Hearing Examiner Galt

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, CONCERNED NEIGHBORS FOR THE PROTECTION OF THE NEIGHBORHOOD, Intervenors.	Case No. APL25-003 MOTIONS BY CONCERNED NEIGHBORS FOR THE PROTECTION OF THE NEIGHBORHOOD, INTERVENORS 1) To Intervene 2) Dismiss Appeal of Herzl Ner Tamid Conservative Congregation For Lack Of Subject Matter Jurisdiction; and 3) Dismiss the Appeal of Herzl Ner Tamid Conservative Congregation For Premature SEPA Appeal Of Conditional Use Permit (CUP).

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. SUMMARY OF ARGUMENT/BACKGROUND OF APPEAL/REZONE AND CONDITIONAL USE PERMIT

Herzl Ner Tamid (Herzl) comprises three parcels. Attached in Exhibit 1 is a map of this part of Mercer Island.

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Two Herzl lots to the east are zoned "residential", and one parcel to the west is zoned B. There are only three B zoned properties on Mercer Island, effectively two in the Town Center. The B Zone contains regulatory limits that are closer to the Commercial Office Zone than to the Residential Zone.

The B Zone did not allow schools as a use. Upon the application of Herzl, the Council rezoned the B Zone to allow schools as a use but without any additional regulatory limits as suggested by the City.

However, the permit application filed by Herzl is for a three-story mixed-use office/ elementary school building. Due to the relatively small size of the B Zone property, Herzl proposes to use a Conditional Use Permit (CUP) on its adjacent Residentially Zoned property or properties for the B Zone parking, playground and utilities. This has never been allowed on Mercer Island before.

The City originally issued a Determination of Non-Significance (DNS). Concerned Neighbors for the Protection of the Neighborhood (Concerned Neighbors) objected. Attached in Exhibit 2 is a comprehensive email dated May 21, 2024 forwarded to the City at this time. Attached in Exhibit 3 is one of the many emails dated October 22, 2024 Concerned Neighbors sent regarding the illegal parking along East Mercer Way due to the overflow activities from the several Conditional Use Permits and schools in this area that will be exacerbated by the proposed B Zone development.

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The City then withdrew its DNS and issued a Mitigated Decision requiring a left-turn from East Mercer Way into a lane on the Herzl residential property for the many cars that would be dropping off and picking up students to prevent them from parking along East Mercer Way.

A Study Session was then scheduled before the Mercer Island Design Commission on June 4, 2025, a precursor to a formal public hearing. However, on June 3, 2025, the Council indicated its intent to "sunset" the Design Commission pursuant to RCW 36.70A.630 and move Design Commission review to the Hearing Examiner. Herzl dismissed its Design Commission Study Session, the City deleted the agenda packet from the Design Commission website, and Herzl filed an appeal to the Hearing Examiner.

There are four key legal issues with this application and appeal that are reflected in the Hearing Examiner's April 23, 2025 letter attached in Exhibit 4.

1) Although the synagogue and parking lot on Herzl's residential properties require a CUP, there is no proof of a CUP. The City apparently claims that minutes from 1979 show the Planning Commission recommendation against a CUP but the Council ultimately voting to approve a CUP, but no CUP exists or has been produced let alone the conditions in the CUP. Attached in Exhibit 5 is a timeline in this matter in 1979. So the first step in this matter is for Herzl to apply for and receive a CUP for its residential properties that would allow the Residentially Zoned property to contain a synagogue and parking lot, and to transfer its parking, playground and utilities to those Residentially Zoned properties.

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That CUP **originates** in a Public Hearing before the Hearing Examiner, not in an appeal. MICC 19.15.030(D) Table A.

2) There is no "CUP within a CUP" recommended by the City or before the Hearing Examiner to allow the B Zone property to transfer its parking, playground and utilities onto Herzl's residentially zoned property, and the Mercer Island City Code ((MICC) would suggest it is illegal (discussed further herein).

The second step in this process – after Herzl applies for and obtains **from the Hearing Examiner** a CUP for its residentially zoned properties to allow the synagogue and parking lot, is for a public hearing originating before the Hearing Examiner at which point the CUP to allow the B Zoned property to transfer its parking, playground and utilities to the residentially zoned properties is subject to objections and an appeal by Concerned Neighbors. The current process and appeal does not allow Concerned Neighbors to raise legal objections to the CUP, which apparently the City has informally approved or granted but with this one mitigation.

3) The current "Appeal" by Herzl is an appeal of part of a CUP except there is no CUP, and the CUP process originates in a Public Hearing before the Hearing Examiner pursuant to MICC 19.15.030 Table A. The Hearing Examiner cannot hear an "appeal" of a CUP or part of a CUP in this matter. Herzl's appeal is premature, and it will be timely when the entire CUP is brought before the Hearing Examiner in a Public Hearing.

4) SEPA requires one single appeal that must be consolidated with any appeal that

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is filed on the proposal or action. That appeal will be the CUP within a CUP that will originate before the Hearing Examiner, not this piecemeal appeal that does not allow Concerned Neighbors the opportunity to appeal or to raise objections to the underlying CUP.

II. RELIEF REQUESTED

The Concerned Neighbors agree with the City's requirement for a waiting lane on Herzl's residentially zoned property. Ironically, it was Herzl's claims that its parking minimums be reduced because most students would be dropped off and picked up that necessitated the waiting lane.

Concerned Neighbors agree with Hearing Examiner's legal analysis in his April 23, 2025 letter, and request the following relief:

1) That Concerned Neighbors be allowed to intervene as a party in this matter. (Standing is addressed below).

2) Herzl's appeal be dismissed as the Hearing Examiner does not have subject matter jurisdiction under the Mercer Island City Code to hear an appeal of a CUP when a CUP originates in a Public Hearing before the Hearing Examiner.

3) Herzl's appeal be dismissed under SEPA as it is a piecemeal appeal when a SEPA appeal must be consolidated with any appeal that is filed under the proposed action. In this matter, since the applicant has not yet sought a Conditional Use Permit before the Hearing Examiner as part of this development, this appeal is premature and does not allow Concerned Neighbors the opportunity to raise their legal objections to the underlying CUP which is a

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predicate for the waiting lane.

III. STANDING OF CONCERNED NEIGHBORS FOR THE PROTECTION OF THE NEIGHBORHOOD

Concerned Neighbors represents the Mercerwood neighborhood that lies to the south of Herzl Ner Tamid and is represented by Matt Goldbach and John Hall. The neighborhood of Mercerwood is the neighborhood south of the Temple Herzl Ner Tamid and directly south of the Jewish Community Center.

Mercerwood is one of the less wealthy neighborhoods on Mercer Island, and not surprisingly the location of many of the intensive Conditional Use Permits granted by the City. Attached are two of the many emails submitted to the City making Concerned Neighbors a Party of Record. This proposed development will impact Mercerwood's access, traffic congestion, parking, and noise in a residential neighborhood.

The three main Conditional Use Permits in this small section of Mercer Island include:

1) The Jewish Community Center (The JCC). The JCC is directly to the north of Mercerwood. Since its inception, the JCC has increased its membership, student body (preschool through kindergarten), and intensity of use five hundred percent (500%) without the City ever revisiting the CUP.

2) The French American School (The FAS). The French American School leases property from the JCC. Its intensity of use is now approximately 435 students which is significantly greater than the City originally allowed in the FAS CUP, but the City refuses to

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revisit the CUP. The French American School CUP is predicated on FAS leasing parking from Herzl, and this proposed CUP by Herzl Ner Tamid will render the FAS CUP non-conforming.

3) Temple Herzl Ner Tamid. Herzl comprises the two residential and one B Zone property discussed above, except there is no existing CUP for the synagogue and parking on the residential properties and any conditions of a CUP are unknown.

Concerned Neighbors has been involved in litigation of the intensity of use for the local Conditional Use Permits for many years.

The most recent litigation was the Council's 2018 adoption of a Comprehensive Plan Amendment to create a Community Facilities Zone (CFZ), but without concurrent development regulations, *Owners and Neighbors, et al vs. City of Mercer Island and Stroum Jewish Community Center,* GMBH No. *19-3-00030 (2021).* The CFZ would have allowed greater regulatory limits for a Conditional Use Permit than the surrounding residential zone. Concerned Neighbors appealed to the Growth Management Hearings Board which agreed with Concerned Neighbors that the Council improperly adopted a Comprehensive Plan Amendment creating the CFZ without concurrent development regulations. Not surprisingly, upon remand, with directions to adopt the concurrent development regulations, the regulations were so abusive the citizens revolted and the Council repealed the CFZ.

Concerned Neighbors spent approximately $42,000 in attorney fees in the litigation before the Growth Management Hearing Board. The City all told spent close to $250,000, including public meetings. The JCC spent nothing: Although it intervened, it never

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participated. Concerned Neighbors anticipate it will have to hire legal counsel in this matter but is waiting to see the proposed CUP first.

Unfortunately, the City has required Concerned Neighbors to file serial Public Records Act requests to obtain the documents and/or information on the ever-changing application for a CUP in this matter. Therefore, Concerned Neighbors requests that it be recognized as an Intervenor in this matter subject to service of all documents on Concerned Neighbors' representatives, Matthew Goldbach and John Hall whose contact information is as follows:

Matthew Goldbach
9980 SE 40th Street
Mercer Island, WA 98040
Tel: (954) 806-2489
Email: blkship@yahoo.com

John Hall
9970 SE 40th Street
Mercer Island, WA 98040
Tel: (206) 914-5599
Email: velooceella@gmail.com

IV. THIS SEPA APPEAL IS NOT COMPLETE OR RIPE AND MUST BE CONSOLIDATED WITH ANY APPEAL THAT IS FILED UNDER THE PROPOSED ACTION AND CONFORM WITH MICC 19.15.130B AND MICC 19.21.200B.

As the Hearing Examiner correctly notes, a SEPA Appeal must be a single appeal and complete, and mitigation measures and conditions that are required as part of the Determination of Non-Significance appealed to the Hearing Examiner. However, in this matter, the City's proposed mitigation is actually part of the CUP which is the central

document that must originate before the Hearing Examiner and allow all parties the opportunity to contest or agree with the City's recommendation, not just the City's mitigation measures, but the approval of the CUP itself. Without an approved CUP, litigating the City's proposed mitigation for a waiting lane is premature.

V. OBJECTIONS TO CUP CONCERNED NEIGHBORS WILL RAISE AT THE PUBLIC HEARING BEFORE THE HEARING EXAMINER

As noted above, Concerned Neighbors has been involved in this rezone and proposed development/CUP from the very beginning, and has consistently raised their objections, although the City refuses to treat Concerned Citizens or its representatives as parties of record. Although Concerned Neighbors does not oppose the City's mitigation for an off-street lane on Herzl property in order to serve as a holding area for cars dropping off and picking up students (which was only implemented based on Concerned Neighbors' submissions to the Determination of Non Significance), Concerned Neighbors does not believe that the necessary underlying CUP will be appropriate or legal under the Mercer Island City Code MICC 19.06.110(2) for the following reasons:

1) Concerned Neighbors incorporates the objections it raised for traffic and parking in their email attached in Exhibit 2. The irony is the applicant, Herzl, claimed that many of the drop-offs and pickups of students would not park and therefore less onsite parking was needed to be reserved on the Herzl property. As a result and based on the many emails with illegal overflow parking submitted by Concerned Neighbors, the City is now requiring a holding area on Herzl property. However, this parking area does not alleviate the

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traffic congestion on this systemic intersection which is addressed in detail in Concerned Neighbors' prior emails.

2) There is no original CUP for Herzl's residential properties to allow a synagogue and parking lot in the residential zone. The City and applicant cannot produce a CUP and no one has any idea what conditions would exist in this unknown CUP. Therefore, Herzl must first apply for a CUP for the underlying property, including synagogue and parking lot, and that would originate in a Public Hearing before the Hearing Examiner.

3) According to the Design Commission Study Session's agenda packet (now deleted):

> **4) BACKGROUND**
>
> The Applicant is proposing to construct a preschool and K-8 school with rental office space on parcel number 0824059045. This parcel is within the Business (BI zoning designation, which permits outright both public and private schools accredited or approved by the state for compulsory school attendance and office uses. The associated pedestrian pathways, utilities, fencing, landscaping, trash enclosure, and parking would be located on parcel numbers 2107000010 and 1515600010 which are split zoned Business (B) and Single-Family Residential (R-9.6). Pursuant to MICC 19.01.040(G)(2), where a boundary between zones divides a lot into two or more pieces, the entire lot shall be deemed to be.located.in the first zone on the following list in which any part of the lot is located: R-15, R-12. R-9.6, R-8.4, MF-2L, MF-3, MF-2, PI, PBZ, C-O, TC, and B, parcel numbers 2107000010 and 1515600010 are designated R-9.6. The proposed development would be shared between the existing synagogue and the new preschool, K-8 school, and office building. The existing synagogue on parcel number 1515600010 was permitted in December of 1979, without the approval of a conditional use permit, as one was not required at the time. MICC 19.02.010(C)(3) allows places of worship when authorized by the issuance of a conditional use permit.

MICC 19.01.020(G)(2) only applies, "when uncertainty exists as to the boundaries of any zones shown on any zone map...". MICC 19.01.020(G)(2).

There is not any uncertainty as to the zones. In its memo to the Design Commission, the City clearly states that "parcel numbers 2107000010 and 1515600010 are designated R-9.6."

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and "The Applicant is proposing to construct a preschool and K-8 school with rental office space on parcel number 0824059045. This parcel is within the Business (B) zoning designation...". Two parcels are in zone R-96 residential (2107000010 and 1515600010) and the third parcel is located in zone B (0824059045). This is not **ONE** lot but three separate parcels which are touching.

5) A B Zone property or any commercial property cannot use a CUP to transfer the required parking and other amenities to a residential property through a CUP, whether the properties are commonly owned or not. This issue was addressed by the Council. The Council amended the MICC 19.06.110(5) to adopt Section (C) which prohibits a CUP in a residential zone from using an adjacent residential property for CUP related uses if not part of the CUP even if the properties are held in common ownership.

MICC 19.06.110(5)(c)

> 5. *Change after conditional use permit granted.*
>
> c. *Applicability.* A conditional use permit shall be applicable only to the property for which it was granted, as defined by the legal description of the property boundaries submitted with the conditional use permit application ("permitted property"). The use(s) permitted under a conditional use permit shall not extend beyond the permitted property to adjoining property or property added to the permitted property unless the conditionally approved

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use(s) are already allowed on the adjoining or added property or a new conditional use permit is granted for the adjoining or added property.

This land use trick was never contemplated when the Council rezoned the B Zone to allow schools as a use.

6) The City and applicant mistake common ownership for combined parcels. These properties are three distinct separate parcels. Whether they are currently in common ownership is irrelevant unless they are legally joined. As a result, any B Zone use that is allowed to be transferred to the residential properties through a CUP must be by permanent easement in case any of the properties are sold breaking the common ownership.

The City has to inform the FAS that its CUP is now non-conforming due to the loss of off-street parking at Herzl which is part of the FAS CUP. The City cannot continue to grant CUPs or increase the intensity of use of CUPs when the conditions for approval of the CUP no longer exist.

VI. CONCLUSION

For the reasons set forth above, Concerned Neighbors respectfully requests the Hearing Examiner grant the following relief:

1) Allow Concerned Citizens to intervene as a party in this appeal and in any matters below.

2) Herzl's "Appeal" be dismissed for lack of subject matter jurisdiction.

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3) Herzl's "Appeal" be dismissed as premature when it is part of the CUP that has not been subject to a public hearing before the Hearing Examiner.

4) Herzl's appeal be dismissed because a SEPA Appeal must be consolidated with any Appeal that is filed on the proposal and action when the CUP within a CUP has not been approved by the Hearing Examiner.

DATED, this 20th day of June 2025.

CONCERNED NEIGHBORS FOR THE PROTECTION OF THE NEIGHBORHOOD

By: _____
Matthew Goldbach

By: _____
John Hall

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Exhibit 1

Restaurants
Hotels
Things to do
Transit
Parking
Pharmacies
ATMs
Country Village Day School
96th Ave SE
Semaphore Corporation
Northwest Geriatrics
E Mercer Way
I-90
E Channel Bridge
Mercer Boat La
Michael Philips Trail
Frontage Rd
Herzl-Ner Tamid Conservative...
Bright Horizons at Mercer Island
Yellow Wood Academy
Oranjeschool
Mercer Island City Maintenance Department
E Mercer Way
SE 38th St
SE 38th St
SJCC Early Childhood School
SE 39th St
EXHIBIT 9010
SE 40th St
SE 40th St
SE 40th St
96th Ave SE
97th Ave SE
E Mercer Way
SE 41st St
Design
Mercerwood Dr
Mercerwood Dr
96th Ave SE
Layers
Images
Street View
Photo Path
Photo Sphere
Click highlighted areas to see images Learn more

Exhibit 2

EXHIBIT 9010

From: John Michael Hall [mailto:velooce@comcast.net]
Sent: Tuesday, May 21, 2024 12:41 PM
To: molly.mcguire@mercerisland.gov
Cc: jeff.thomas@mercerisland.gov; matt@bitmax.net; velooce@comcast.net
Subject: CUP24-001 & SEP24-003 Herzl-Ner Tamid - Comments from Neighbors

Good afternoon, please find attached the neighbors' response to the Request for a Conditional Use Permit with SEPA Review for the construction of a new, three-story K-8 school with rental offices, shared parking, and associated site improvements. Please make sure our comments are on record.

