicant is requesting a reduced buffer width from the standard 25 feet to 0 feet for the piped watercourse and is proposing mitigation to support the reduce watercourse buffer. Mercer Island City Code (MICC) 19.07.070(B)(1) states that the standard buffer width for a piped watercourse is 25 feet. Per MICC 19.07.070(B)(1), the minimum buffer width with enhancement for a piped watercourse is determined by the code official.

10. Reduction of Buffer Width Mitigation Options.

MICC 19.07.070(B)(2)(b) states the code official may consider the following mitigation options:

- i. Permanent removal of impervious surfaces and replacement with native vegetation;
- ii. Installation of biofiltration/infiltration mechanisms such as bioswales, created and/or enhanced wetlands, or ponds supplemental to existing storm drainage and water quality requirements;
- iii. Removal of noxious weeds, replanting with native vegetation and five-year monitoring;**
- iv. Habitat enhancement within the watercourse such as log structure placement, bioengineered bank stabilization, culvert removal, improved salmonid passage and/or creation of side channel or backwater areas;
- v. Use of best management practices (e.g., oil/water separators) for storm water quality control exceeding standard requirements;
- vi. Installation of pervious material for driveway or road construction;**
- vii. Use of "green" roofs in accordance with the standards of the LEED Green Building Rating System;**
- viii. Restoration of off-site area if no on-site area is possible;
- ix. Removal of sources of toxic material that predate the applicant's ownership; and
- x. Opening of previously channelized and culverted watercourses on-site or off-site.

Staff Analysis:

The applicant has proposed a combination of the mitigation options described in MICC 19.07.070(B)(2)(b)(i), (vi), and (vii). The proposed mitigation is illustrated in Exhibit 1, under Appendix D Critical Areas Study and Mitigation Plan Maps and described in greater detail in the rest of the Critical Area Study and Mitigation Plan. The applicant has proposed 1,081 square feet of green roof, 1,200 square feet of pervious driveway, 89 linear feet of bulkhead removal, 570 square feet of new sand beach, and 1,898 square feet of shoreline planting. As approved with conditions, the planting plan will be provided at the time of building permit application for the new single-family residence.

The City's peer review consultant (ESA) recommended approval of the proposed mitigation plan, and of a buffer reduction from 25 feet to 5 feet, subject to conditions of approval (Exhibit 2).

13. Maintenance and Monitoring.

Landscape maintenance and monitoring may be required for up to five years from the date of project completion if the code official determines such condition is necessary to ensure mitigation success and critical area protection. Where monitoring reveals a significant variance from predicted impacts or a failure of protection measures, the applicant shall be responsible for appropriate corrective action, which may be subject to further monitoring (MICC 19.07.040(J)).

Staff Analysis:

As approved with conditions, a five-year maintenance bond or assignment of funds, and maintenance and monitoring of mitigation is required.

14. Wetlands.

MICC 19.07.080 (A) states that all property meeting the definition of a wetland in the Wetland Manual is designated as a wetland.

Staff Analysis:

Following a site visit on November 23, 2016 (refer to Exhibit 13 for the site visit photos), the City requested (Exhibits 8 and 9) that the applicant provide additional testing to confirm that there is not a wetland on-site. The applicant confirmed that there is no wetland on-site (Exhibit 1). Staff finds that this code section does not apply, as there is no wetland present at the subject site.

15. Wildlife Habitat Conservation Areas.

Bald eagles are the only endangered or threatened non-aquatic wildlife species known to inhabit Mercer Island and the city designates those areas used by these species for nesting, breeding, feeding and survival as wildlife habitat conservation areas (MICC 19.07.090).

Staff Analysis:

Bald Eagles are currently de-listed from the threatened species list, however they are still protected under the Bald and Golden Eagle Protection Act. The applicant contacted Mark Miller at U.S. Fish and Wildlife, and was informed that no permit is required for the project. Refer to Exhibit 1, page 7 and Appendix A for more details.

16. Permit Expiration:

MICC 19.15.020(K) states “Except for building permits or unless otherwise conditioned in the approval process, permits shall expire one year from the date of notice of decision if the activity approved by the permit is not exercised. Responsibility for knowledge of the expiration date shall be with the applicant.”

Staff Analysis:

Staff finds that this requirement shall carry with the proposal, and is appropriate as a condition of approval.

II. CONCLUSIONS OF LAW

Based on the above Findings of Facts, the following Conclusions of Law have been made:

1. The subject property contains a piped watercourse and associated buffer.
2. The subject property does not contain a wetland or wetland buffer.
3. As specified in MICC 19.07.070(B)(1), the minimum buffer width may be reduced by the code official subject to approval of proposed mitigation. The proposed mitigation is consistent with MICC 19.07.070(B)(2)(b)(iii), MICC 19.07.070(B)(2)(b)(vi), and MICC 19.07.070(B)(2)(b)(vii) and will mitigate any potential impacts from the buffer reduction.

