CITY OF MERCER ISLAND

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

STAFF REPORT & DECISION

CRITICAL AREA REVIEW 2 CAO24-032 (Exhibit 1)

Project No:	CAO24-032
Description:	The applicant proposes to construct a new single-family residence. A critical area review 2 (CAR2) application was submitted in conjunction with building permit application number 2410-056, due to the proposed development location containing a piped and open watercourse and within a geologically hazardous areas, specifically potential slide and erosion hazard area.
Applicant/ Owner:	Kati Eitzman (Sturman Architects) / Seascape Homes, LLC
Location of Property:	5222 Forest Ave SE, Mercer Island WA 98040 King County Assessor tax parcel number: 141030-0057
Zoning District	R-15
Staff Contact:	Grace Manahan, Code Compliance Planner grace.manahan@mercerisland.gov | 206-275-7764
Exhibits:	1. Staff Report & Decision dated April 14, 2025 2. Development Application signed September 24, 2024 3. Concurrent Review Request Form, dated August 27, 2024 4. Geotechnical Engineering Study prepared by Geotech Consultants, Inc., Inc., dated March 18, 2020 5. Memorandum prepared by Geotech Consultants, Inc., dated March 2, 2025 6. Report prepared by Altmann Oliver Associates, LLC, dated August 23, 2024 7. Memorandum prepared by Altmann Oliver Associates, LLC, dated January 27, 2025 8. Site Plan prepared by Sturman Architects, dated March 13, 2025 9. Letter of Completeness, dated October 25, 2024 10. Notice of Application, dated November 4, 2024 11. Hazard Report generated by the City of Mercer Island on April 7, 2025 12. Watercourse Map generated by the City of Mercer Island on April 7, 2025 13. Critical Areas Notice on Title, recorded February 3, 2025 under King County Recorder's Number 20250203000248 14. Notice of Decision, dated April 14, 2025

INTRODUCTION

I. Project Description

The applicant proposes to build a new single-family residence (proposed development) at 5222 Forest Ave SE (subject property). A critical area review 2 (CAR2) application was submitted in conjunction with building permit application number 2410-056, due to the proposed development location containing a piped and uniped watercourse and within a geologically hazardous areas, specifically a potential slide and erosion hazard area.

II. Site Description and Context

The subject property is located within R-15 Zone. The subject property is surrounded by single-family homes within zone R-15 to the north, east, and south and west. The subject property contains a piped and open watercourse as well as mapped geologically hazardous areas including potential slide and erosion hazard areas.

Findings of Fact & Conclusions of Law

I. Application Procedure

1. The application **(Exhibit 2)** for a CAR2 was received by the City of Mercer Island on September 27, 2024. The application was determined to be complete **(Exhibit 9)** on October 25, 2024.
2. Under MICC 19.15.030, Table A, a CAR2 is a Type III land use review. Type III land use reviews require notice of application (discussed below). A notice of decision is issued once the project review is approved by the code official, followed by an appeal period (**Exhibit 14).**
3. The City of Mercer Island provided public notice of application for this Critical Area Review 2 Permit, as set forth in MICC 19.15.090 (**Exhibit 10**). The comment period for the public notice period lasted for 30 days, from November 4, 2024, to December 4, 2024. The following methods were used for the public notice of application:
    1) A mailing sent to neighboring property owners within 300 feet of the subject parcel.
    2) A sign posted on the subject parcel.
    3) A posting in the City of Mercer Island's weekly permit bulletin.
4. No public comments were received

II. State Environmental Policy Act (SEPA)

The proposal is categorically exempt from SEPA pursuant to WAC 197-11-800(1)(b)(ii).

III. Consistency with the Critical Areas Code and Land Development Code

1. MICC 19.07.070 lists requirements for disclosure and notice on title. The applicant shall disclose to the city the presence of critical areas on the development proposal site and any mapped or identifiable critical areas within the distance equal to the largest potential required buffer applicable to the development proposal on the development proposal site.
    a. The owner of any property containing critical areas and/or buffers on which a development proposal is submitted, except a public right-of-way or the site of a permanent public facility,

shall file a notice approved by the city with the records and elections division of King County. The notice shall inform the public of the presence of critical areas, buffers and/or mitigation sites on the property, of the application of the city's critical areas code to the property and that limitations on actions in or affecting such critical areas and/or buffers may exist. The notice shall run with the land in perpetuity.

b. The applicant shall submit proof to the city that the notice has been recorded prior to approval of a development proposal for the property or, in the case of subdivisions, short subdivisions, and binding site plans, at or before recording of the final subdivision, short subdivision, or binding site plan.