John Hall
Tel: 206-914-5599

To: Molly McGuire

cc: Jeff Thomas
Matthew Goldbach

Re: CUP24-001 & SEP24-003

Public Comments of Neighbors in Response to the Request for a Conditional Use Permit with SEPA Review for the construction of a new, three-story K-8 school with rental offices, shared parking, and associated site improvements.

1) **Identity of Neighbors.**

John Hall has owned his house located at 9970 SE 40th Street, Mercer Island since 1981. He has been a resident of Mercer Island since 1958. He has lived in the same neighborhood.

Matthew Goldbach has owned his house located at 9980 SE 40th St since 2014. He has been a resident of Mercer Island since 2014.

Furthermore, both Matt Goldbach and John Hall were founding members of Concerned Neighbors for the Protection of the Neighborhood (CNPC), an association of Mercerwood neighbors who were the named Appellants in the litigation before the Growth Management Hearings Board contesting the Community Facilities Zone that was subsequently repealed by the Council.

2) **Identification of Project.**

The applicant's Project Narrative states as follows:

> "The proposed amendment to the existing conditional use permit(s) would permit a private school school to use the existing outdoor play areas and the non-commercial recreational area; and would permit certain non-occupied portions of the school building to project into the residential zone."
>
> "Existing development is noncompliant with current impervious surface limits but legally conforming per 19.01.050.A.7. Added impervious surface will be offset by removed impervious surface so that we retain existing lot coverage and impervious surface areas."
>
> "The project on the adjoining B-zoned lot is a 3-story mixed-use building housing a K-8 private school on the lower levels and rental office space on the upper level and a half."
>
> "Concurrently, a preschool will be developed on the R-9.6 parcels, within the existing synagogue building, which is permitted outright."

The project narrative has that the preschool uses will be considered as part of the transportation/traffic study, but they have failed to include the addition of the preschoolers who would be in the existing synagogue building so the number of school children does not include the additional synagogue building preschool children.

The Applicant is proposing that the B-Zoned property have no on-site parking at all, and that the parking for both the School and Office portion of the building be a shared-use on the existing Herzl parking lot.

3) Neighbors' Understanding of the Permits at Issue.

This process is not very clear. The property owner originally requested to rezone the B zone to add schools as an allowed use. The CPD initially proposed additional regulatory limits for a school, including the location of an onsite playfield, parking limits, and the question of setbacks between the adjacent R-zoned property which shares an internal lot line, but the Council simply added schools as a use to the B zone.

Now, the applicant has filed an application for a three story building without any onsite parking to include a K-8 school and unaffiliated 12,300 square feet of office space, and no onsite playfield, that must go before the Design Commission, and that building permit depends on a SEPA review and modification of the CUP of the Herzl property to amend its available parking use to "share" parking with the new B-zoned property that will displace the required parking for the French American School under its conditional use permit rendering the French American School CUP in non-compliance.

It is hard for us to not feel this is a bait and switch in which the council was led to believe adding schools as an allowed use in the B-zone would result in a standard one-story school with onsite parking and playfield that now results instead in an application for a three-storied mixed-use building with no on-site parking or playfield.

4) Prior Precedent.

We are aware of one prior precedent in which the applicant sought to have no onsite parking, and that was the Mercer Island Center for the Arts, a performing arts center building in Mercerdale Park.

Attached in Exhibit 1 is the Determination of Non-Significance (DNS) with Mitigation and Use of Phased SEPA Determination (WAC 197-11-060(5)) through the WAC issued by Scott Greenberg on September 11, 2017. MICA, a performing arts center, sought to build a 35,00 sq ft building in Mercerdale Park with no onsite parking and sought to use public parking along 77th and in the Mercerdale neighborhood to meet its estimated parking requirements (which the DSG found the applicant had underestimated.)

Instead, as noted in the Determination of Non-Significance, the Director required the applicant to identify "and reserve" 205 private parking places in the Town Center as part of its conditions.

As noted below, we feel that due to the incredible importance of the East Mercer Way intersection involved in this matter, the high number of schools that are or will be located in this area, the lack of any public parking along East Mercer Way, and the current and future increases in zoning and development in the area that a Determination of Non Significance is inappropriate.

5) **The Unique Features of the Location make a Determination of Non Significance inappropriate and an analysis under SEPA is appropriate.**

The code modifications the application is seeking are extreme and very unusual. Therefore, the applicant carries the burden of proving these code modifications will not affect existing uses and neighbors.

The undersigned and represented neighbors object to a Determination of Non-Significance under SEPA based the following conditions of this location:

A. This area of East Mercer Way has a high volume of traffic, including Islanders using East Mercer Way to go south, Islanders using this intersection to access Gallagher Hill, and access to and from the I-90 eastbound and westbound.

B. This intersection is one of two westbound exits from I-90 to Mercer Island. Therefore, it is critical that this intersection have the capacity to meet its volume to avoid overloading exiting traffic in the Town Center island Crest Way I-90 exit, or backing up traffic onto I-90.

C. This area has a number of inchoate future developments. These include a new City Hall and the return of staff to City Hall; the Council's recent addition of multifamily housing as a use to the Commercial Office zone; the JCC's proposal to rezone its property to Commercial Office to support a substantial increase in square footage and intensity of use.

D. Four different K-8 schools, including the JCC, The French American School, the proposed school on the B-zone property, and a new preschool on the Herzl property. Schools create a high intensity of use and parking and traffic per square foot, and create a significant amount of foot traffic along East Mercer Way.

E. East Mercer Way does not have sidewalks from I-90 to 40th Ave SE. There is no space to park cars along East Mercer Way. If cars are parked along this stretch of East Mercer Way, the children attending the French American School, the JCC School, as well as the proposed school on Parcel B and on the synagogue's property will be forced into the center of the road in order to walk along East Mercer Way, and the sight lines of cars going both north and south along East Mercer Way will be seriously impeded. Therefore, there can be NO parking along East Mercer Way now or in the future.

F. We believe the City must consider ALL current and future uses at this location to make a determination on future traffic and parking impacts, and that should be done through the SEPA process to protect current and future uses.

6) **The Applicant understates the Parking requirements that result in the French American School CUP being out of compliance, and the parking must be permanently reserved by easement.**

The applicant proposes to share the existing parking on the Herzl property with Herzl, rather than providing any onsite parking on the B-zone property as required by code, as well as the parking for the proposed pre-school on the Herzl property without any increase in the number of parking stalls or parking area.

First, we believe the estimated parking needs for both schools and the offices - which often operate on weekends and so are not consistent with a shared parking use - have been underestimated by the applicant.

Second, this parking is a required element of the French American School CUP and each year the FASP must file its lease to park at Herzl to comply with the CUP. Without this parking, the FAS CUP will be out of compliance and the CUP void.

Third, to avoid this situation in the future, the Herzl property allocated to the B-zone for parking must be permanently reserved and run with the land which should be by easement. Herzl must understand that the property reserved for parking for the B-zone, as well for the playfield, will be permanently reserved and non-developable forever.

7) **The Applicant's Transportation Concurrency Application is Flawed and Misrepresents the Total Number of Trips, the Total Use of this Intersection, and Should be Subject to a Full SEPA Analysis.**

Attached is the Applicant's Transportation Concurrency Application and Memo. We believe the application misrepresents the number of trips, and that it is critical that the Planning Department consider the uses both current and future for this intersection as a whole in a formal SEPA process.

According to the application, the proposal includes a private K-8 grade school and 12,300 of gross square feet of general office space. Furthermore, the private school will enroll up to 150 students in pre-K up to grade 8 school levels.

According to the Transportation Concurrency Ordinance, the Land Use categories, the applicant uses "Code 530" which is actually for a high school, although the trips per unit at 0.26 are consistent with a private school (K-8 imprint.) The applicant also estimates that 12,300 square feet of office space will result in 1.15 trips per unit. The applicant's total prior proposed vehicle trips with a net new vehicle trips equal 53.

We and the neighbors simply don't believe this Transportation Concurrency Ordinance passes the smell test. We believe the proper category is "520" for elementary school with 1.37 trips per unit and the 12,300 sq ft of office space will certainly result in more than 14 total proposed vehicle trips.

The other major concern is that this Transportation Concurrency Ordinance should not be reviewed as a "first come, first serve" concurrency analysis. This intersection is one of the most stressed on Mercer Island and serves many existing and future uses and expansion of uses.

For example, the applicant's Transportation Concurrency Ordinance, if incorrect, could result in the City being unable to build a new City Hall and return staff to the office. It has to be remembered that WSDOT controls the ramp metering eastbound onto I-90, that prioritizes the traffic backups on the I-90 and I-405. This intersection serves the exit westbound from I-90 for Islanders living south along East Mercer Way and up Gallagher Hill and for other people coming to Mercer Island. If this traffic is backed up onto I-90, it would cause systemic backups and dangerous situations. Furthermore, it will migrate more traffic to the exit at Island Crest Way which is known as the "big left" and one of the busiest intersections on Mercer Island.

Finally, the JCC has requested its property be rezoned to Commercial Office with an increase in intensity of use. The City has recently amended the Commercial Office zone to include multifamily housing to meet the City's obligation under ESB1220, to meet the City's affordable housing mandate. The applicant believes that both of these will be not possible due to the increase of traffic due to this application and the lack of transit serving this location, and lack of organized school buses.

8) Conclusion.

The neighbors request that the City require a formal SEPA Analsys for both the parking and Transportation concurrency. The shared use agreement will result in the French American School CUP be non-compliant and void that CUP since there is not adequate alternate parking.

The neighbors also believe that the Transportation Concurrency Ordinance is flawed and under-estimates future trips for this critical intersection, and a first come, first serve approach could negatively impact the City's desire to build the City Hall, the JCC's request for a rezone, and the Council's recent addition of multifamily housing in the Commercial Office zone to meet its affordable housing mandates under HB 1220.

Thank you for your consideration of this.

John Hall and Matthew Goldbach

DETERMINATION OF NON-SIGNIFICANCE (DNS) WITH MITIGATION AND USE OF PHASED SEPA DETERMINATION (WAC 197-11-060(5))

Application Nos.:	SEP16-015 and ZTR16-002
Description of proposal:	**This State Environmental Policy Act (SEPA) threshold determination analyzes the environmental impacts associated with two "non-project actions" proposed by the applicant, Mercer Island Center for the Arts (MICA), as part of a phased SEPA review pursuant to WAC 197-11-060(5)(b) & (c)(i).** This SEPA Determination covers the following two non-project elements of the proposed MICA project: 1. A Zoning Code Text Amendment to Mercer Island City Code chapter 19.05, Special Purpose, to allow the uses planned for the performing arts center and to allow the use of off-site parking to meet the proposal's parking demand; and 2. An Agreement to Lease Subject to Certain Conditions Precedent ("agreement to lease") between the City of Mercer Island and MICA for the portion of the Mercerdale Park property where a performing arts center is proposed to be located. The environmental impacts of "project actions" needed for the MICA project, such as a long subdivision, critical area determination and construction permits, are not ready for decision at this time and will be further analyzed after the City Council makes decisions on the zoning code text amendment and agreement to lease.
Proponent:	Lesley Bain (Framework), Architect for MICA
Location of proposal:	Mercerdale Park, 3205 77th Avenue SE, Mercer Island, WA
Lead agency:	City of Mercer Island
Project documents:	***Please follow this file path to access the associated documents for this project:*** https://mieplan.mercergov.org/public/MICA-SEP16-015_ZTR16-002

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

This threshold determination is a phased SEPA decision pursuant to WAC 197-11-060(5)(b) & (c)(i). Phased review assists agencies and the public to focus on issues that are ready for decision and exclude from consideration issues not yet ripe for a SEPA determination. In addition, phased review is appropriate when the sequence is from a non-project document to a document of narrower scope such as a site-specific analysis for subsequent project-level development applications (e.g., long subdivision, critical area determination, building permit).

This threshold determination will be supplemented with site-specific environmental review at the time of a project-level development application, and a new SEPA threshold determination will be issued prior to issuance

of any underlying project-level permits. The site-specific environmental review will address probable environmental impacts from the proposal, including but not limited to issues related to transportation (traffic and parking), surface waters (wetlands and wetland buffers), storm water, plants, aesthetics, light and glare, recreation, and the cumulative impacts of the project in any one or more SEPA checklist categories.

_____ There is no comment period for this DNS.

X This DNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the DNS.

_____ This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date below. Comments must be submitted by _____.

Responsible Official: Scott Greenberg, Director
Development Services Group
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040
Email: scott.greenberg@mercergov.org

Date: September 11, 2017 Signature: _____

APPEAL INFORMATION

There is no administrative (City) appeal of a SEPA threshold determination associated with a City Council legislative action (the proposed zoning code amendment) pursuant to MICC 19.07.120(T)(1). Any appeal must be filed with the State of Washington Central Puget Sound Growth Management Hearings Board. Visit http://www.gmhb.wa.gov/Home_CPSB.aspx for more information.

FINDINGS

1. A series of non-project and project-level proposals are required for the proposed performing arts center to be built in Mercerdale Park. The non-project actions include a zoning code text amendment and an agreement to lease. The project-level actions include multiple land use approvals (e.g., long subdivision and critical area determination), and construction permits.

2. The applicant initially submitted a SEPA checklist and supporting information for the entire MICA project, combining both the non-project and project actions. This submittal was reviewed by City staff and peer reviewers with technical expertise in various subject areas. The peer reviewers requested more detailed project-level information at the end of the first review cycle. The applicant provided some additional information, but in certain topic areas, the more detailed information is contingent on details of the building and project design, which cannot be known until a decision is made by the City Council on the non-project zoning code text amendment.

3. Due to the complexity of this project and the sequence of multiple project and non-project approvals needed, the City is opting to use a phased review approach pursuant to WAC 197-11-060(5). WAC 197-11-776 defines phased review as: "...the coverage of general matters in broader environmental documents, with subsequent narrower documents concentrating solely on the issues specific to the later analysis (WAC 197-11-060(5)). Phased review may be used for a single proposal or EIS (WAC 197-11-060)."

4. Phased review allows for environmental review of the issues and impacts ready for decision and excludes issues that are not yet ready for a decision. In this case, the proposed zoning code text amendment and agreement to lease are ready for review and decision. Being ready for review and decision simply means there is adequate information available to determine the environmental impacts and potential mitigation of those elements of the larger project. Being ready for review and decision does not mean that the City Council is ready to act immediately. The zoning code text amendment and agreement to lease both require additional public process prior to City Council action. Other proposals (such as the land use and construction approvals) are contingent upon the review and approval of the zoning code text amendment and agreement to lease approval, and are not ready for review and decision. City Council decisions on the zoning code text amendment and proposed agreement to lease could result in changes to the site design, building design and/or parking requirements of the project, affecting potential environmental impacts of the project.

5. Additional SEPA review of the physical MICA project, including but not limited to site-specific impacts, cumulative impacts and mitigation, will occur following decisions on the zoning code text amendment and agreement to lease, consistent with WAC 197-11-060(5).

ANALYSIS

1. Earth

    a. *Impacts*: The proposed code amendment and agreement to lease are non-project actions and would not create erosion or have other impacts to the earth. If adopted, the proposed code amendment would enable future project actions that could have environmental impacts. Future project actions will be reviewed for impacts and mitigation related to earth, including but not limited to slope stability, and appropriate SEPA action will be taken.

    b. *Mitigation Measures*: No mitigation measures are needed to reduce or control erosion, or other impacts to the earth.

2. Air

a. *Impacts*: The proposed code amendment and agreement to lease are non-project actions and would not create emissions or have other impacts to air. If adopted, the proposed code amendment would enable future project actions that could have environmental impacts. Future project actions will be reviewed for impacts and mitigation related to emissions from construction and operation of the project, and appropriate SEPA action will be taken.

b. *Mitigation Measures*: No mitigation measures are needed to reduce or control emissions or other impacts to air.

3. Water

a. *Impacts*: The proposed code amendment and agreement to lease are non-project actions and would not increase discharge to water nor create impacts to drainage patterns or to surface, ground, or runoff water. If adopted, the proposed code amendment would enable future project actions that could have environmental impacts. Future project actions will be reviewed for impacts and mitigation related to a storm water management plan (to address storm water collection and runoff), and for impacts and mitigation related to the Category III wetland, and appropriate SEPA action will be taken.

b. *Mitigation Measures:* No mitigation measures are needed to reduce or control impacts to drainage patterns or to surface, ground, or runoff water.