4. A critical areas study and proposed mitigation plan was submitted (Exhibit 1), and following peer review (Exhibits 2 and 9), the city has confirmed that impacts will be mitigated as required by MICC 19.07.070(B)(2)(a). In particular, the city's peer reviewer notes that: *"...while the approach will not result in direct enhancement to the piped stream, we believe that the proposed bulkhead removal and beach restoration along the Lake Washington shoreline will provide a similar functional benefit compared to daylighting the downstream-most portion of the piped stream. In either case, the primary functional improvement would be to habitat available for juvenile salmon and other wildlife using the lake shoreline (Exhibit 2)."*
5. As approved with conditions, and following implementation of the proposed mitigation plan, a reduced setback of 5 feet is adequate to protect the watercourse.
6. Pursuant to MICC 19.07.070(B), the code official may allow the standard buffer to be reduced to a minimum buffer width determined by the code official.
 - a. The buffer is applied from the edge of the piped watercourse (MICC 19.16.010).
 - b. The code does not authorize the code official to authorize the proposed improvements (e.g. auto court, rockery, etc.) above or on top of the piped watercourse.
 - c. A buffer reduction from 25 to 0 feet would result in no protection of the piped watercourse and would eliminate any opportunity to daylight the watercourse.
 - d. The code official concludes that a minimum buffer of 5 feet west from the piped watercourse should be authorized, subject to the mitigation proposed by the applicant.
7. A financial guarantee (e.g. bond, cash deposit, or assignment of funds) shall be required for critical area mitigation prior to the issuance of any permit for clearing, grading, or building.
8. As shown in Exhibit 1 and Exhibit 3, no portion of the reduced watercourse buffer is on a steep slope.
9. The proposal will result in no net loss of watercourse and buffer functions.

III. DECISION

Based upon the above noted Findings of Fact and Conclusions of Law, a reduction in the width of the required west piped watercourse buffer is APPROVED with conditions, reducing the buffer from 25 feet to 5 feet, as shown in Exhibits 1 and 3. This decision is final, unless appealed in writing consistent with adopted appeal procedures.

IV. CONDITIONS OF APPROVAL

The following conditions shall be binding on the "Applicant," which shall include owner or owners of the property, heirs, assigns, and successors.

1. The proposed buffer reduction and subsequent site development, shall be completed in substantial conformance with the proposed mitigation plans (Exhibits 1 and 3).
2. The applicant shall complete a King County Critical Area Bond Quantity Worksheet and submit to the Code Official for review and approval. To view this worksheet please visit: <http://www.kingcounty.gov/~media/depts/permitting-environmental-review/dper/documents/forms/lis-wks-sensareaBQ-pdf.ashx?la=en>
3. The applicant shall post a financial surety for completion of the proposed mitigation, consistent with MICC 19.01.060.
4. The applicant shall submit a revised mitigation plan including a planting plan, monitoring protocols and performance measurements, consistent with the mitigation described in Exhibits 1 and 3, prior to building permit issuance.
5. Upon completion of the mitigation work, a letter written by a qualified professional detailing compliance with the approved mitigation plan shall be submitted to the City of Mercer Island Development Services Group. The compliance letter shall be accompanied by a set of as-built drawings depicting type and location of mitigation plantings.

6. A maintenance and monitoring memo or report by a qualified professional shall be submitted to the City of Mercer Island Development Services Group annually for a period of five years. Plant survival rates are to meet or exceed those set out in Exhibit 1.
7. This permit approval shall expire one year from the date of notice of decision if the activity approved by the permit is not exercised.
8. The applicant shall obtain all required permits for construction.
9. The applicant shall install and have inspected full temporary erosion and sediment control measures prior to construction.
10. The applicant shall implement the following for the final Mitigation Plan/Landscaping Plan:
 - a. The areas established as sandy beaches shall include analysis of the slope that will be created, with assurance that the slope is as close to 7:1, no steeper than 4:1 slope.
 - b. Plans for bulkhead removal and shoreline restoration shall include specifications on construction BMP's, materials, and placement intended to minimize any short-term impact to Lake Washington and maximize the long-term success of the enhancement.
 - c. The applicant shall provide evidence that all necessary permits and approvals have been received from the U.S. Army Corps of Engineers and the Washington Department of Fish and Wildlife, including seasonal limits for in-water work to protect fish.
 - d. Emergent aquatic plantings intended to stabilize the shoreline from wave erosion shall be included in the design for the established sandy beach areas. Appropriate native shrub and tree plantings (potentially including willow and dogwood livestakes and/or fascines) and large wood (logs) should be considered for use in the rockery/large stone placement design.
 - e. The final Mitigation Plan/Landscaping Plan shall specify plant species, quantities, spacing, and planting details for the shoreline planting area and the bulkhead removal/shoreline restoration areas.
 - f. The final Mitigation Plan/Landscaping Plan shall include specifications for invasive species removal (English ivy currently growing along the shoreline, including over the bulkhead, and other invasive) during initial and final installation.
 - g. The final Mitigation Plan/Landscaping Plan shall include performance standards for the bulkhead removal/shoreline restoration area (as well as the shoreline planting area), including a 100% survival standard for year one, and percent cover standards for native plants (and for control of invasive species) in subsequent years. Annual assessment of the beach area extent should be included as a performance standard, with potential adaptive management strategies listed if monitoring shows that the new sand beach areas are eroding.
 - h. The final Mitigation Plan / Landscaping Plan shall include specifications for maintenance and monitoring through a five-year period, assuring that performance standards are achieved.

Approved this 24th day of April, 2017.



**Lauren Anderson
Assistant Planner
Development Services Group
City of Mercer Island**

Parties of record have the right to appeal the decision on this action when it is issued. If at that time you desire to file an appeal, you must submit the appropriate form, available from the Development Services Group, and file it with the City Clerk within fourteen (14) days from the date this decision is signed. 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