

BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

In Re The Appeal of:

HERZL-NER TAMID CONSERVATIVE  
CONGRETATION,

Appellant,

v.

CITY OF MERCER ISLAND, a Washington  
State municipality

Respondent.

Case No. APL25-003

CONCERNED NEIGHBORS' PUBLIC  
COMMENTS FOR HERZL'S SEPA  
APPEAL OF THE REVISED MDNS

Hearing Date: July 9, 2025

TO: HEARING EXAMINER GALT

AND TO: JOSH FRIEDMANN, APPELLANT COUNSEL OF RECORD FOR HERZL

AND TO: EILEEN KEIFFER, COUNSEL FOR CITY OF MERCER ISLAND

**I. INTRODUCTION**

On July 1, 2025, the Hearing Examiner issued an email that changed the procedure in the Combined SEPA Appeal and Open Record Hearing for the CUP. Rather than one concurrent Appeal/Open Record Hearing, they will be bifurcated as Concerned Neighbors requested in its Motions, but the SEPA appeal will go first which Concerned Neighbors thinks

1 is backwards because the MDNS depends on the Hearing Examiner's granting of the  
2 underlying CUP.

3 As noted below, although Concerned Neighbors agrees with the revised MDNS,  
4 Concerned Neighbors thinks that it needs further specificity that will be binding on the City  
5 and Herzl upon remand, and will need a traffic light or priority signal for the left-hand turn  
6 lane.  
7

8 **II. EVIDENCE RELIED UPON**  
9

10 Concerned Neighbors relies upon Exhibit A to Herzl's Appeal for Modification of the  
11 MDNS issued by the City of Mercer Island on April 7, 2025 and attached hereto as Exhibit 1.  
12

13 **III. STANDING AND OPPORTUNITY TO SUBMIT PUBLIC COMMENTS**  
14 **IN SEPA APPEAL**

15 The City and Herzl object to Concerned Neighbors' Motion to Intervene in this  
16 Appeal. Now that Concerned Neighbors has received and reviewed the City of Mercer  
17 Island's Staff Report on SEPA Appeal, Concerned Neighbors agrees formal intervention is not  
18 necessary. Concerned Neighbors never intended to offer testimony or participate in the  
19 questioning of witnesses but sought intervention simply to receive documents and filings in  
20 this case in real time.  
21

22 Concerned Neighbors believe that the unusual situation below in which an  
23  
24  
25

1 everchanging CUP and everchanging SEPA DNS/MDNS were combined confused the  
2 neighbors who submitted public comments. Virtually every public comment submitted from a  
3 neighbor raised the issue of the intolerable traffic congestion at this critical intersection and  
4 arterial, so Concerned Neighbors believe that they should be granted permission to submit  
5 these public comments on the SEPA Appeal due to the unusual process below. Concerned  
6 Neighbors also believes the CUP should precede the MDNS.

7 While Concerned Neighbors agrees with the City that a left-turn lane will be critical  
8 for the high volume of drop-offs and pick-ups at the proposed school and office building,  
9 Concerned Neighbors doesn't feel that the MDNS as issued by the City is specific enough.  
10 Concerned Neighbors' concern is that the MDNS is upheld by the Hearing Examiner and is  
11 remanded, at which point the Community Planning Department and Herzl enter into a  
12 sweetheart deal that waters down the MDNS (not unlike the CUP process below).  
13

14 Therefore, Concerned Neighbors requests the Hearing Examiner order as follows in  
15 this Appeal:

16 1) The MDNS include a schematic and/or drawing that specifically identifies the  
17 width, length and location of the left-turn lane from East Mercer Way southbound onto  
18 Frontage Road, and the design is binding upon the parties upon remand.  
19

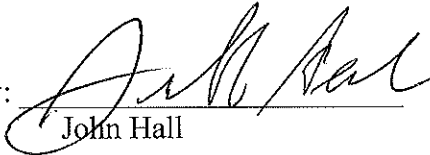
20 2) That the left-turn lane includes a traffic light or priority signal. Otherwise, due  
21 to the very heavy volume of traffic on East Mercer Way, both in the morning and evening, due  
22 to Islanders traveling northbound to access I-90 Eastbound and Westbound, as well as nearly  
23  
24  
25