4. Plants

a. *Impacts*: The proposed code amendment and agreement to lease are non-project actions and would not create impacts to trees, plants or vegetation. If adopted, the proposed code amendment would enable future project actions that could have environmental impacts. Future project actions will be reviewed for impacts and mitigation related to plants, trees and vegetation, and appropriate SEPA action will be taken.

b. *Mitigation Measures*: No mitigation measures are needed to reduce or control impacts to trees, plants or vegetation.

5. Animals

a. *Impacts:* The proposed code amendment and agreement to lease are non-project actions and would not create impacts to animals including fish and marine life. If adopted, the proposed code amendment would enable future project actions that could have environmental impacts. Future project actions will be reviewed for impacts and mitigation related to animals, and appropriate SEPA action will be taken.

b. *Mitigation Measures*: No mitigation measures are needed to reduce or control impacts to animals including fish and marine life.

6. Energy and natural resources

a. *Impacts:* The proposed code amendment and agreement to lease are non-project actions and would not create impacts to nor deplete energy or natural resources. If adopted, the proposed code amendment would enable future project actions that could have environmental impacts. Future project actions will be reviewed for impacts and mitigation related to energy and natural resources (including green building), and appropriate SEPA action will be taken.

b. *Mitigation Measures*: No mitigation measures are needed to reduce or control energy impacts or conserve energy and natural resources.

7. Environmental health

    a. *Impacts:* The proposed code amendment and agreement to lease are non-project actions and would not create noise, nor create or be affected by environmental health hazards, including toxic or hazardous substances. If adopted, the proposed code amendment would enable future project actions that could have environmental impacts. Future project actions will be reviewed for impacts and mitigation related to environmental health, and appropriate SEPA action will be taken.

    b. *Mitigation Measures*: No mitigation measures are needed to reduce or control noise or environmental health hazards.

8. Land use and shoreline use

    a. *Impacts*: The proposed code amendment is a non-project action that would allow "public facilities" as an additional use within Mercerdale Park. The proposed list of uses allowed as "public facilities" includes: theatre, lecture hall, classroom, performing studio, visual arts studio, exhibition gallery, gathering and meeting spaces, café and bar, and accessory functions. Adding the proposed use as a permitted use to Mercer Island City Code (MICC) 19.05.010 would not have direct impacts on the environment.

    The proposed agreement to lease is a non-project action that would follow approval of a code amendment allowing the proposed land use (which is not allowed today). If the code amendment is approved, the proposed agreement to lease would then allow public facilities as a permitted use within Mercerdale Park and would not create land use impacts.

    There are also environmentally critical areas in and adjacent to Mercerdale Park (wetland, wetland buffer, and geologic hazard areas). If adopted, the proposed code amendment would enable future project actions that could have environmental impacts. Future project actions will be reviewed for impacts and mitigation related to land use and critical areas, and appropriate SEPA action will be taken.

    b. *Mitigation Measures*: No mitigation measures are needed to ensure the proposal is compatible with existing and projected land uses and plans.

9. Housing

    a. *Impacts*: The proposed code amendment and agreement to lease are non-project actions and would not create impacts to housing. If adopted, the proposed code amendment would have no impact on existing housing nor would it allow any housing in Mercerdale Park. Future project actions would not require additional analysis for housing impacts.

    b. *Mitigation Measures*: No mitigation measures are needed to reduce or control housing impacts.

10. Aesthetics

    a. *Impacts:* The proposed code amendment and agreement to lease are non-project actions and would not create aesthetic impacts. If adopted, the proposed code amendment would enable future project actions that could have environmental impacts. Future project actions will be reviewed for impacts and mitigation related to aesthetics, and appropriate SEPA action will be taken.

    b. *Mitigation Measures*: No mitigation measures are needed to reduce or control aesthetic impacts.

11. Light and glare

    a. *Impacts:* The proposed code amendment and agreement to lease are non-project actions and would not create light and glare impacts. If adopted, the proposed code amendment would enable future project actions that could have environmental impacts. Future project actions will be reviewed for impacts and mitigation related to light and glare, and appropriate SEPA action will be taken.

    b. *Mitigation Measures*: No mitigation measures are needed to reduce or control light and glare impacts.

12. Recreation

    a. *Impacts:* The proposed code amendment and agreement to lease are non-project actions and would not create recreational impacts. If adopted, the proposed code amendment would enable future project actions that could have environmental impacts. Future project actions will be reviewed for impacts and mitigation related to recreation, and appropriate SEPA action will be taken.

    b. *Mitigation Measures*: No mitigation measures are needed to reduce or control impacts on recreation.

13. Historic and Cultural Preservation

    a. *Impacts:* The proposed code amendment and agreement to lease are non-project actions and would not create impacts to historic or cultural resources. If adopted, the proposed code amendment would enable future project actions that could have environmental impacts. Future project actions will be reviewed for impacts and mitigation related to historic and cultural preservation, and appropriate SEPA action will be taken.

    b. *Mitigation Measures*: No mitigation measures are needed to avoid, minimize, or compensate for loss, changes to, and disturbance to historic or cultural resources.

14. Transportation

    a. *Impacts:* The proposed code amendment would create new parking requirements for Public Facilities in Mercerdale Park. It would allow the amount of required parking to be determined through a parking demand study, similar to the allowance in the current code for the Town Center. It would also allow all parking to be provided off-site pursuant to a traffic management plan.

    If shared parking is used, the applicant proposes use of unrecorded written agreements that can be terminated within 90 days. If such off-site parking agreement is terminated, the applicant proposes to locate alternative parking and/or provide shuttle service for parking. Because the parking agreement would not be recorded on title, a new owner may be unaware of the parking agreement, and could choose not to honor the agreement. This could lead to inadequate parking being provided for the proposed public facility. Requiring these parking agreements to be recorded would provide some level of certainty as to the continued existence of the required baseline number of parking stalls for the proposal. Further, extending the termination period to 120 days would give more time to locate additional (replacement) parking, and negotiate and record a new parking agreement.

    While the final configuration, size and design of a specific public facility project in Mercerdale Park is still under consideration, some concerns related to the proposed parking code amendments can be determined today. The primary concern is where staff, visitors and

patrons would park if one or more of the proposed off-site parking agreements is terminated. A related concern is the ability for City staff to adequately monitor compliance with the off-site parking agreements and approved traffic management plan over the duration of the proposed long-term lease period.

If adopted, the proposed code amendment and agreement to lease would enable future project actions that could have environmental impacts. Future project actions will be reviewed for additional impacts and mitigation related to transportation and parking, and appropriate SEPA action will be taken when more project details are known.

b. *Mitigation Measures*: The following mitigation measures are needed to reduce or control transportation impacts related to parking. The applicant shall:

- Complete a Parking Management Plan that includes both construction and operation of the facility.
- Provide for periodic review of the Parking Management Plan (Plan), not less than annually and any time an element of the Plan changes and disrupts availability of required parking.
- Provide annual reporting of the traffic demand management plan to provide program adjustments based on the report.
- MICA shall identify a designated "Parking Coordinator" who is responsible for parking and traffic management and coordination of these issues with the City.
- Enter into written agreement(s) approved by the City for any proposed off-site, off-street parking. Such agreements shall be recorded with King County prior to issuance of any construction permits. Such agreements may be terminated upon not less than one hundred twenty (120) days' notice to the code official, provided that the applicant has agreed to either enter into a replacement parking contract or make alternative parking arrangements, such as a shuttle service; in the case of any replacement and/or alternative parking arrangement, such arrangements must be reviewed and approved by the code official prior to the end of the 120-day notice period.
- Update any private parking agreements as necessary to maintain baseline level of available parking to meet demand with an appropriate level of redundancy; and if parking is disrupted, modify MICA program scheduling until such parking is made available again.
- Provide clear signage at the proposed MICA site to assist with clarity of parking and loading requirements.
- Provide patron education specifically to restrict patron parking in the residential neighborhoods south, east and west of Mercerdale Park.

15. Public Services

a. *Impact*: The proposed code amendment and agreement to lease are non-project actions and would not create impacts to public services. If adopted, the proposed code amendment would enable future project actions that could have environmental impacts. Future project actions will be reviewed for impacts and mitigation related to public services, and appropriate SEPA action will be taken.

b. *Mitigation Measures*: No mitigation measures are needed to reduce or control impacts on public services.

16. Utilities

a. *Impact*: The proposed code amendment and agreement to lease are non-project actions and would not create impacts to utilities. If adopted, the proposed code amendment would enable future project actions that could have environmental impacts. Future project actions will be reviewed for impacts and mitigation related to utilities, and appropriate SEPA action will be taken.

b. *Mitigation Measures*: No mitigation measures are needed to reduce or control impacts on utilities.

ESA

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Seattle, WA 98107
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www.esassoc.com

memorandum

date September 8, 2017

to Robin Proebsting, Project Planner and Scott Greenberg, SEPA Official; City of Mercer Island

from Claire Hoffman, Ecologist; ESA

subject Proposed Mercer Island Center for the Arts (MICA) –SEPA Review

This memorandum documents the State Environmental Policy Act (SEPA) third-party review process conducted by Environmental Science Associates (ESA) on behalf of the City of Mercer Island (City) for the proposed Mercer Island Center for the Arts (MICA) project. The City also retained Perrone Consulting and DKS to review the geotechnical and transportation evaluations, respectively, conducted by the MICA (Applicant). The responsible official at the City will make the SEPA threshold determination for the proposed project (Mercer Island City Code [MICC] 19.07.120). Note that the project may require phased review (WAC 197-11-776). This memorandum also includes ESA's SEPA determination recommendation to the City for the proposed MICA project.

The proposed MICA project would be located at 3205 77th Ave SE (Parcel #1224049068). The proposal includes a building approximately 28,300 square feet with a 300-seat main stage theatre, a 100-seat theatre, a 100-seat recital hall, and educational spaces. Public bathrooms accessible from the exterior and storage space for the Mercer Island Farmers Market would also be provided.

The following is a summary timeline of the review process by ESA, Perrone Consulting and DKS, beginning with the submission of the SEPA Checklist by the Applicant in July 2016.

August 2016

DKS reviewed the Traffic Impact Analysis by TranspoGroup (June 2016).

The City requested public comment on a SEPA Checklist (July 27, 2016) and received a number of comment letters during this initial comment period. Concerns included all elements of the environment, but primary concerns were parking, transportation, loss of park lands, impacts to the wetland and trees, and erosion/slides.

September 2016

ESA reviewed the SEPA Checklist (July 27, 2016) by Framework Cultural Placemaking and attachments. For detail of this review, refer to the Memorandum dated September 20, 2016 to Scott, Project Planner for the City from ESA (Attachment 1).

October 2016

Perrone Consulting reviewed the Earth and subsurface water elements of the SEPA Checklist (July 27, 2016) by Framework Cultural Placemaking as well as the geotechnical design report by HartCrowser (2016).

January 2017

In response to the aforementioned reviews and public comments, the Applicant was asked by the City to submit a revised SEPA Checklist. A revised Checklist was submitted to the City on January 12, 2017, which included additional attachments and responses to public comment. This version was deemed incomplete. MICA made several resubmittal attempts, and its April 4, 2017 submittal was deemed complete.

May 2017

ESA reviewed the January 12, 2017 SEPA Checklist, responses to comments, and attachments. On May 15, 2017 ESA met with the Applicant at the ESA office to discuss ESA's comments on the January SEPA Checklist. At this meeting, ESA asked for a revised SEPA Checklist to clarify wetland impacts and mitigation, tree removal and replacement, stormwater discharge, and improve general organization of the information in the SEPA Checklist.

Perrone Consulting and DKS reviewed the geotechnical and transportation elements, respectively, of the January 12, 2017 SEPA Checklist. Additionally, DKS reviewed a revised Transportation Impact Analysis by TranspoGroup (January 2017) and Perrone Consulting reviewed the Geotechnical Engineering Design Report (July 26, 2016) by HartCrowser. The City had a conference call with the Applicant, HartCrowser (the Applicant's consultant), DKS, Perrone Consulting, and ESA on June 7, 2017. DKS and Perrone Consulting requested further clarification on transportation and geotechnical elements, respectively.

June 2017

The Applicant sent an interim of their revisions to the City and ESA on June 6, 2017 via email. ESA had minor follow-up comments.

After further clarification between DKS and the Applicant, they submitted a revised SEPA Checklist with updated transportation attachments on June 29, 2017. On June 30, 2017, DKS reviewed this interim version and required no further changes (Attachment 2).

The Applicant submitted additional slope stability review which was reviewed by Perrone Consulting on June 23, 2017. Perrone Consulting had minor comments, but agreed with the overall determination that the slopes on the proposed project site would be relatively stable and pose a low risk of failure (Attachment 3).

July 2017

The Applicant submitted a reissued SEPA checklist on July 3, 2017 (Attachment 4), which addressed comments and questions from ESA, DKS, and Perrone Consulting.

Evaluation and Recommendation

The following discussion reviews the elements of the environment addressed in the reissued SEPA Checklist (July 3, 2017). ESA relied on DKS and Perrone Consulting to assess potential impacts to the transportation and geotechnical elements, respectively. ESA recommends a mitigated determination of non-significance (MDNS) for the MICA project. Some elements discussed below do not require mitigation because they comply with existing regulations and less than significant impacts are expected. Elements where mitigation is required to reduce the impacts to a level of non-significance are identified below.

1.Earth.

Based on review of analysis from Perrone Consulting, the Applicant has provided sufficient information to insure that the proposed project does not result in undue slope stability risk. Significant impacts to slope stability are not anticipated.

2. Air.

Emissions from construction and operation of the project are expected to be well below the Federal de minimis threshold of 100 tons per year, which is the applicable threshold within King County. Significant impacts to air quality are not anticipated.

3A. Water. Surface.

The SEPA Checklist and supporting Wetland Delineation Report and Critical Areas Report were reviewed by Claire Hoffman, professional wetland biologist from ESA. Additionally, she conducted a site visit to verify wetland and vegetation conditions on September 13, 2016. The delineation and proposed mitigation meet the requirements of MICC 19.07.080. MICC 19.07.080.C. allows for buffer averaging of Category III wetlands to a minimum of 25 feet with enhancement. The Applicant is proposing to avoid the wetland, and thus no direct wetland impacts are expected. The Applicant incorporated ESA's recommendations from the September 20, 2016 memorandum and from the May 15, 2016 meeting. Impacts to surface waters (wetlands and wetland buffers) are not anticipated to be significant.

Required Mitigation: enhance 11,362 square feet of degraded buffer with native trees, shrubs, and groundcover as proposed by the applicant in the Critical Areas Study of the July 2017 SEPA Checklist (see Attachment G). Comply with mitigation and monitoring methods outlined in Attachment G, Critical Areas Study. The enhancement area can only be reduced if the impact area is reduced.

3B. Water. Ground.

There are no withdrawals or discharges proposed as part of the project. No significant impacts are anticipated.

3C. Stormwater.

The proposed project would construct a detention vault and discharge to the existing City stormwater system as well as the on-site wetland. Stormwater discharge to surface waters (i.e. to the wetland) is allowed under MICC 15.09.040. As design of the MICA progresses, ESA recommends that the Applicant provide a detailed stormwater management plan to insure that current City and State standards are met. With development and compliance with a stormwater management plan, significant impacts are expected to be avoided.

Required Mitigation: develop and comply with a Stormwater Management Plan.

4. Plants.

Vegetation was field verified during a site visit (September 13, 2016) and the Tree Assessment and Critical Areas study for the project were reviewed. Adequate information has been provided by the Applicant regarding impacts to trees and other vegetation. There are a number of dead or unhealthy trees that would be replaced as part of this project. The exact number, location, size, and species of dead and healthy trees will need to be provided for the permitting process. A tree permit would be required per MICC 19.10. With the mitigation proposed, significant impacts to plans and vegetation are not expected.

Required Mitigation: plant a minimum of 74 trees within the wetland buffer, trees should be primarily coniferous and native species as proposed by the applicant in the Critical Areas Study of the July 2017 SEPA Checklist (see Attachment G). Comply with tree mitigation outlined in Attachment G, Critical Areas Study of the July 2017 SEPA Checklist. Prior to the permitting process, provide the exact number, location, size, and species of dead and

healthy trees that would be removed. The number of trees planted can only be reduced if the number removed is reduced.

5. Animals.

ESA reviewed the Critical Areas study and crosschecked available information regarding listed species and protected habitats on and near the site. There are no protected species known to use the site, and there are no expected significant impacts to wildlife.

6. Energy and Natural Resources.

The Applicant proposes to meet LEED Silver, which includes standards for energy efficiency. By obtaining LEED Silver, the proposal is not expected to result in significant impacts to energy and natural resources.

7. Environmental Health.

ESA reviewed the Phase I Environmental Assessment (Aerotech, 2015) which concluded that there is no obvious evidence of potential environmental risks or Recognized Environmental Conditions indicating the presence of hazardous or other conditions. Special emergency services are not expected to be required. Significant impacts to environmental health are not anticipated.

8. Land and Shoreline Use.

The Applicant has requested a zoning code text amendment to allow a cultural center to be built in the Public Institution zone (P zone). The code amendment is specific to this parcel; as such the code amendment would not affect other parcels in the P zone. The decision on the text amendment will be made by City of Mercer Island Council.