Staff Analysis: A Critical Areas Notice on Title was recorded with the King County Recorder's Office on February 3, 2025 (**Exhibit 13**); therefore, this requirement is met.

2. MICC 19.07.090 describes the purpose and procedures by which the city will review and authorize development and verify consistency with this chapter.

   a. Critical Area Review 2. The purpose of a critical area review 2 is to review critical area studies and mitigation plans in support of proposed buffer averaging and reduction of wetland and watercourse buffers.

   b. Review timing and sequence.

      A. When development and/or activity within a wetland, watercourse, fish and wildlife habitat conservation area or buffer associated with these critical area types is proposed, a critical area review 2 is required to be reviewed and approved prior to construction authorization.

      B. When development and/or activity is proposed on a site containing only geologically hazardous areas, an application has the option of either:

         i. Applying for a critical area review 2 in advance of construction permits, using the procedures required for a Type III land use review; or

         ii. Requesting consolidation of the review of geologically hazardous areas together with construction permit review.

      C. When development and/or activity is proposed on a site containing geologically hazardous areas and on or more of the critical area types listed in subsection (B)(2)(a) of this section or the associated buffer of one of those critical areas, a critical area review 2 reviewing all critical areas is required to be reviewed and approved prior to construction authorization, using the procedures required for a Type III land use review.

Staff Analysis: The applicant submitted a Concurrent Review Request Form (**Exhibit 3**) requesting consolidated review of the Critical Area Review 2 and associated building permit application; therefore, the application is consistent with the review timing and sequence requirements.

3. MICC 19.07.100 lists requirements for mitigation sequencing. An applicant for a development proposal or activity shall implement the following sequential measures, listed below in order of preference, to avoid, minimize, and mitigate impacts to environmentally critical areas and

associated buffers. Applicants shall document how each measure has been addressed before considering and incorporating the next measure in the sequence:

a. Avoiding the impact altogether by not taking a certain action or parts of an action. The applicant shall consider reasonable, affirmative steps and make best efforts to avoid critical area impacts. However, avoidance shall not be construed to mean mandatory withdrawal or denial of the development proposal or activity if the proposal or activity is an allowed, permitted, or conditional use in this title. In determining the extent to which the proposal should be redesigned to avoid the impact, the code official may consider the purpose, effectiveness, engineering feasibility, commercial availability of technology, best management practices, safety and cost of the proposal and identified changes to the proposal. Development proposals should seek to avoid, minimize and mitigate overall impacts based on the functions and values of all of the relevant critical areas and based on the recommendations of a critical area study. If impacts cannot be avoided through redesign, use of a setback deviation pursuant to section 19.06.110(C), or because of site conditions or project requirements, the applicant shall then proceed with the sequence of steps in subsections B through E of this section;

b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, using a setback deviation pursuant to section 19.06.110(C), using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

d. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

f. Monitoring the impact and taking appropriate corrective measures to maintain the integrity of compensating measures.

Staff Analysis: The Memorandum prepared by Geotech Consultants, Inc., (**Exhibit 5**) addresses mitigation sequencing for the proposed development. The study found no steep slopes are present on the subject property. The applicant proposes to minimize the impact by only proposing work outside the mapped erosion and potential landslide areas at the site. The project also includes the planting of replacement trees in the northeast portion of the site and the plans incorporate final erosion conditions to prevent long term erosion.

4. MICC 19.07.110 lists requirements for a critical area study. A critical area study is required when a development proposal will result in an alteration to one or more critical area buffers or when required to determine the potential impact to a critical area. The critical area study may be waived or modified if the applicant demonstrates that the development proposal will not have an impact on the critical area or its buffer in a manner contrary to the purposes and requirements of this chapter.

   Staff Analysis: The applicant submitted a Geotechnical Engineering Study prepared by Geotech Consultants, Inc., (**Exhibit 4**) that addresses all of the requirements for a critical area study in MICC 19.07.110; therefore, this requirement is met.

5. MICC 19.07.160 lists standards for development on sites containing geologically hazardous areas.

   A. Geologically hazardous areas are lands that are susceptible to erosion, landslides, seismic events, or other factors as identified by WAC 365-190-120. These areas may not be suited for development activities because they may pose a threat to public health and safety. Areas susceptible to one or more of the following types of hazards shall be designated as geologically hazardous areas: landslide hazard areas, seismic hazard areas, and erosion hazard areas.