1 1,000 students being dropped off or picked up at the French American School and Jewish  
2 Community Center which then exit and turn left northbound onto East Mercer Way back to I-  
3 90, the cars waiting to turn left will be backed up so far they will block the intersection at East  
4 Mercer Way and 36<sup>th</sup> and the left-turn lane onto I-90 Eastbound, and anxious parents late for  
5 school will make dangerous left hand turns against heavy traffic.  
6

7 DATED, this 1<sup>st</sup> day of July 2025.  
8

9 **CONCERNED NEIGHBORS FOR THE PROTECTION OF THE**  
10 **NEIGHBORHOOD**

11 By:   
12 \_\_\_\_\_  
13 Matthew Goldbach

14 By:   
15 \_\_\_\_\_  
16 John Hall

# Exhibit 1

## EXHIBIT A TO APPEAL FOR MODIFICATION OF MDNS CONDITION TEXT

completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

<input checked="" type="checkbox"/>	This MDNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the MDNS.
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Responsible Official: Ryan Harriman, Planning Manager  
ryan.harriman@mercerisland.gov | (206) 275-7717

**Issued Date: April 7, 2025**      **Signature: /s/ Ryan Harriman, Planning Manager**

### **Findings:**

1. The City's transportation consultant, KPG Psomas (KPG), reviewed the Traffic Impact Analysis with the associated Transportation Concurrency Certificate application (TCC24-004) and identified aspects of the project which would likely have significant impacts without proper mitigation. The City has incorporated the comments from KPG's review letters into the SEPA threshold determination as required mitigation measures to ensure that these issues are addressed by the applicant.

### **Mitigation Measures:**

Pursuant to the provisions of RCW 43.21C.060, WAC 197-11-350, and the above Findings, the SEPA Lead Agency requires the following mitigation measures:

1. Provide a left turn lane from southbound East Mercer Way to the Frontage Road serving the site. All lane widths (left and through) shall comply with American Association of State Highway and Transportation Officials ("AASHTO") and Washington State Department of Transportation ("WSDOT") standards. The turn lane length shall be designed to accommodate left turn demand during the AM and PM peak hour and site peak if it does not coincide with the AM and PM peak hour.
2. The addition of the southbound left turn lane may reduce the length of adjacent northbound left turn lane at the SE 36th Street/East Mercer Way intersection. Verify with a traffic operations analysis that, with the addition of the southbound left turn lane to the Frontage Road, the northbound left turn lane at the SE 36th Street/East Mercer Way intersection will have sufficient storage length to accommodate vehicles during the AM and PM peak hours.
3. Confirm adequacy of curb radii for right turning vehicles exiting from the Frontage Road onto northbound East Mercer Way based on lane width designed for East Mercer Way if lane width is narrower than existing condition. Modify curb radii if warranted.
4. The Transportation Impact Analysis states that the school bus unloading/loading will occur at the east end of the school. The site plan and circulation plan do not show the location of the bus loading zone or walkways along the east side of the building for students to access the bus loading zone. Revise the site plan and circulation plan to show the bus loading zone and how students will safely access the bus loading zone. Parent drop-off and pick-up traffic will also use the roadway east of the school. The Transportation Impact Analysis should describe how the school buses will safely interact with parent drop-off and pick-up queuing and traffic that is using the same roadway.

### **APPEAL INFORMATION**

## EXHIBIT A TO APPEAL FOR MODIFICATION OF MDNS CONDITION TEXT

This decision to issue a Mitigated Determination of Non-significance (MDNS) rather than to require an EIS may be appealed pursuant to Chapter 19.21 of the Mercer Island Unified Land Development Code, Environmental procedures.



Any party of record may appeal this determination to the City Clerk at 9611 SE 36<sup>th</sup> Street, Mercer Island, WA 98040 no later than **5 pm on April 21, 2025** by filing a timely and complete appeal application and paying the appeal fee. You should be prepared to make specific factual objections. Contact the City Clerk to read or ask about the procedures for SEPA appeals. 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.