The following critical areas are found on/near the project site: a wetland, wetland buffer, and known or suspected land slide hazard area on-site, as well as erosion hazard areas and steep slopes to the west of the site. For a discussion of the wetland and wetland buffer refer to Element 3A above, Water and geologic hazard areas are discussed under Element 1, Earth. The project is not within the shoreline area. Impacts to land use are not anticipated to be significant. No additional mitigation is required.

9. Housing.

There is no housing proposed to be added or removed as part of this project. Impacts to housing are not anticipated to be significant.

10. Aesthetics.

The MICA building would look different than existing conditions; it would be taller and larger than the existing recycling center. The proposed mainstage is the tallest structure at 30 feet high, closer to the park the building would be approximately 16 feet tall. MICC 19.05.010 requires that buildings in the P-zone shall not exceed 36 feet or three stories. The MICA building would be visible from the park, street, adjacent businesses, and some homes. The design of the building will be subject to review and approval by the City. Vegetation would be removed but replaced as part of the mitigation plan; however, it will take time for trees to mature. Landscaping around the building would follow the requirements of MICC 19.12.040. With compliance to exiting City regulations and design approval, the proposed building and landscaping are not anticipated to result in significant impacts to aesthetics.

11. Light and glare.

The proposed project is not anticipated to result in significant impacts from light and glare and will comply with MICC 19.12.070. The project will be required to develop a lighting plan.

Required Mitigation: Lighting Plan

12. Recreation.

The proposed project would be in the northwest corner of Mercerdale Park in the current location of a former recycling center building, public restrooms, and a portion of Bicentennial Park. The plaza and flagpole, and public restrooms would be permanently removed. During constructions, portions of the park immediately adjacent to the MICA building would be unavailable during construction. The public restrooms would be unavailable during construction. The trail around Mercerdale Park lawn would be relocated but remain open during construction. The trail leading to the Mercerdale Hillside Trail would not be changed, but may need to be closed temporarily during construction for safety reasons. After construction, the trail around Mercerdale Park lawn will be restored and the public restrooms and sinks will be replaced in the new MICA building. With mitigation, significant impacts to recreation are not anticipated. Visitors to the Sunday Mercer Island Farmer's Market which occurs June – October may be inconvenienced by construction activities. The Applicant will work with the Farmer's Market to insure that access to the Market is not restricted for vendors or visitors during construction as well as after the MICA building is completed. For these reasons the Farmer's Market is not expected to be significantly impacted. With the implementation of the proposed mitigation measures, significant impacts to recreation are not anticipated to be significant.

The Applicant has requested a code amendment which would allow for an arts center within the P-zone. The review of the code amendment is outside of the scope of this review. If the code is amended to allow for an arts center within the P-zone, there would be no significant impact to recreation.

Required Mitigation:

- The flagpole will be replaced by the Applicant; the flagpole will be located in an area agreed upon between the Applicant and the City within or immediately adjacent to Mercerdale Park.
- The trail leading to the Mercerdale Hillside Trail may be closed during construction hours for the safety of trail users. The Applicant will ensure it is accessible to the public on evenings and weekends.
- The Applicant will coordinate with the Farmers Market to assure that the Sunday activities of the Market are not significantly affected. This includes maintain access to the Farmer's Market both during construction and operation.

13. Historic and Cultural Preservation.

The historic and cultural preservation evaluations included in the SEPA checklist were reviewed by a historian at ESA. There are no recorded sites, cemeteries, register-listed properties, traditional cultural places, or indications of former use on historical aerials, maps, or in published ethnographies. None of the existing buildings are over 45 years old and thus do not meet the threshold for consideration as a historic property. No significant historic or cultural impacts are anticipated.

14. Transportation.

The transportation element was reviewed by DKS for the City. With the following mitigation measures, impacts to transportation and parking are not anticipated to be significant.

Required Mitigation:

- The Applicant will complete a Parking Management Plan which includes both construction and operation of the facility.
- Identify a designated "Parking Coordinator" – who is an on-site staff member responsible for parking and traffic management.
- Provide for periodic review of Parking Management Plan, any time an element of the Plan changes and disrupts availability of necessary parking.
- Update any private parking agreements as necessary to maintain baseline level of available parking to meet demand with an appropriate level of redundancy; and if parking is disrupted, modify MICA program scheduling until such parking is made available again.
- Provide annual reporting of the traffic demand management plan to provide program adjustments based on reporting.
- Manage the loading zones areas through program scheduling, patron education, signage and staffing assistance if necessary to ensure through traffic is not inhibited.
- Provide necessary illumination at the MICA site for safe pedestrian crossing and load/unload activities.
- Provide clear signage at the MICA site to assist with clarity of parking and loading requirements.
- Coordinate facility scheduling with other local events such as Summer Celebration, Farmer's Market, Parks events, and the Thrift Shop.
- Provide patron education specifically to restrict patron parking in the neigbborhood south of Mercerdale Park.
- Schedule afternoon activities for kids such that only one class has drop-off/pick-up at one time to manage traffic flow at the pullout area and ensure safe access to vehicles.

This SEPA review has been conducted very early in the design process and the Applicant has not yet completed design, or all required supporting documents. If the mitigation is completed in accordance with the measures outline above, it is ESA's opinion that the project would be mitigated to a level of non-significance. Based on this review, ESA recommends a mitigated determination of non-significance (MDNS).

If you have any questions, please call us at (206) 789-9658.

Sincerely,

Claire Hoffman

cc.
Scott Olmsted, ESA
Molly Adolfson, ESA

EXHIBIT 9010

DUE TO THE LARGE FILE SIZE (32MB), ATTACHMENTS TO THE ESA REPORT AND SEPA CHECKLIST ARE AVAILABLE ONLINE AT https://mieplan.mercergov.org/public/MICA-SEP16-015_ZTR16-002

OR CAN BE VIEWED AT MERCER ISLAND CITY HALL DURING REGULAR BUSINESS HOURS.

HOWEVER, ATTACHMENT "D"-PROPOSED ZONING CODE AMENDMENT—IS ATTACHED

EXHIBIT 9010

SEPA Environmental Checklist

Mercer Island Center for the Arts

Attachment D

Proposed Zoning Code Text Amendment

January 2017

19.05.010 Public institution – P.

A. Uses Permitted.

1. Government services.

2. Public schools under the administration of Mercer Island School District No. 400 subject to the requirements in subsection F of this section. Subsections B, C and E of this section do not apply to public schools. Uses other than public schools located on land owned by the Mercer Island School District shall comply with applicable provisions of Chapter 19.02 MICC.

3. Public park.

4. Transit facilities including transit stops and associated parking lots.

5. On-site hazardous waste treatment and storage facilities are allowed as accessory uses to a use permitted in this zone. These facilities shall comply with the state siting criteria as set forth in Chapter 173-303 WAC.

6. Wireless communications facilities subject to the conditions set out in MICC 19.06.040.

7. Public Facilities in Mercerdale Park, with primary uses of theatre, lecture hall, classroom, performing studio, visual arts studio, exhibition gallery, gathering and meeting spaces, café and bar, and accessory functions thereof (hereafter referred to as "Mercerdale Park Public Facilities"), subject to the requirements in subsection G of this section.

B. Mercer Island I-90 Right-of-Way Added to Public Institution Zone. The entire area within the Mercer Island I-90 right-of-way, including, but not limited to, the roadway, street overcrossings, lids, open space, recreation areas, linear greenbelts and the park-and-ride lot area as approved by the city on November 14, 1983, and incorporated in the right-of-way plan approved by WSDOT on May 1, 1987, shall be part of the public institution zone. All uses within the I-90 right-of-way shall be maintained as set forth in city-approved I-90 related documents.

C. Design Requirements. Any development within the public institution zone shall comply with the applicable sections of Chapter 19.11 MICC, Town Center Development and Design Standards, except as otherwise allowed in subsection G of this section.

D. Parking Requirements. All uses permitted in this zone shall comply with the parking requirements set out in MICC 19.05.020.

E. Structures, excluding stacks, shall not exceed 36 feet or three stories in height, whichever is less; provided, the height of buildings located on sites exceeding five acres may be increased by 12 feet or one story, whichever is less, for each additional two and one-half acres of area when specifically approved by the city council upon recommendation of the design commission in accordance with the following conditions:

1. Approval by the Federal Aviation Administration.

2. Adequate provision for ultimate off-street parking needs.

F. Public Schools. The following requirements apply to public schools: [MICA proposes no changes to this section and, therefore, the text is exluded.]

G. Mercerdale Park Public Facilities, shall be subject to the following requirements:

Setback from Property Lines	No minimum setback required, except as necessary to comply with MICC 19.11.030.A.1.	
Height Limit (as defined by MICC 19.16.010)	As allowed pursuant to MICC 19.05.010.E.	

Street Standards	The Street Standard requirements of MICC 19.11.120 are inapplicable.	

19.05.020 Parking requirements.

A. The following parking requirements apply to all uses in the P zone.

B. General Requirements. The following apply except as otherwise required or allowed pursuant to MICC 19.05.020.C.

1. Surfacing and Grading. All off-street parking areas shall be graded and surfaced to a standard comparable to the street which serves the parking area. The parking area shall be developed and completed to the required standards before an occupancy permit for the building to be served is issued.

2. Traffic Control Devices. All traffic control devices such as parking strips designating car stalls, directional arrows or signs, bull rails, curbs and other structures shall be installed and completed as shown on the approved plans. Hard surfaced parking areas shall use paint or similar devices to delineate parking stalls and directional arrows.

3. Design. Parking lot design should conform to the diagrams set out in Appendix A of this development code, unless alternative design standards are approved by the design commission and city engineer.

4. Location. Off-street parking shall be located on the same lot or on an adjoining lot or lots to the building to be served; except, that off-street parking may be located in an area beginning within 500 feet of the building to be served; provided there are no intersecting street between the parking area and building to be served. This requirement does not apply to transit facilities.

5. Ingress and Egress. The city engineer shall have the authority to fix the location and width of vehicular ingress or egress to and from property, and to alter existing ingress and egress as may be required to control street traffic in the interest of public safety and general welfare.

6. Handicapped Standards. Off-street parking shall meet the relevant state design standards for the physically disabled.

7. Compact Vehicles. Up to 50 percent of the required off-street parking spaces may be designed for accommodating compact vehicles. Such parking spaces must be clearly designated as compact stalls. The design commission may increase the percentage of compact stalls permitted if the applicant can demonstrate that no adverse impacts will occur.

8. Loading Space. An off-street loading space, having access to a public street, shall be required adjacent to each building hereafter erected or enlarged. Such loading space shall be of adequate size to accommodate the maximum number and size of vehicles simultaneously loaded or unloaded, in connection with the business or businesses conducted in such building. No part of the truck or van using the loading space may project into the public right-of-way.

9. Variances. Notwithstanding any of the minimum parking requirements set out in subsection C of this section, the code official may grant variances from the minimum parking requirements with the approval of the design commission and the city engineer for projects reviewable by the design commission.

C. Minimum Parking Requirements for Specific Uses.

1. Government buildings shall provide one parking space per 200 square feet of gross floor area.

2. Public elementary and middle schools shall provide a minimum of two parking spaces per classroom. Public high schools shall provide a minimum of one parking space per classroom plus an additional one parking space per 10 students. If the parking spaces that would need to be provided as specified above are in excess of the actual parking demands of the school's staff, students, and visitors, the code official may allow a reduction in minimum parking requirements based on a parking analysis prepared by a qualified professional, with the approval of the city engineer and the design commission, for projects reviewable by the design commission.

3. Mercerdale Park Public Facilities shall provide parking as follows:

a. A parking demand study shall be prepared by a professional traffic engineer and approved by the City Engineer determining the parking requirements for the proposed public facility.

b. The amount of parking required by the approved parking demand study may be met by entirely off-site with a combination of on-street parking and shared off-street parking pursuant to a traffic management plan approved by the City Engineer determining that parking demand for all land uses shall not significantly overlap and that uses will be served by adequate parking if on-street parking and shared parking reductions are authorized.

c. Prior to establishing shared parking, the property owner or owners shall enter into an unrecordedwritten agreement approved by the code official that can only be terminated upon not less than ninety (90) day notice to the code official, provided that one of the affected property owners has agreed to either enter into a replacement parking contract or make alternative parking arrangements, such as shuttle service, in either case satisfactory to the code official prior to the end of the notice period.

4. Mercerdale Park Public Facilities shall be exempt from the requirements of MICC 19.05.020.B.4.

D. Mixed Use Parking. In the case of mixed uses, the total requirements for off-street parking facilities shall be the sum of the requirements for the various uses computed separately. Off-street parking facilities for one use shall not be considered as providing required parking facilities for any other use, except as hereinafter specified for cooperative use.

E. Cooperative Parking. Cooperative parking between two or more adjoining property owners is allowed; provided, the code official, with approval from the design commission and city engineer, may reduce the total required spaces by when the applicant has demonstrated that no adverse impact will occur due to the reduced number of stalls.

F. Parking Lot Dimension. All parking areas shall conform to the design standards set out in Appendix A of this development code unless alternative design standards are approved by the design commission and city engineer. (Ord. 14C-06 § 4; Ord. 99C-13 § 1).

EXHIBIT 9010

CITY OF MERCER ISLAND

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

CITY USE ONLY		
PERMIT #	RECEIPT#	FEE
DATE RECEIVED:		

TRANSPORTATION CONCURRENCY APPLICATION

Received By:

STREET ADDRESS/LOCATION	COUNTY ASSESSOR PARCEL #'S	
3700 E Mercer Way	0824059045	
PROPERTY OWNER *(required)* Herzl-Ner Tamid Conservative Congregation	ADDRESS *(required)* 3700 E Mercer Way	CELL/OFFICE *(required)* 206-232-8555 ext. 203 E-MAIL *(required)* merav@h-nt.org
APPLICANT NAME *(If different from above)* Anjali Grant	ADDRESS 3427 Beacon Ave S, Seattle 98144	CELL/OFFICE 206-512-4209 E-MAIL anjali@agrantdesign.com

Use this form to determine the net number of additional dwelling units and/or vehicle trips generated by the proposed development. A **TRAFFIC IMPACT ANALYSIS** complying with the **City's Traffic Impact Analysis Guidelines** must be submitted with this form if the development proposal will generate 10 or more peak hour vehicle trips. **In determining the net new trips, no credit shall be given for vehicle trip ends from sites/structures that have been vacant for more than one year or for trips from any unpermitted or illegal development.**

WRITTEN DESCRIPTION OF DEVELOPMENT PROPOSAL:

The proposed project includes a private school and 12,300 gross square feet of general office. The private school will enroll up to 150 students in the PK-8 grade levels.

TYPE OF DEVELOPMENT: Check all boxes that apply.

☐	Single Family	☐	Mixed use	☑	School
☐	Multifamily	☐	Commercial	☑	Other Offices

RELATED APPLICATION TYPE(S): Check all boxes that apply.

☑	Building Permit	☐	Design Review	☑	Conditional Use Permit
☐	Development Agreement	☐	Short or Long Plat	☐	Other

FOR RESIDENTIAL PROJECTS: Demonstrate net dwelling units.

Number of Existing Dwelling units:		Number of Dwelling Units to be Demolished:		Number of Net New Dwelling Units:	

FOR COMMERCIAL PROJECTS: Complete this section of the form to demonstrate total proposed vehicle trip ends. Use the Vehicle Trip tables on the following pages to fill in the following sections to determine the Net New Vehicle Trips associated with your development proposal.

Credit can be given for a previous use if that use has not been vacant for more than one year. **If offsetting trips with previous use:**		
Provide Previous/Current Tenant Name and Use :		
Has the above named use been vacated for one year or more?	☐	**Yes**
	☑	**No**

PROPOSED LAND USE – ITE Land Use Category/Code	**Unit of Measure**	**Number of Units (ft², dwellings, room, bed, etc.)**	**Trips per Unit**	**Total Proposed Vehicle Trips (Number of Units x Trips Per Unit)**
530	students	150 students	0.26	39
710	1,000 sf GFA	12,300 sf	1.15	14
CURRENT/PRIOR LAND USE - ITE Land Use Category/Code (only if use occupied in last 1 year)	**Unit of Measure**	**Number of Units (ft², dwellings, room, bed, etc.)**	**Trips per Unit**	**Total Proposed Vehicle Trips (Number of Units x Trips Per Unit)**
Net New Vehicle Trips Subtract Total Prior Vehicle Trips from Total Proposed Vehicle Trips				53

CONCURRENCY VALIDITY AND EXPIRATION (MICC 19.20.040D, MICC 19.20.040E, MICC 19.20.040F)

Validity: A transportation concurrency certificate is valid only for the specified uses, densities, intensity and development proposal site(s) for which it was issued and shall not be transferred to a different project or parcel. A transportation concurrency certificate shall remain valid for the longer of:

1. One (1) year from the date of issuance;
2. During the period of time the development proposal associated with the certificate is under review by the city;
3. For the same period of time as the development approval. If the development does not have an expiration date or an approved phasing schedule that allows a longer build-out, the concurrency certificate shall be valid for one (1) year from the date of the last permit approval associated with the development proposal;
4. For a period of time specified in an approved development agreement.