      Staff Analysis: The subject property contains landslide and erosion hazard areas. A Geotechnical Engineering Study prepared by Geotech Consultants, Inc. (**Exhibit 4**) was submitted showing that the proposed development has incorporated all geotechnical recommendations so that the risk to the site and adjacent property is eliminated or mitigated such that the site is determined to be safe.

   B. Alteration within geologically hazardous areas or associated buffers is required to meet the standards in this section, unless the scope of work is exempt pursuant to section 19.07.120, exemptions, or a critical area review 1 approval has been obtained pursuant to section 19.07.090(A).

      1. When an alteration within a landslide hazard area, seismic hazard area or buffer associated with those hazards is proposed, the applicant must submit a critical area study concluding that the proposal can effectively mitigate risks of the hazard. The study shall recommend appropriate design and development measures to mitigate such hazards. The code official may waive the requirement for a critical area study and the requirements of subsections (B)(2) and (B)(3) of this section when he or she determines that the proposed development is minor in nature and will not increase the risk of landslide, erosion, or harm from seismic activity, or that the development site does not meet the definition of a geologically hazardous area.

         Staff Analysis: The applicant submitted a Geotechnical Evaluation prepared by Geotech Consultants, Inc. (**Exhibit 4**) that states that the proposed development incorporates all recommendations to render the site safe and will not increase the risk of landslide or erosion. The geotechnical engineering study and critical area study were reviewed and approved by the City of Mercer Island's third-party geotechnical reviewer Michele Lorilla, PE; therefore, this requirement is met.

      2. Alteration of landslide hazard areas and seismic hazard areas and associated buffers may occur if the critical area study documents find that the proposed alteration:

         a. Will not adversely impact other critical areas;

         b. Will not adversely impact the subject property or adjacent properties;

         c. Will mitigate impacts to the geologically hazardous area consistent with best available science to the maximum extent reasonably possible such that the site is determined to be safe; and

d. Includes the landscaping of all disturbed areas outside of building footprints and installation of hardscape prior to final inspection.

Staff Analysis: The Geotechnical Engineering Study prepared by Geotech Consultants, Inc. (**Exhibit 4**), states that provided the recommendations in the report are followed, the planned development will not adversely impact the stability of the neighboring properties or result in a need for increased critical area buffers on those adjacent properties. The proposed development includes a landscaping plan that includes the landscaping of all disturbed areas outside of the building footprints and installation of hardscape, required prior to final inspection (**Exhibit 8, Sheet A1.3**).

3. Alteration of landslide hazard areas, seismic hazard areas and associated buffers may occur if the conditions listed in subsection (B)(2) of this section are satisfied and the geotechnical professional provides a statement of risk matching one of the following:

   a. An evaluation of site-specific subsurface conditions demonstrates that the proposed development is not located in a landslide hazard area or seismic hazard area;

   b. The landslide hazard area or seismic hazard area will be modified or the development has been designed so that the risk to the site and adjacent property is eliminated or mitigated such that the site is determined to be safe;

   c. Construction practices are proposed for the alteration that would render the development as safe as if it were not located in a geologically hazardous area and do not adversely impact adjacent properties; or

   d. The development is so minor as not to pose a threat to the public health, safety and welfare.

   Staff Analysis: The Memorandum prepared by Geotech Consultants, Inc. (**Exhibit 5**) states construction practices are proposed for the alteration that would render the development as safe as if it were not located in a geologically hazardous area and do not adversely impact adjacent properties; therefore, this requirement is met.

C. Development is allowed within landslide hazard areas and associated buffers, when the following standards are met:

   1. A critical area study shall be required for any alteration of a landslide hazard area or associated buffer;

   2. Buffers shall be applied as follows. When more than one condition applies to a site, the largest buffer shall be applied:

      a. Buffer widths shall be equal to the height of a steep slope, but not more than 75 feet, and applied to the top and toe of slopes;

      b. Shallow landslide hazard areas shall have minimum 25-foot buffers applied in all directions; and

      c. Deep-seated landslide hazard areas shall have 75-foot buffers applied in all directions.

Staff Analysis: The Geotechnical Engineering Study prepared by Geotech Consultants, Inc. (**Exhibit 4**) satisfies the requirements of a critical area study. The study finds that the risk of erosion and landslide activity at the site is very low and would not be affected by the proposed construction, provided the typical erosion control measures are in place during construction and all areas are landscaped following construction; therefore, these standards are met

D. When development is proposed within an erosion hazard area:

1. All development proposals shall demonstrate compliance with chapter 15.09, storm water management program.

2. No development or activity within an erosion hazard area may create a net increase in geological instability on or off site.