Expiration: A transportation concurrency certificate shall expire if any of the following occur:

1. The timeframe established in section the validity section above is exceeded.
2. The related development permit application is denied or revoked by the city.
3. The related development permit expires prior to issuance of a building permit.

Extension: A transportation concurrency certificate shall not be extended. A new transportation concurrency application, review and certificate are required if the previous transportation concurrency certificate has expired.

DECLARATION: I HEREBY STATE THAT I AM THE OWNER OF THE SUBJECT PROPERTY OR I HAVE BEEN AUTHORIZED BY THE OWNER(S) OF THE SUBJECT PROPERTY TO REPRESENT THIS APPLICATION, AND THAT THE INFORMATION FURNISHED BY ME IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE READ THE ABOVE INFORMATION REGARDING EXPIRATION DEADLINES AND APPEAL PROCESS IN CHAPTER 19.20 MICC. I FURTHER UNDERSTAND THAT ISSUANCE OF A TRANSPORTATION CONCURRENCY CERTIFICATE IS NOT A GUARANTEE THAT THE CITY WILL ISSUE A DEVELOPMENT PERMIT OR BUILDING PERMIT.

Digitally signed by Anjali Grant
Date: 2024.02.15 08:41:28-08'00'

SIGNATURE

2/15/2024

DATE

ITE Trip Generation Rates (Weekday, PM Peak Hour of Adjacent Street Traffic)

				Setting/Location	
Code	ITE Land Use Category	Unit of Measure	Trips Per Unit	General Urban/ Suburban	Dense Multi-Use Urban
PORT AND TERMINAL					
30	Intermodal Truck Terminal	1,000 SF GFA	1.72		
90	Park-and-Ride Lot with Bus Service	Parking Spaces	0.43		
INDUSTRIAL					
110	General Light Industrial	1,000 SF GFA	0.63		
130	Industrial Park	1,000 SF GFA	0.40		
140	Manufacturing	1,000 SF GFA	0.67		
150	Warehousing	1,000 SF GFA	0.19		
151	Mini-Warehouse	1,000 SF GFA	0.17		
154	High-Cube Transload & Short-Term Storage	1,000 SF GFA	0.10		
155	High-Cube Fulfillment Center Warehouse	1,000 SF GFA	1.37		
156	High-Cube Parcel Hub Warehouse	1,000 SF GFA	0.64		
157	High-Cube Cold Storage Warehouse	1,000 SF GFA	0.12		
160	Data Center	1,000 SF GFA	0.09		
170	Utilities	1,000 SF GFA	2.27		
180	Specialty Trade Contractor	1,000 SF GFA	1.97		
RESIDENTIAL					
210	Single-Family Detached Housing	Dwelling Units	0.99		
220	Multifamily Housing (Low-Rise) 1-2 floors -	Dwelling Units	0.56		
221	Multifamily Housing (Mid-Rise) 3-10 floors	Dwelling Units		0.44	0.18
222	Multifamily Housing (High-Rise)	Dwelling Units		0.36	0.19
231	Mid-Rise Residential with 1st-Floor Commercial	Dwelling Units	0.36		
232	High-Rise Residential with 1st-Floor	Dwelling Units	0.21		
240	Mobile Home Park	Dwelling Units	0.46		
251	Senior Adult Housing - Detached	Dwelling Units	0.30		
252	Senior Adult Housing - Attached	Dwelling Units	0.26		
253	Congregate Care Facility	Dwelling Units	0.18		
254	Assisted Living	1,000 SF GFA	0.48		
255	Continuing Care Retirement Community	Units	0.16		
260	Recreation Homes	Dwelling Units	0.28		
265	Timeshare	Dwelling Units	0.63		
270	Residential Planned Unit Development	Dwelling Units	0.69		
LODGING					
310	Hotel	Rooms	0.60		
311	All Suites Hotel	Rooms		0.36	0.17
312	Business Hotel	Rooms	0.32		
320	Motel	Rooms	0.38		
330	Resort Hotel	Rooms	0.41		
RECREATIONAL					
411	Public Park	Acres	0.11		
416	Campground / Recreation Vehicle Park	Acres	0.98		
420	Marina	Berths	0.21		
430	Golf Course	Acres	0.28		
431	Miniature Golf Course	Holes	0.33		
432	Golf Driving Range	Tees/Driving Positions	1.25		
433	Batting Cages	Cages	2.22		
434	Rock Climbing Gym	1,000 SF GFA	1.64		
435	Multi-Purpose Recreational Facility	1,000 SF GFA	3.58		

436	Trampoline Park	1,000 SF GFA	1.50		
437	Bowling Alley	1,000 SF GFA	1.16		
440	Adult Cabaret	1,000 SF GFA	2.93		
444	Movie Theater	1,000 SF GFA	6.17		
445	Multiplex Movie Theater	1,000 SF GFA	4.91		
452	Horse Racetrack	Seats	0.06		
454	Dog Racetrack	Attendees	0.15		
460	Arena	1,000 SF GFA	0.47		
462	Professional Baseball Stadium	Attendees	0.15		
465	Ice Skating Rink	1,000 SF GFA	1.33		
466	Snow Ski Area	Slopes	26.00		
473	Casino/Video Lottery Establishment	1,000 SF GFA	13.49		
480	Amusement Park	Acres	3.95		
482	Water Slide Park	Parking Spaces	0.28		
488	Soccer Complex	Fields	16.43		
490	Tennis Courts	Courts	4.21		
491	Racquet/Tennis Club	Courts	3.82		
492	Health/Fitness Club	1,000 SF GFA	3.45		
493	Athletic Club	1,000 SF GFA	6.29		
495	Recreational Community Center	1,000 SF GFA	2.31		
INSTITUTIONAL					
520	Elementary School	1,000 SF GFA	1.37		
522	Middle School / Junior High School	1,000 SF GFA	1.19		
530	High School	1,000 SF GFA	0.97		
534	Private School (K-8)	Students	0.26		
536	Private School (K-12)	Students	0.17		
537	Charter Elemantary School	Students	0.14		
538	School District Office	1,000 SF GFA	2.04		
540	Junior / Community College	1,000 SF GFA	1.86		
550	University/College	1,000 SF GFA	1.17		
560	Church	1,000 SF GFA	0.49		
561	Synagogue	1,000 SF GFA	2.92		
562	Mosque	1,000 SF GFA	4.22		
565	Daycare Center	1,000 SF GFA	11.12		
566	Cemetery	Acres	0.46		
571	Prison	1,000 SF GFA	2.91		
575	Fire and Rescue Station	1,000 SF GFA	0.48		
580	Museum	1,000 SF GFA	0.18		
590	Library	1,000 SF GFA	8.16		
MEDICAL					
610	Hospital	1,000 SF GFA	0.97		
620	Nursing Home	1,000 SF GFA	0.59		
630	Clinic	1,000 SF GFA		3.28	5.18
640	Animal Hospital / Veterinary Clinic	1,000 SF GFA	3.53		
650	Free-Standing Emergency Room	1,000 SF GFA	1.52		
OFFICE					
710	General Office Building	1,000 SF GFA		1.15	0.87
712	Small Office Building	1,000 SF GFA	2.45		
714	Corporate Headquarters Building	1,000 SF GFA	0.60		
715	Single Tenant Office Building	1,000 SF GFA	1.74		
720	Medical-Dental Office Building	1,000 SF GFA	3.46		
730	Government Office Building	1,000 SF GFA	1.71		
731	State Motor Vehicles Department	1,000 SF GFA	5.20		

EXHIBIT 9010

732	United States Post Office	1,000 SF GFA	11.21		
733	Government Office Complex	1,000 SF GFA	2.82		
750	Office Park	1,000 SF GFA	1.07		
760	Research and Development Center	1,000 SF GFA	0.49		
770	Business Park	1,000 SF GFA	0.42		
RETAIL					
810	Tractor Supply Store	1,000 SF GFA	1.40		
811	Construction Equipment Rental Store	1,000 SF GFA	0.99		
812	Building Materials and Lumber Store	1,000 SF GFA	2.06		
813	Free-Standing Discount Superstore	1,000 SF GFA	4.33		
814	Variety Store	1,000 SF GFA	6.84		
815	Free Standing Discount Store	1,000 SF GFA	4.83		
816	Hardware / Paint Store	1,000 SF GFA	2.68		
817	Nursery (Garden Center)	1,000 SF GFA	6.94		
818	Nursery (Wholesale)	1,000 SF GFA	5.18		
820	Shopping Center	1,000 SF GFA	3.81	3.81	4.92
823	Factory Outlet Center	1,000 SF GFA	2.29		
840	Automobile Sales (New)	1,000 SF GFA	2.43		
841	Automobile Sales (Used)	1,000 SF GFA	3.75		
842	Recreational Vehicle Sales	1,000 SF GFA	0.77		
843	Automobile Parts Sales	1,000 SF GFA	4.91		
848	Tire Store	1,000 SF GFA	3.98		
849	Tire Superstore	1,000 SF GFA	2.11		
850	Supermarket	1,000 SF GFA	9.24		
851	Convenience Market (Open 24 Hours)	1,000 SF GFA	49.11		
853	Convenience Market with Gasoline Pumps	1,000 SF GFA	49.29		
854	Discount Supermarket	1,000 SF GFA	8.38		
857	Discount Club	1,000 SF GFA	4.18		
860	Wholesale Market	1,000 SF GFA	1.76		
861	Sporting Goods Superstore	1,000 SF GFA		2.02	1.65
862	Home Improvement Superstore	1,000 SF GFA		2.33	3.35
863	Electronics Superstore	1,000 SF GFA	4.26		
864	Toy/Children's Superstore	1,000 SF GFA	5.00		
865	Baby Superstore	1,000 SF GFA	1.82		
866	Pet Supply Superstore	1,000 SF GFA	3.55		
867	Office Supply Superstore	1,000 SF GFA	2.77		
868	Book Superstore	1,000 SF GFA	15.83		
869	Discount Home Furnishing Superstore	1,000 SF GFA	1.57		
872	Bed and Linen Superstore	1,000 SF GFA	2.22		
875	Department Store	1,000 SF GFA	1.95		
876	Apparel Store	1,000 SF GFA		4.12	1.12
879	Arts and Craft Store	1,000 SF GFA	6.21		
880	Pharmacy / Drugstore without Drive-Through	1,000 SF GFA	8.51		
881	Pharmacy / Drugstore with Drive-Through	1,000 SF GFA	10.29		
882	Marijuana Dispensary	1,000 SF GFA	21.83		
890	Furniture Store	1,000 SF GFA	0.52		
897	Medical Equipment Store	1,000 SF GFA	1.24		
899	Liquor Store	1,000 SF GFA	16.37		
SERVICES					
911	Walk-In Bank	1,000 SF GFA	12.13		
912	Drive-In Bank	1,000 SF GFA	20.45		
918	Hair Salon	1,000 SF GFA	1.45		
920	Copy, Print, and Express Ship Store	1,000 SF GFA	7.42		

EXHIBIT 9010

925	Drinking Place	1,000 SF GFA	11.36		
926	Food Cart Pod	Food Carts	3.08		
930	Fast Casual Restaurant	1,000 SF GFA	14.13		
931	Quality Restaurant	1,000 SF GFA	7.80		
932	High-Turnover (Sit-Down) Restaurant	1,000 SF GFA		9.77	9.80
933	Fast Food Restaurant without Drive-Through	1,000 SF GFA	28.34		
934	Fast Food Restaurant with Drive-Through	1,000 SF GFA		32.67	78.74
935	Fast Food Restaurant with Drive-Through	1,000 SF GFA	42.65		
936	Coffee/Donut Shop without Drive-Through	1,000 SF GFA	36.31		
937	Coffee/Donut Shop with Drive-Through	1,000 SF GFA		43.38	83.19
938	Coffee/Donut Shop with Drive-Through	1,000 SF GFA	83.33		
939	Bread / Donut / Bagel Shop without Drive-	1,000 SF GFA	28.00		
940	Bread / Donut / Bagel Shop with Drive-Through	1,000 SF GFA	19.02		
941	Quick Lubrication Vehicle Shop	1,000 SF GFA	8.70		
942	Automobile Care Center	1,000 SF GFA	3.11		
943	Automobile Parts and Service Center	1,000 SF GFA	2.26		
944	Gasoline / Service Station	1,000 SF GFA	109.27		
945	Gasoline / Service Station with Convenience	1,000 SF GFA	88.35		
947	Self Service Car Wash	Wash Stalls	5.54		
948	Automated Car Wash	1,000 SF GFA	14.20		
949	Car Wash and Detail Center	Wash Stalls	13.60		
950	Truck Stop	1,000 SF GFA	22.73		
960	Super Convenience Market/Gas Station	1,000 SF GFA	69.28		
970	Winery	1,000 SF GFA	7.31		

transpogroup
WHAT TRANSPORTATION CAN BE.

MEMORANDUM

Date:	February 6, 2024	**TG:**	1.23278.00
To:	Patrick Yamashita, PE – City of Mercer Island		
From:	Dan McKinney, Jr.		
Subject:	HNT JDS – TIA Preliminary Analysis		

This memorandum provides a summary of preliminary transportation related information for the proposed private school development on the Herzl (HNT) property in Mercer Island, Washington. The following sections provide a brief description of the proposed project, an estimate of the project's vehicular trip generation and distribution throughout the adjacent roadway network, and a summary of the recommended study intersections and broader analysis scope for the Transportation Impact Analysis (TIA) report.

Project Description

The proposed project is located at 3700 E Mercer Way. The proposed project includes approximately 14,051 gross square feet of private school and 12,300 gross square feet of general office. The project site location is shown in Figure 1. The private school will enroll up to 150 students in the PK-8 grade levels. The private school space would be occupied by the Jewish Day School (JDS), which is currently located in Bellevue and intends to move to the proposed site.

Vehicular access to the project site would be provided along the northern site limits where a driveway would be provided onto Frontage Rd, as illustrated in Figure 1.

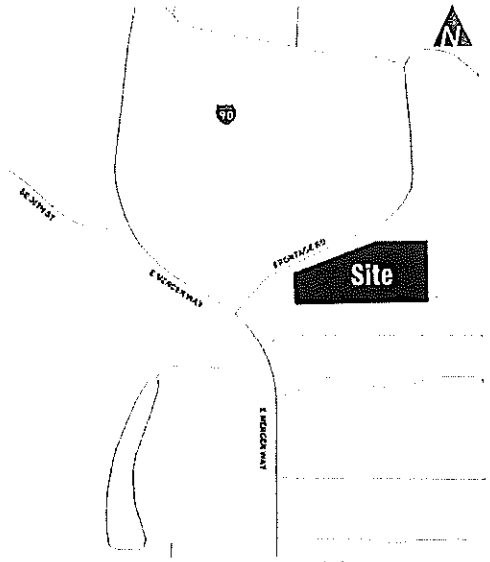


Figure 1 – Project Vicinity

Existing Conditions

This section describes existing condition within the identified study area. Characteristics are provided for the roadway network, non-motorized facilities, transit service, existing traffic volumes, traffic operations, and traffic safety.

Roadway Network

The project site is located in northeast Mercer Island, and is bounded by E Mercer Way to the west, Frontage Road to the north, and SE 40th Street to the south. The major roadways within the study area include:

SE 36th Street is a two-lane roadway classified as an arterial. This roadway provides east-west access with sidewalks located on the south side and a center two-way left-turn lane. SE 36th Street serves as a connection to eastbound and westbound Interstate 90 (I-90) with freeway access at the N Mercer Way and E Mercer Way intersections. The posted speed limit is 30 miles per hour (mph) in the vicinity of the project.

E Mercer Way is a two-lane roadway classified as an arterial with sidewalks. This roadway provides north-south access and a connection to I-90 with a freeway connection at the SE 36th Street intersection. The posted speed limit is 30 mph in the vicinity of the project.

SE 40th Street is an east-west residential roadway located south of the project site area. The road provides one lane in each direction and no sidewalks. The posted speed limit is 25 mph in the vicinity of the project.

Frontage Road is an east-west city facility roadway located north of the project site area. The road provides one lane in each direction and no sidewalks. Access to the project site is provided via a driveway along the south side of Frontage Road.

Non-Motorized Facilities

Sidewalks are provided along SE 36th Street and E Mercer Way with crosswalks located at major intersections allowing safe pedestrian mobility throughout the area. Signalized crossings are provided at the SE 36th Street/E Mercer Way intersection. Unsignalized crossings are located along E Mercer Way at the north and south legs of the Jewish Community Center Access Road intersection. Additional pedestrian circulation near the site is discussed below.

No marked bicycle facilities are provided along roadways in the project vicinity, but E Mercer Way and SE 36th Street are considered bicycle-friendly roadways.

Transit Service

No public transit routes utilize study area roadways, including E Mercer Way, SE 36th Street, and SE 40th Street. The nearest transit stop to the project site is located at the N Mercer Way/Fortuna Drive intersection approximately 0.6 miles northwest of the project site which is served by King County Metro Route 204 Dial-a-Ride Transit (DART) service providing service between North Mercer Island and the Mercer Village Shopping Center. DART service offers both fixed and variable routing on N Mercer Way between the hours of 9 am and 3 pm on weekdays, and 9 am to 7 pm on Saturdays.

The East Link is a planned Sound Transit Link Light Rail extension that would provide service from Downtown Seattle to Mercer Island to Redmond. The segment of the East Link between Bellevue and Redmond is expected to open in April 2024, with the remainder of the link extension, including the segment running through Mercer Island, being scheduled to open in 2025.

Although limited public service is available under existing conditions, the JDS does provide bus service for families of the school. During the 2023-2024 school year, the JDS provided four buses, with a total of 25 students using the bus.

Project Trip Generation

Project trip generation estimates were developed for the project based on information contained in the Institute of Transportation Engineers (ITE) *Trip Generation* (11th Edition, 2021). Trip Generation is a nationally recognized and locally accepted method for determining trip generation for private and public developments. Trips were calculated using the Private School (K-8) (LU #530) and General Office (ITE LU #710) land uses. The following paragraphs summarize the preliminary trip generation estimate for the remaining proposed uses.

Table 1 summarizes the project's estimated trip generation for weekday AM peak hour, PM peak hour, and school peak hour time periods. School peak hour trip generation is based on the PM peak hour of generator for the private school land use. Detailed trip generation calculation worksheets are provided in Attachment A.

Table 1. Estimated Trip Generation

		Weekday AM Peak Hour			Weekday PM Peak Hour			School PM Peak Hour		
Land Use	**Size**	**In**	**Out**	**Total**	**In**	**Out**	**Total**	**In**	**Out**	**Total**
Proposed Uses										
Private School (LU #530)	150 students	71	55	126	18	21	39	44	50	94
General Office (LU #710)	12,300 sf	25	3	28	5	24	29	7	8	15
Total		**96**	**58**	**154**	**23**	**45**	**68**	**51**	**58**	**109**

Project Trip Distribution & Assignment

Vehicular trip distribution for the private school land use is based on information provided by the JDS regarding the ZIP code locations where students currently attending the school lived. It is assumed that the trip distribution of the proposed private school will match the current trip distribution at JDS. A separate primary vehicular trip distribution was determined for office trips consistent with Mercer Island General Traffic Impact Analysis Requirements. Vehicular trip distribution for the office land use is based on the U.S. Census Bureau's *OnTheMap* tool. *OnTheMap* is a web-based mapping and reporting application, which shows where workers are employed and where they live based on census data. The school and office trip distributions are provided in Attachment B. Table 2 summarizes the general primary trip distribution patterns assumed by land use as shown in Attachment B.

Table 2. Weekday AM & PM Peak Hour Trip Distribution by Land Use		
Location	School Trips	Office Trips
East of Mercer Island	65%	45%
West of Mercer Island	25%	40%
Within Mercer Island	10%	15%

Primary project trips for each site use were assigned to the study intersections based on these general travel patterns. The resulting distribution and assignment of primary vehicular trips are shown in Attachment B.

Study Intersections & Analysis Scope

Based on the forecast trip assignment to the adjacent roadway network, the following intersections could be considered for analysis under weekday AM and PM peak hour conditions:

1. SE 40th Street/E Mercer Way
2. Frontage Road/E Mercer Way
3. SE 36th Street/E Mercer Way
4. I-90 EB Off-Ramp/E Mercer Way
5. I-90 WB Ramps/E Mercer Way
6. Site Access/Frontage Rd

Weekday AM peak hour, PM peak hour, and school peak hour volumes were collected at all study intersections during the week of March 25th, 2024.

In addition, an evaluation of traffic operations related impacts, the TIA will also include an evaluation of non-motorized facilities, transit service, and the collision history within the project vicinity. Please identify whether any of the intersection within the project vicinity should be removed or added to the above list of potential study intersection, other whether other specific elements should also considered in the evaluation of potential transportation related impacts.

transpogroup
WHAT TRANSPORTATION CAN BE.

Attachment A: Trip Generation Worksheets

Attachment B: Trip Generation

Herzl Private School

Proposed Use														
									Gross Trips			Total Net New		
Land Use	Setting	Size	Units	Model	Equation	Rate	Units	Inbound %	Inbound	Outbound	Subtotal	Inbound	Outbound	Total
Private School (K-8) (LU 530)		150	students											
School Peak Hour				Equation (log)	ln(T) = 0.98*ln(x)-0.38	-	-	47%	44	50	94	44	50	94
AM Peak Hour				Equation (lin)	T = 1.11x - 40.99	-	-	56%	71	55	126	71	55	126
PM Peak Hour				Rate	-	0.26	per student	46%	18	21	39	18	21	39
General Office Building (LU 710)		12,300	sf											
School Peak Hour				Equation (log)	ln(T) = 0.87*ln(x)+3.05	-	-	50%	7	8	15	7	8	15
AM Peak Hour				Equation (log)	ln(T) = 0.86*ln(x)+1.16	-	-	88%	25	3	28	25	3	28
PM Peak Hour				Equation (log)	ln(T) = 0.83*ln(x)+1.29	-	-	17%	5	24	29	5	24	29
Subtotal									51	58	109	51	58	109
PM Peak Hour of Generator									96	58	154	96	58	154
AM Peak Hour									23	45	68	23	45	68
PM Peak Hour														

Net New Trips			
PM Peak Hour of Generator	51	58	109
AM Peak Hour	96	58	154
PM Peak Hour	23	45	68

Notes:

1. Trip rates based on Institute of Transportation Engineers' (ITE) *Trip Generation* 11th Edition equation and average trip rate as shown above.
2. AVO = average vehicle occupancy. Retail and Residential AVO based on NCHRP 365 for urban areas with populations over 1 million people. No AVO rate if trips calculated based on person trip rate

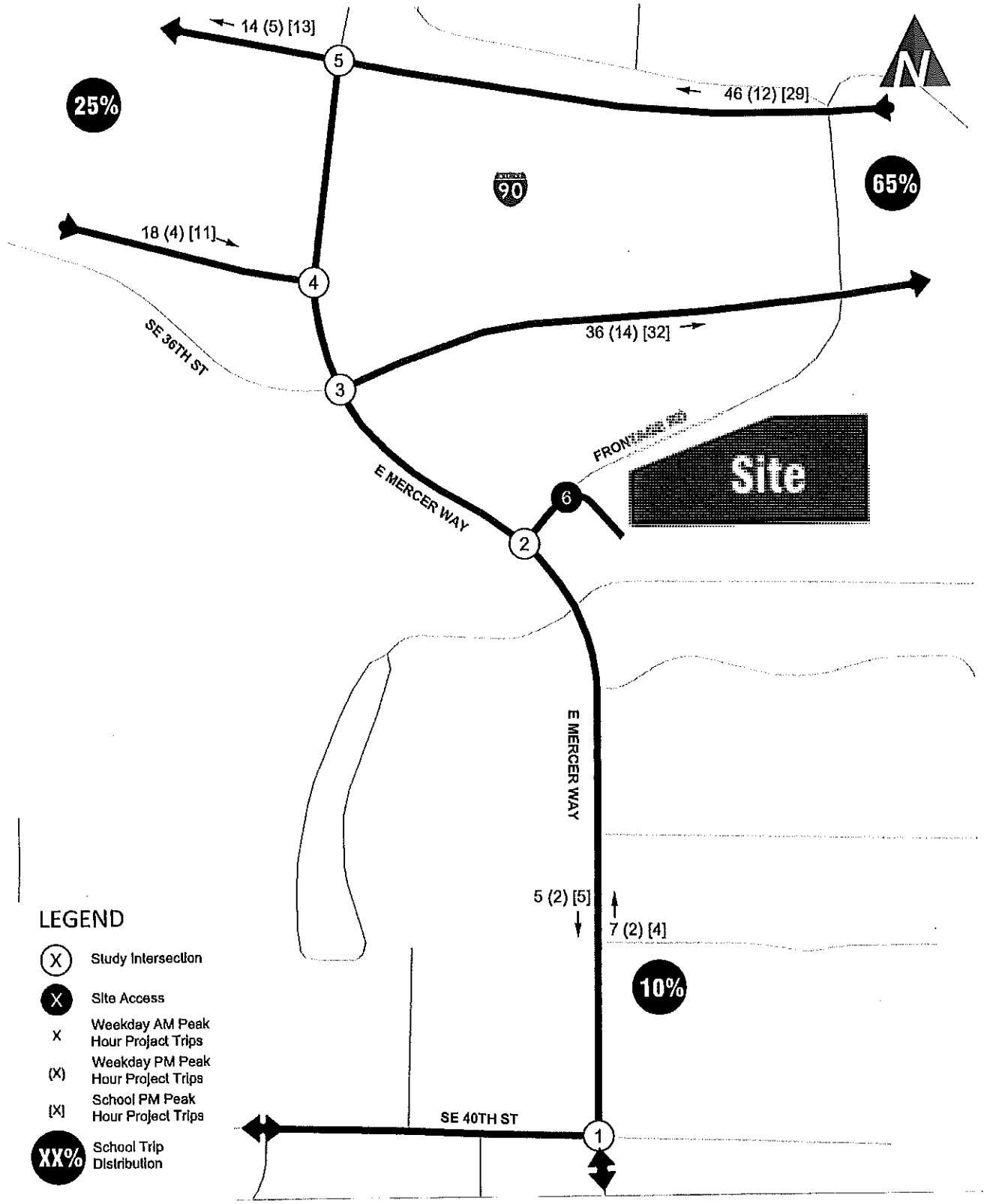
3. School Peak Hour trips for LU 530 based on PM peak hour of generator. School Peak Hour trips for LU 710 calculated based on time of day distributions at 3-4 pm given in ITE Trip Generation 11th Edition appendices, and daily trips given from equation.
Inbound trips for school peak hour are 7.5% of 94 daily inbound trips. Outbound school peak hour trips are 8.4% of 94 daily outbound trips. Total school peak hour trips are 7.8% of 188 total daily trips

EXHIBIT 9010

EXHIBIT 9010

transpogroup
WHAT TRANSPORTATION CAN BE.

Attachment B: Trip Distribution & Assignment



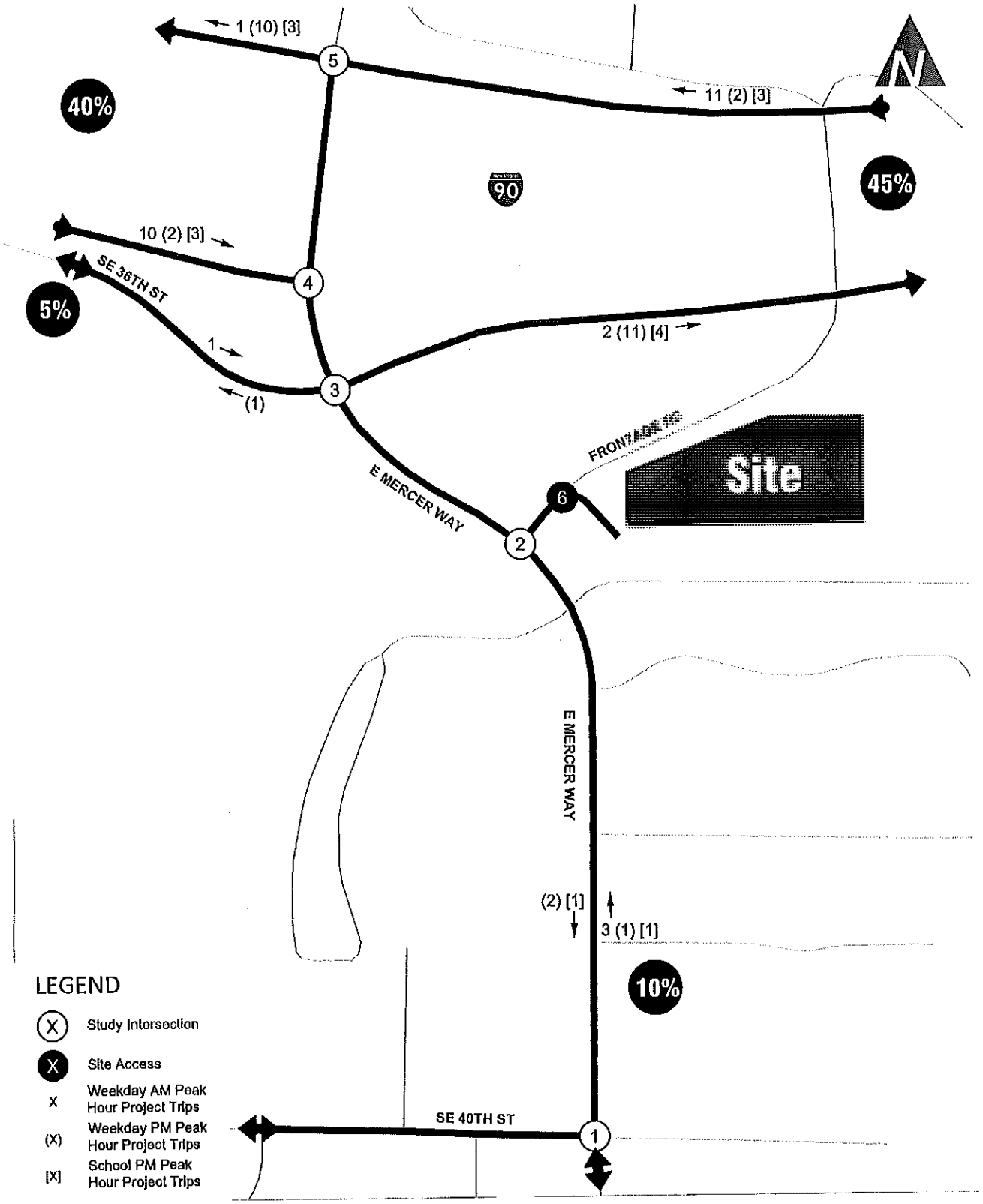
School Trip Distribution and Assignment

ATTACHMENT B

Herzl Private School

transpogroup

Mar 21, 2024 - 10:32am jeffreyc M:\23\t 23273.00 - Herzl Private School\Graphics\ODP\Graphics_23273.dwg Layout: School Dist & Assignment (2)



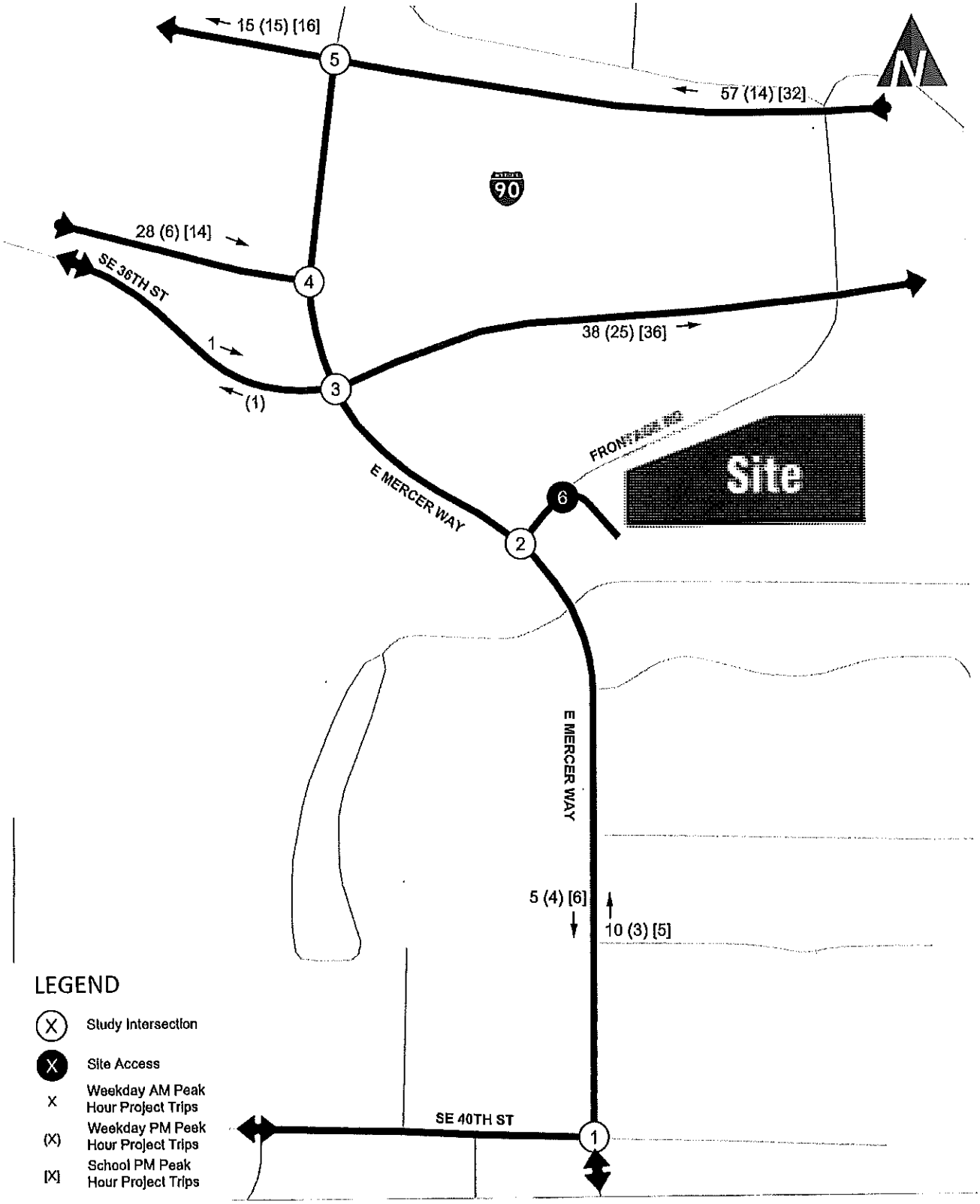
Office Trip Distribution and Assignment

ATTACHMENT **B**

Herzl Private School

transpogroup

Mar 21, 2024 - 10:3 [illegible] jeffreyc M:\23\1.241278.00 - Herzl Private School\Graphics\GMA\Graphics_241278.dwg Layout: Office Dist A Assignment (2)



Total Trip Distribution and Assignment

ATTACHMENT **B**

Herzl Private School

transpogroup

Mar 21, 2024 - 10:15am jeffreyc M:\23\L23278.00 - Herzl Private School Graphics\DWG\Graphics_23278.dwg Layout: Total Dist & Assignment

Exhibit 3

From: blkship <blkship@yahoo.com>
Subject: CUP24-001 & SEP24-003 Herzl-Ner Tamid - Supplemental Comments from Neighbors/Submissions For Oct. 23 Planning Commission Meeting on Code Docket
Date: 22 October 2024 at 3:19:00 PM GMT-7
To: molly.mcguire@mercerisland.gov
Cc: Jeff Thomas <jeff.thomas@mercerisland.gov>, Planning Commission <planning.commission@mercergov.org>

Dear Ms. McGuire,

On May 21 John Hall and I on behalf of the neighbors submitted written comments on Hertzl's Request for a Conditional Use Permit with SEPA Review for the construction of a new, three-story K-8 school with rental offices, "shared" parking, and associated site improvements.