Staff Analysis: The critical area review is occurring concurrently with review of the associated construction permit under Building Permit No. 2410-056. As conditioned, the proposed development is required to obtain all related permits. The construction permit has been reviewed and approved by Ruji Ding, Senior Development Engineer for compliance with chapter 15.09, storm water management program. The Geotechnical Evaluation (**Exhibit 4**) finds that the risk of erosion at the site resulting from the proposed construction is very low, provided that the typical erosion measures are implemented during construction and all disturbed areas are landscaped following construction; therefore, this requirement is met.

6. MICC 19.07.180 lists standards for development on sites containing watercourses.

A. Buffer width reduction shall be allowed provided the flowing requirements are met:

1. The applicant has demonstrated that buffer averaging would not be feasibly allow development
Staff Analysis: The Critical Areas Report prepared by Altmann Oliver Associates **(Exhibit 7)** states that the stream is located off site and there are no areas on the property that are suitable for buffer replacement; therefore, buffer averaging is not possible.

2. The applicant has demonstrated how impacts will be minimized and that avoidance has been addressed consistent with section 19.07.100, mitigation sequencing;
Staff Analysis: The Critical Areas Report prepared by Altmann Oliver Associates **(Exhibit 7)** addresses stream mitigation for the proposed development. The mitigation measures shall achieve equivalent or greater ecological function, the offsite stream will also not be affected by the project, including no change to the bed, bank, or flow of the stream.

3. The applicant has demonstrated how all proposed impacts have been mitigated consistent with subsection E of this section and will not result in a loss of ecological function;
Staff Analysis: The Critical Areas Report prepared by Altmann Oliver Associates **(Exhibit 7)** states the there will be no loss of ecological function as part of the project and includes a buffer enhancement plan.

4. The proposed buffer width is not less than 75 percent of the standard buffer width at any point; and

Staff Analysis: The Critical Areas Report prepared by Altmann Oliver Associates **(Exhibit 7)** states the buffer width is proposed to be reduced from 60 feet to 45 feet in places and will not be less than 75 percent of the standard buffer.

5. The proposed buffer reduction is not proposed in conjunction with buffer averaging.
   Staff Analysis: Buffer averaging is not proposed as part of this project.

CONDITIONS OF APPROVAL

1. The proposed development shall be in substantial conformance with **Exhibit 4** and all applicable development standards contained within Chapter 19.07 Mercer Island City Code (MICC).

2. The applicant is responsible for documenting any required changes in the project proposal due to conditions imposed by any applicable local, state and federal government agencies.

3. Construction or substantial progress toward construction of a development for which a permit has been granted must be undertaken within three years after the approval of the permit or the permit shall terminate. The code official shall determine if substantial progress has been made.

DEVELOPMENT REGULATION COMPLIANCE – DISCLOSURE

1. Compliance with all applicable codes, including but not limited to zoning, critical areas (including Fish & Wildlife Habitat Conservation Areas), and building code, will be required as part of building permit review.

DECISION / RECOMMENDATION

Based upon the above noted Findings of Fact and Conclusions of Law, Critical Area Review 2 application CAO24-032, as depicted in **Exhibit 8**, is hereby **APPROVED as conditioned**. This decision is final, unless appealed in writing consistent with adopted appeal procedures, MICC 19.15.020(J), and all other applicable appeal regulations.

Approved this 14th day of April 2025.

Grace Manahan

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Grace Manahan
Code Compliance Planner
Community Planning & Development
City of Mercer Island

If you desire to file an appeal, you must submit the appropriate form, available from the department of Community Planning and Development, and file it with the City Clerk within fourteen (14) days from the date after the notice of decision is made available to the public and applicant pursuant to MICC 19.15.130. Upon receipt of a timely complete appeal application and appeal fee, an appeal hearing will be scheduled. To reverse, modify or remand this decision, the appeal hearing body must find that there has been substantial error, the proceedings were materially affected by

irregularities in procedure, the decision was unsupported by material and substantial evidence in view of the entire record, or the decision is in conflict with the city's applicable decision criteria.

Please note that the City will provide notice of this decision to the King County Department of Assessment, as required by State Law (RCW 36.70B.130). Pursuant to RCW 84.41.030(1), affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation by contacting the King County Department of Assessment at (206) 296-7300.