In particular, we objected to the proposal to shift all required onsite parking from the B zoned property to the adjascent R zoned Hertzl property through a CUP (as well as a playground for the school). Currently the parking on the Hertzl property is part of a lease with the French American School which is part of the FAS CUP. According to the permit application this parking for FAS will be eliminated by Hertzl and instead used for the B zoned property that will have no onsite parking.

Attached to this email are photos we ask be added to the permit file and comments that I explain in detail below. These photos show parking along EMW when the Hertzl lot is closed to the FAS.

Since I have filed a proposed code amendment that prohibits a CUP on a residentially zoned property being used by property zoned TC, CO, B or PBZ for TC, CO, B or PBZ uses I am copying the planning commission on this email and photographs for tomorrow night's planning commission meeting.

It is important to understand that the CUP's for the FAS and JCC were based on much lower enrollment/membership figures, and so the area has inadequate for all the necessary parking which today overflows onto EMW even before the construction of an office building and school on Hertzl's B zoned property that will add no new parking.

EXPLANATION OF PHOTOGRAPHS.

There are seven photographs of the area along EMW between 38th and 40th Ave. SE. Six are from the week of October 24, 2024 when Hertzl closed its parking lot to the FAS, and one from July 2024 when the parking lot on Hertzl was closed and the JCC was running summer camps.

Photograph one is critical because it shows the elementarty school bus stops on each side of EMW. In this photo some students have just gotten off the bus. The cars parked along EMW force the kids into EMW because there is no sidewalk, which is a very busy arterial. The bus stop going to school is across the street and when cars are parked along EMW the kids must wait for the bus while standing in the street itself.

Photographs 2-5 show the massive amount of parking along EMW during the week of Oct. 14 when Hertzl closed its parking lot per its lease with the FAS to FAS parking. If Hertzl's SEPA permit and application for a CUP to shift all onsite parking from the B zoned property to Hertzl are granted this parking along EMW will become an everyday occurence and create a permanent safety issue. I can tell you as a neighbor who drives this stretch of EMW it is very unnerving driving it when so many cars are parked along EMW because I never know who will dart out.

Photograph 6 is from July 2024 and shows massive parking along EMW even when school is out due to the JCC's summer programs.

Finally photo 7 shows the Hertzl parking lot empty the week of October 14 which is why so many cars are parked along EMW.

SUMMARY.

As noted in our original submissions, the JCC and FAS have both exceeded their original CUPS may times over when it comes to number of members and students which has exceeded existing parking. Hertzl now proposes a pre-school on its R zoned property and a three story office building/school on its B zoned property **with no onsite parking on the B zoned property.**

This would clearly render the FAS CUP non-conforming, but the city never revisits CUP's no matter how much they exceed their original CUP.

Furthermore the city refuses to enforce parking along EMW, and really should prohibit parking on EMW at all times due to safety concerns.

The neighbors are asking that the application to shift all onsite parking from the B zoned property to the R zoned property through a CUP be denied and the B zoned property required to provide its parking onsite. I will also ask the planning commission to recommend that the code be amended from prohibiting a CUP on residentially zoned property from being used for TC, CO, B, or PBA zoned uses.

Thank you.

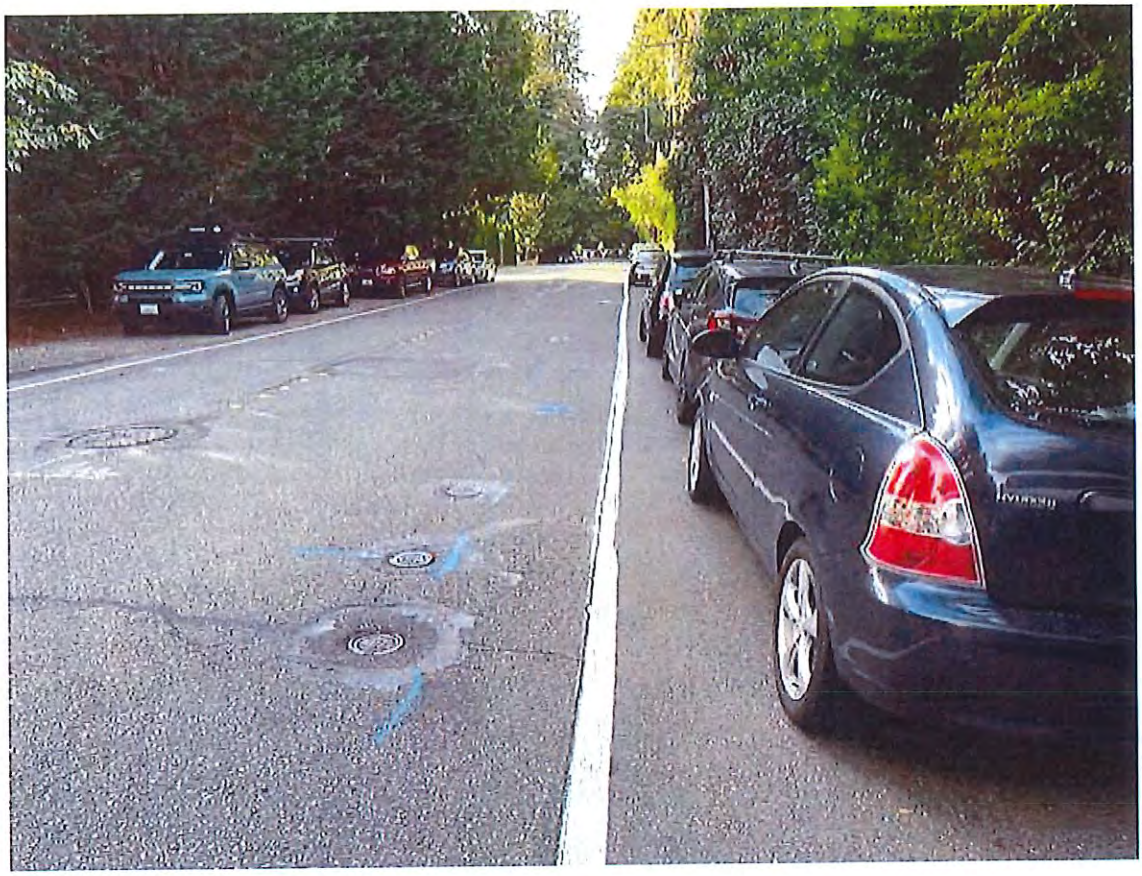
Matthew Goldbach

EXHIBIT 9010

Elementary school bus stops along East Mercer Way between 38th and 40th Ave SE.

EXHIBIT 9010

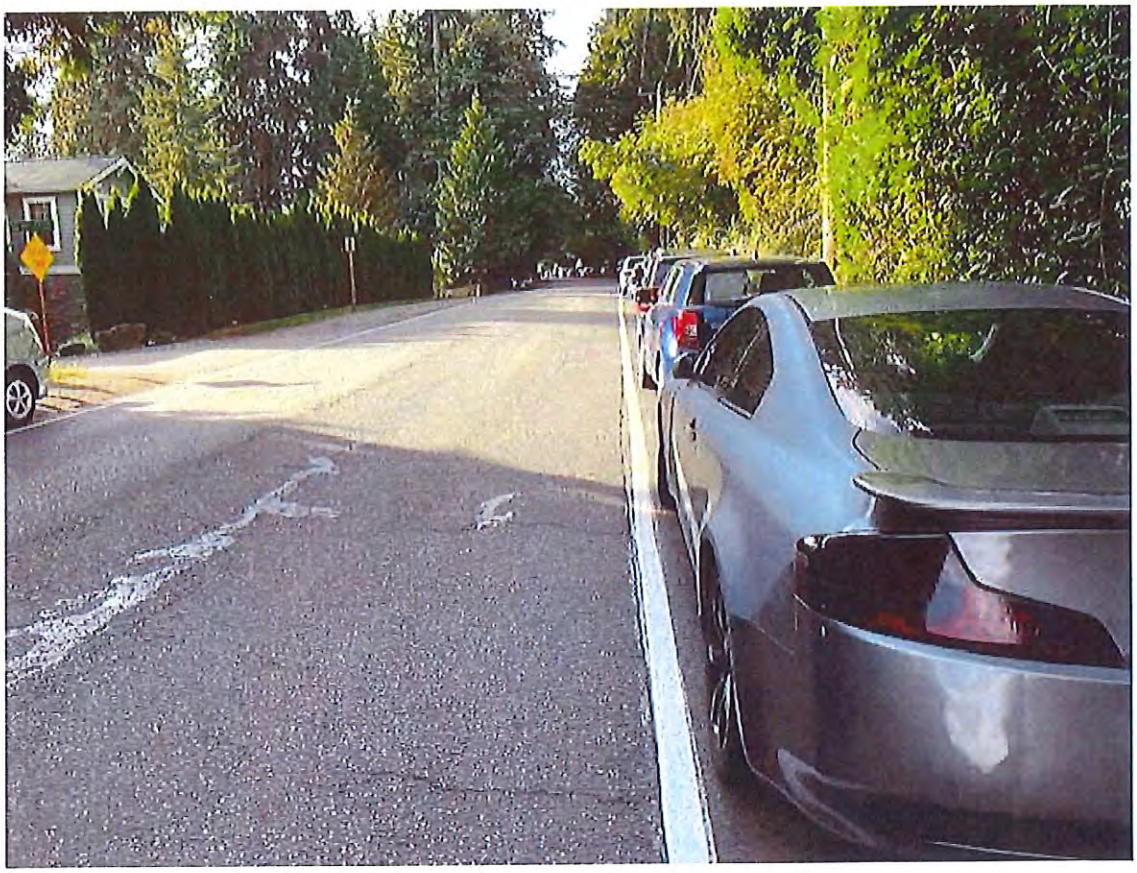
Parking on East Mercer Way week of October 24, 2024



Parking on East Mercer Way week of October 14, 2024

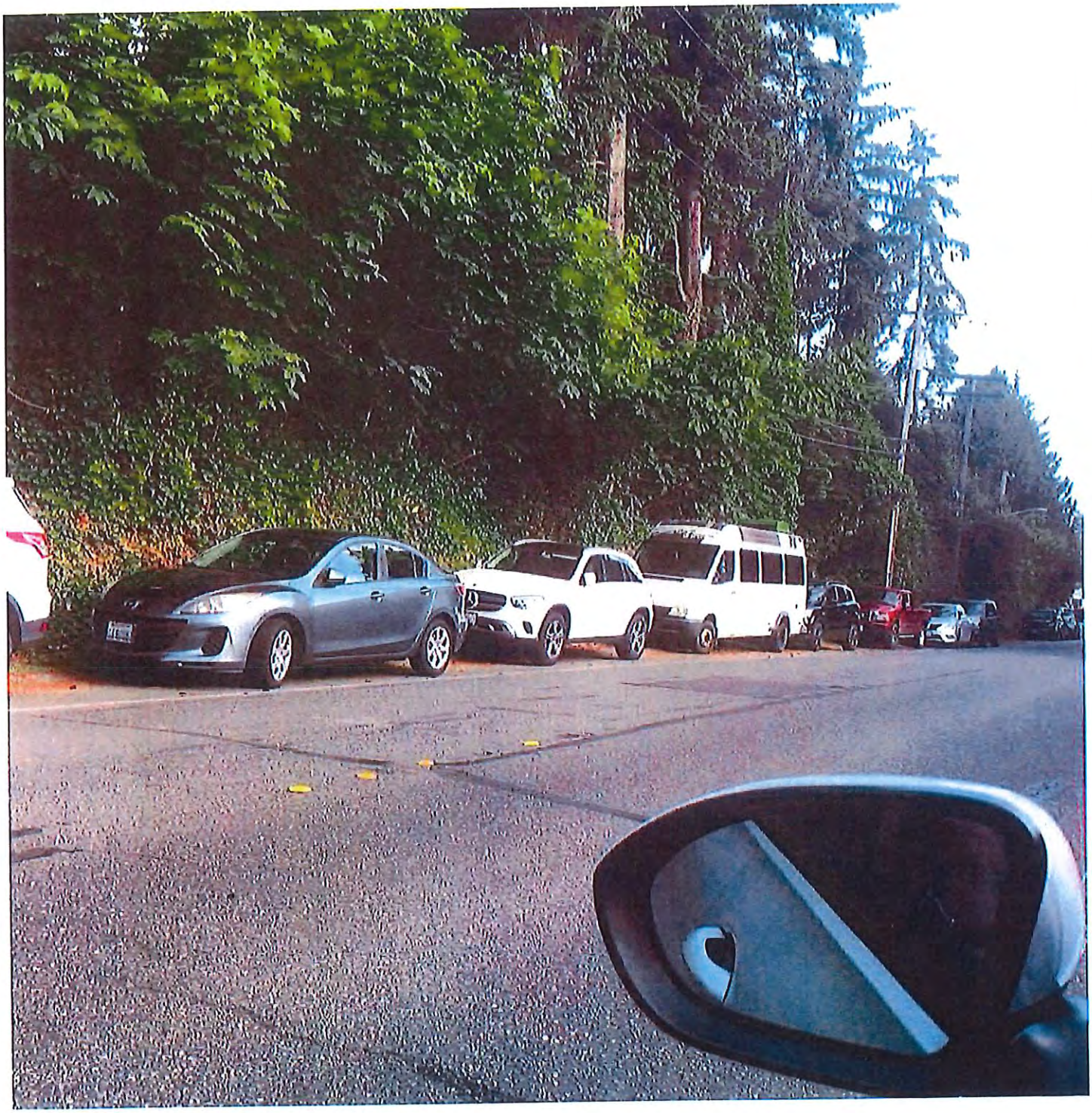
Parking on East Mercer Way week of October 14, 2024

EXHIBIT 9010



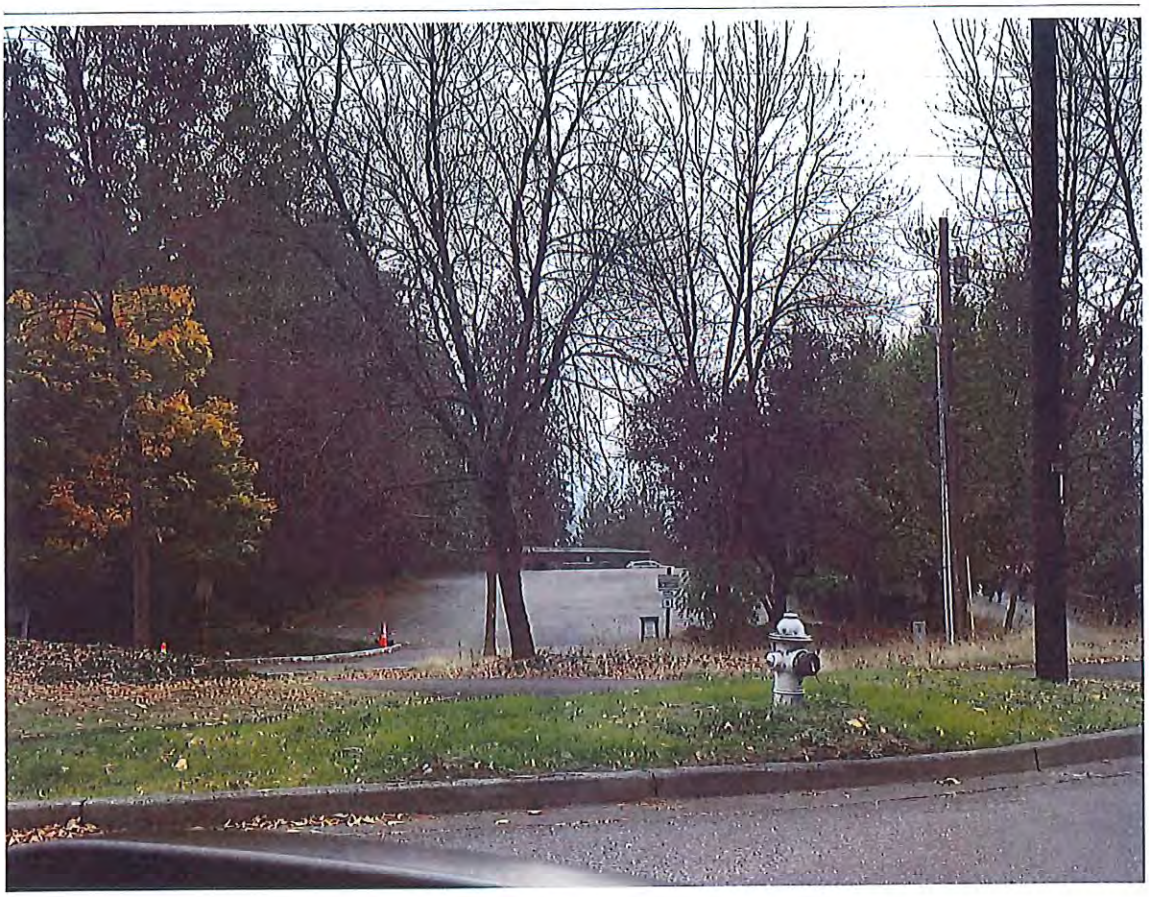
Parking on East Mercer Way week of October 14, 2024

5



Parking on East Mercer Way week of July 2024

EXHIBIT 9010



Herzl parking lot week of October 14, 2024 noting empty parking lot

Exhibit 4

EXHIBIT 9010

JOHN E. GALT
Quasi-Judicial Hearing Services
927 Grand Avenue
Everett, Washington 98201
Voice: (425) 259-3144
E-mail: jegalt755@gmail.com

April 23, 2025

Herzi-Ner Tamid Conservative Congregation
C/o Hillis Clark Martin & Peterson P.S.
ATTN: Josh Friedmann
999 Third Avenue, Suite 4600
Seattle, WA 98104
josh.friedmann@hcmp.com
SERVICE BY E-MAIL (First class mail service if requested)

City of Mercer Island
Community Planning & Development, SEPA Responsible Official
C/o Madrona Law Group, PLLC
ATTN: Eileen Keiffer & Laurie Halvorson
14205 SE 36th Street, Suite 100, PMB 440
Bellevue, WA 98006
eileen@madronalaw.com
laurie@madronalaw.com
SERVICE BY E-MAIL (First class mail service if requested)

AND

City of Mercer Island
ATTN: Bio F. Park, City Attorney
9611 SE 36th Street
Mercer Island, WA 98040
bio.park@mercergov.org
SERVICE BY E-MAIL (First class mail service if requested)

Subject: APL25-003: Herzi-Ner Tamid Conservative Congregation SEPA appeal

Dear Principal Parties:

I write in my capacity as the City of Mercer Island Hearing Examiner ("Examiner").

On April 22, 2025, I received the appeal which Josh Friedmann filed on April 18, 2025, on behalf of Herzi-Ner Tamid Conservative Congregation ("Appellant"), determined subsequently to be complete upon payment of the appeal filing fee, *in re* the State Environmental Policy Act ("SEPA") threshold Revised

Mitigated Determination of Nonsignificance ("MDNS") under file No. SEP24-003, issued by the City on April 7, 2025. SEPA threshold determinations are Type III land use actions which are subject to the right of administrative appeal to the Examiner. [MICC 19.15.030(H), Table C]

The MICC provides for a 14-calendar day appeal period from date of issuance of the decision being appealed. [MICC 19.15.130(B)] The content requirements for Type I - III appeals are set forth in MICC 19.15.130(D). It would appear that Appellant's SEPA appeal was timely and complete when filed.

I am sure that all listed addressees are aware that this is essentially a "follow-on" appeal: An MDNS was issued and timely appealed by Appellant under file number APL25-002; that MDNS was withdrawn on April 7, 2025, due to a procedural irregularity; the Examiner advised the principal parties by email on April 7, 2025, that withdrawal of the MDNS effectively closed the appeal; the City's Responsible Official issued a Revised MDNS on April 7, 2025; and Appellant filed a new appeal on April 18, 2025, under file number APL25-003.

On April 2, 2025, the Examiner sent a letter to the Principal Parties in APL25-002 raising a jurisdictional/timing concern. Neither principal party had responded to that letter before the original MDNS was withdrawn. I believe the issue remains and needs to be resolved before we proceed further. Therefore, I present the issue again in the following three paragraphs (with an additional sentence at the end of the third paragraph).

A SEPA "appeal must be consolidated with any appeal that is filed on the proposal or action, and must conform to the requirements of MICC 19.15.130(B), Permit review procedures." [MICC 19.21.200(B)] The MDNS indicates that the threshold determination at issue is associated with a Conditional Use Permit ("CUP") which is required for at least part of the project. According to MICC 19.15.030(H), Table D, a CUP is a Type IV land use application which requires a predecision hearing before the Hearing Examiner.

"Mitigation measures and conditions that are required as part of a determination of nonsignificance" are, according to MICC 19.21.200(A)(2), appealable to the hearing Examiner.

The above provisions appear, at least at first blush, to be at least somewhat contradictory. MDNS mitigation measures are appealable to the Examiner but must be consolidated with a related appeal on an underlying application. But since the Examiner is the decision maker on a CUP, the Examiner would not hear an appeal from his own decision. Any appeal from a CUP decision would be to Superior Court. [1] So, then, would not the SEPA appeal have to await the CUP decision before the appeal could be consolidated and heard in

[1] Interestingly, when preparing the April 7th letter I noted for the first time that MICC 19.15.030(H), Table D, lists the Hearing Examiner as both the decision maker and the appeal authority for all Type IV applications within the Examiner's jurisdiction and the Design Commission as both the decision maker and the appeal authority for all Type IV applications within its jurisdiction. I presume those are scrivener's errors.

court? Or, would not the SEPA appeal have to be consolidated with the required CUP hearing in order to provide not more than one open record hearing on a project permit application?

I would appreciate a brief analysis from both parties on this seeming jurisdictional issue before we proceed further. Please provide your responses not later than April 30, 2025.

I look forward to your comments.

Sincerely,

\s\ John E. Galt

John E. Galt
City of Mercer Island Hearing Examiner

Exhibit 5

Timeline

3/28/1979 – Application for Conditional Use Permit submitted for "large grass area for various uses: occasional outdoor services, classes when appropriate, limited play area, occasional picnics, cottage for on-site custodian, garden meditation quite areas".

https://publicdocs.mercergov.org/PAV/api/Document/ASoTFoTlHWM%C3%81D9TRgiQgZYQx3MlnNfYLT6SKc2dAtVGPXcJHeqZRDVg%C3%89a7SYBOllbSESwt7gXIdMJoLmE%C3%89NWl24%3D/

5/2/1979 – Notice of Public Hearing for the May 16 Planning Commission meeting (I cannot find any record of this meeting, and new notice was issued in June which we do have record for. It looks like this May meeting did not occur)

https://publicdocs.mercergov.org/PAV/api/Document/Ad9Shp0XbGissSa6Jg4ynkV4lIlv08N8NJLhdE9K67kiv5uW5uNEvlcXCsnCIqHgHAmHLnh7kjEsHPw9do3o1MY%3D/

6/18/1979 – Notice of Public Hearing for June 20 Planning Commission meeting

https://publicdocs.mercergov.org/PAV/api/Document/ATUKE3twDX%C3%81eLie8NGBIckXQ0KGpKZZ5bvxBQoVlDIt7nD9K0LJ%C3%81vmJeiuxgHLzSm7weulTGlH4G0Be%C3%81JyDxLll%3D/

6/20/1979 – Planning Commission Meeting minutes.

https://publicdocs.mercergov.org/PAV/api/Document/AXtb1Hn3J4IPRClE%C3%89M4LI4lzjqqBRBlM0rrs6y7ZzXuRJY0Hkyv8TU2LBdGxdLqUqJNusUlcZvUWn03fDf1C0b0%3D/

Key points:

- Applicant responded to a question from a Commissioner that the application was classified as an application for a non-commercial recreational tract upon Staff's opinion that many of the uses were recreational-type uses. He added that it would be possible for the applicant to come back before PC and seek approval for individual improvements without creating a non-commercial tract.
- A Commissioner said that he felt it was not appropriate to grant a CUP "on top of" an existing conditional use of the property as a church in a residential neighborhood. He added that activities should be restricted to those related to the original conditional use. He went on to say that the circumstances of the applicant did not

meet the criteria for a non-commercial recreational tract because membership was not in any way limited. *I do not believe there was an existing CUP at this time*

- Motion: Commissioner Clancy moved that the application be denied.
    - The motion was seconded by Commissioner Bryant and passed unanimously

6/26/2979 – Notice of denial

https://publicdocs.mercergov.org/PAV/api/Document/AdPupFXU1jthFe9do1Ch0HyvQFliflyHVSiZU4xuCMmF656M7lMzKyUwE1d8DLA1jHD2LJ3e0quid3Fi3nEdRE%3D/

6/29/1979 – Appeal filed with the reason stated as "the Planning Commission denial is in error because a) it is not supported by facts, b) it is contrary to the weight of the evidence, c) it is based upon a fallacious interpretation of the zoning ordinance, and d) the facts meet the requirements of Section 4.02(4) and 19.02 of the zoning code as specified in the staff report and recommendation for approval". The appellant also stated that they do not believe a CUP should be required because the proposed developments (listed in the link below) are accessory uses which are incidental to that of the main building.

https://publicdocs.mercergov.org/PAV/api/Document/AYKz2WPXCdaGmMfJhWoVms0d%C3%817Uty9tR9gvbfEDAtT27sD5AiUuiu8%C3%89phqk8FrKSVHEy8xLPwfpAmUoqeQfKZE%3D/

7/16/1979 – Notice of Appeal Hearing with City Council

https://publicdocs.mercergov.org/PAV/api/Document/Acx%C3%89aeqfyEn5zNlpuOq2Rsre2Il%C3%81tsyBRAZ0m0%C3%894LnRMaQ7fuOJY9ROzi6kgAGYJHMifrT57QGOVFsthHzbGj5Y%3D/

7/17/1979 – Memorandum from City Attorney to City Council stating that "In the case of the Herzl application which involves additional development on the site including landscaping, relocation of paved play area, creation of a bark play area, repairing a barbeque and the relocation of an outdoor chapel area, the proposal involves the expansion of a non-conforming use. Such development can only be permitted if it becomes conforming with the provisions of the Zoning Code. In order to conform to the provisions of the Zoning Code, Herzl must apply for and receive a conditional use permit" and "a church use and other uses which may be incidental or accessory thereto are no longer permitted outright in a single family zone. The outright permission for such uses has been changed as of July 1975 and a conditional use permit is required. The expansion of uses accessory to or incidental to church uses would have been permissible without a conditional use permit prior to 1975 but currently the ordinance requires the obtaining of a conditional use permit".

https://publicdocs.mercergov.org/PAV/api/Document/AeQ%C3%81xpJej3mQTEqrA5CqASXStzY8Kw6fgSu5ywudagMY6Af8C652RHxl4xurJdcdD7cE%C3%89pvTlhNWmLAuQ7BxmEA%3D/

7/19/1979 – Letter from City Attorney to applicant stating that "I see no alternative but to require the conditional use permit for the types of uses sought by the Synagogue in this case".

https://publicdocs.mercergov.org/PAV/api/Document/ATkiBCFYscLO6o2pfcaLPQ%C3%89DX%C3%89469opKwbi1CELUzUF9Y35LEt44AHqX8PtBOsysOueJ9uWPRYwDnROodM%C3%81w1Cs%3D/

7/23/1979 – Public Appeal Hearing with City Council where it was moved by Councilman Horn, seconded by Councilman Rasmussen "to table the motions on the floor to permit the applicant to apply for a conditional use permit for the whole property of the Herzl/Ner Tamid congregation".

https://publicdocs.mercergov.org/PAV/api/Document/AYq%C3%81D4ItoAeUv2jhNbTPSO7sQVUTV9FBjqwAbYvT7FKTht1OTM4KhUZoQ1i94MSryzO0VsVaVniSKB1D4MKWdcw%3D/

7/23/1979 – Whole record including staff report

https://publicdocs.mercergov.org/PAV/api/Document/ARYpZdJ6fVga72TDvpbMfXYXKge2qpslSx2NYTa%C3%89pyEK1hEIVG6Le7U0nxkg8fq0QRJbO0AV2OMD%C3%81cTsZ0LEiyg%3D/

11/26/1979 – Letter from the applicant reiterating that the new CUP is for the entire site

https://publicdocs.mercergov.org/PAV/api/Document/AaI871on31Sl%C3%89Ppv2A0YtlT1xAuvdJzBPsuJiyTyaJqUVPwebedxns3bycE8I%C3%81j9aD0gIPnL60RNp1VbkS%C3%89irLc%3D/

11/26/1979 – Letter from the City reiterating that the new CUP is for the entire site

https://publicdocs.mercergov.org/PAV/api/Document/AYq4bG0s14FCnWTtALldbD5ngd5aHgtg4lpbrxiapPanYlEWAom4ekEACvRN%C3%89264sRz%C3%81azCQ2gPYssUrBHFo888%3D/

12/5/1979 – Motion: Commissioner Fry moved that the Planning Commission recommend to the City Council that the Conditional Use Permit request by the Herzl-Ner Tamid Conservative Congregation be approved as submitted on December 5, 2979, as depicted in Exhibit B, as modified, in that it meets the required showing in Section 19.02 of the Zoning Code. The motion was seconded by Commissioner Gregory and passed unanimously".

https://publicdocs.mercergov.org/PAV/api/Document/AQSaNWgQ7Uh4hXsS%C3%8185LPrEXAFvKgTpf0X8sBVLI86t1EDv5LxGpSs7vTvrQIemiIr%C3%81ZL2ek35jQb6jHpeRO3z8%3D/

12/10/1979 – City Council Motion: affirm the recommendation of the Planning Commission in that the Conditional Use Permit request of Herzl-Ner Tamid meets the required showing in Section 19.02 of the Zoning Code. Motion passed.

https://publicdocs.mercergov.org/PAV/api/Document/Aeg7z%C3%813awrGpReGKLvOE7ilUU6OiJv%C3%81ZLDZcEQmcjOKLorQSipNzCRKjhsjxBtyN7WG1ZeQI4ZXSfvkcSpaP4C0%3D/

12/10/1979 – City Council hearing including staff report and Exhibit B (site plan)

https://publicdocs.mercergov.org/PAV/api/Document/ASSc1B1vrTTbyroXWu8ogvKwZ55eOEHf8rJ4gDUuxR9AAohwPyWlIqNk3LMY100RDD3ffusyralknEiTlqZlfuU%3D/

12/11/1979 – Notice of approval and next steps (Design Commission review for the caretakers cottage) NOTE: "This final review by the Design Commission does not jeopardize the approved Conditional Use Permit". The final review by the Design Commission is required prior to issuance of a building permit for the caretaker's facility.

https://publicdocs.mercergov.org/PAV/api/Document/AYetH1RTRVTyuEb%C3%89up5iwxPWFrX0a0GcvurjFU4pc%C3%81dOpZb%C3%89myVz%C3%89wXvrz6a7ub%C3%89vnC86mY0i1zFNsrcDzl7G7c%3D/

There is a DSR application (DSR7903-001) but I am having trouble finding records quickly.

A building permit was issued for the synagogue: "V:\Cloud Files\LUP FILES\CUP\2024\CUP24-001 & SEP24-003 Herzl New-Tamid\Decision and Staff Report\Exhibits\Document Type BLDG - Site Plans; Parcel Num 1515600010; Address 3700 E MERCER WAY; Date 12 20 1979.pdf"

So presumably, Design Commission approval was obtained. If it wasn't, I don't see how we can hold them up for that since the permit was clearly issued (stamp on the bottom)

EXHIBIT 9010