
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

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STAFF REPORT

CRITICAL AREA REVIEW 2

Project No.:	CAO23-027
Description:	A request for a Critical Area Review 2 for the construction of single-family homes on the two subject properties located within geologically hazardous areas.
Applicant / Owner:	Dan Alexander (Medici Architects) / Blair Hanson, Lapos Ventures, LLC and BV Homes, LLC
Site Address:	2430 and 2436 74th Ave SE, Mercer Island, WA 98040; Identified by King County Assessor tax parcel number 531510-0458 and 531510-0455.
Zoning District:	Single Family Residential (R-9.6)
Staff Contact:	Molly McGuire, Planner
Exhibits:	<ol style="list-style-type: none">1. Revised Development Application, received by the City of Mercer Island on May 30, 20242. Determination of Complete Application dated January 2, 20243. Notice of Application dated January 8, 20244. Geotechnical Engineering Study prepared by Earth Solutions NW, LLC, dated May 2, 20235. Plan Review Letter for 2430 74th Ave SE prepared by Earth Solutions NW, LLC, dated April 9, 20246. Plan Review Letter for 2436 74th Ave SE prepared by Earth Solutions NW, LLC, updated April 3, 20257. Mitigation Sequencing prepared by Earth Solutions NW, LLC, dated August 20, 20248. Development Plan Set for 2430 74th Ave SE, dated August 7, 20249. Development Plan Set for 2436 74th Ave SE, dated March 6, 202510. Landscaping Plan for 2430 74th Ave SE, dated August 2, 202411. Landscaping Plan for 2436 74th Ave SE, updated January 2, 202512. Hazard Reports generated by the City of Mercer Island on January 29, 2024<ol style="list-style-type: none">12.1. 2430 74th Ave SE Hazard Report12.2. 2436 74th Ave SE Hazard Report13. City of Mercer Island Review Letters<ol style="list-style-type: none">13.1. Review Letter 1 dated February 8, 202413.2. Review Letter 2 dated July 22, 2024

14. Applicant Response to City of Mercer Island Review Letters
 - 14.1. Response to Review Letter 1 dated June 14, 2024
 - 14.2. Response to Review Letter 2 dated September 17, 2024
15. Notice of Decision, issued by the City of Mercer Island on April 21, 2025

INTRODUCTION

I. Project Description

The applicant has requested approval of a Critical Area Review 2 for the construction of single-family homes on the two subject properties located within geologically hazardous areas. The applicant has submitted applications for two of the single-family residences, and a third single-family residence is anticipated in the future.

The proposal consists of the following components:

1. A request for the alteration of geologically hazardous areas for the construction of single-family homes on the two subject properties subject to the standards of Mercer Island City Code (MICC) 19.07.160.

II. Site Description and Context

1. The proposed activity is to occur at 2430 and 2436 74th Ave SE, Mercer Island, WA 98040. The site is designated Single Family Residential (zoned R-9.6). Adjacent properties are within the R9.6 and MF-2 zone and contain Residential and Multi-Family uses. The subject sites contain potential landslide, seismic, and erosion geologically hazardous areas (**Exhibit 12**).

Findings of Fact & Conclusions of Law

III. Application Procedure

1. The application for a Critical Area Review 2 was received by the City of Mercer Island on November 7, 2023. The application was determined to be incomplete on November 29, 2023, and resubmitted on December 26, 2023. The application was determined to be complete on January 2, 2024 (**Exhibit 2**).
2. Under MICC 19.15.030, Table A, applications for Critical Area Review 2 must undergo Type III review. Type III reviews require notice of application (discussed below). A notice of decision is issued once the project review is complete.
3. The City of Mercer Island provided public notice of application for this Critical Area Review 2, as set forth in MICC 19.15.090 (**Exhibit 3**). The comment period for the public notice period lasted for 30 days, from January 8, 2024 to February 7, 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.

IV. State Environmental Policy Act (SEPA)

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

V. 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: Prior to final inspection of the construction permits on each of the subject properties, a Critical Areas Notice on Title consistent with the above standards will be required, as conditioned; therefore, this requirement will be 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 one 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 has applied for the Critical Area Review 2 in advance of construction permits using the procedures required for a Type III land use review; therefore, this requirement has been met.

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: Earth Solutions NW, LLC provided documentation addressing mitigation sequencing consistent with the sequence above (**Exhibit 7**). The geotechnical engineer finds that avoidance of impacts is not possible due to site constraints. The development has been designed using appropriate technology, such as pile foundations, lightweight backfill, and grading techniques to reduce grading associated with minimum code requirements. Site disturbance has been reduced to the minimum required that satisfies the applicable code requirements, to the extent practical; therefore, this requirement has been met.

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 geotechnical report (**Exhibit 4**) provides recommendations for the site for the assumed future construction of three new single-family residences. The geotechnical report states it is their opinion that, based on site conditions observed during the fieldwork and slope

stability analyses, the landslide 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. A post-design memorandum prepared by the qualified professional confirming that the proposed improvements comply with the design recommendations was provided for each future construction permit on the subject site (**Exhibits 5 & 6**). A post-design memorandum will be required for any additional construction, as conditioned; 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 City's GIS Hazard Map indicates the development proposal sites are located within landslide hazard areas, seismic hazard areas, and erosion hazard areas (**Exhibit 12**). The Geotechnical Engineering Study (**Exhibit 4**) finds that evaluation of site-specific subsurface conditions demonstrates that the proposed development is not located in a seismic hazard area.

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 study (**Exhibit 4**) that provides recommendations for appropriate design and development measures to mitigate the hazards on the subject site. The applicant also submitted plan review letters prepared by the geotechnical engineer (**Exhibits 5 & 6**) that state the geotechnical engineer reviewed the development plan sets in **Exhibits 8 & 9** and finds that no additional slope stability analysis is warranted for this project, as the analyses completed adequately models the site and individual lots. The geotechnical evaluation study also finds that the site is not considered to be located within a seismic hazard area. As conditioned, a post-design memorandum prepared by the qualified professional confirming that the proposed improvements comply with the design recommendations will be required for each future construction permit on the subject site; 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 evaluation study (**Exhibit 4**) provides documentation that the proposed alteration will not adversely impact other critical areas and will not adversely impact the subject property or adjacent properties. Mitigation sequencing has been addressed and finds that the project has been minimized to reduce impacts to the extent practical. The geotechnical evaluation study provides recommendations for appropriate design and development measures to mitigate the hazards on the subject set. Landscaping of all disturbed areas consistent with **Exhibits 10 & 11** shall be required prior to final inspection of the associated development proposals for the subject site; therefore, these requirements will be met as conditioned.

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 public health, safety and welfare.

Staff Analysis: The plan review letters prepared by Earth Solutions NW, LLC (**Exhibits 5 & 6**), and the geotechnical engineering study (**Exhibit 4**) contain the following statements of risk for each geologically hazardous areas:

Landslide hazard area: "The landslide 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", which matches statement of risk (b) above.

Seismic hazard area: "This evaluation of site-specific subsurface conditions demonstrates that the proposed development is not located in a seismic hazard area", which matches statement of risk (a) above.

- 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 report prepared by Earth Solutions NW, LLC (**Exhibit 4**) serves as a critical area study for the alteration of the landslide hazard area. The subject sites are located entirely within the landslide hazard area; therefore, a buffer cannot be applied from the edge of the hazard area. Future proposed development will be required to comply with the recommendations provided by Earth Solutions NW, LLC. A post-design memorandum prepared by the qualified professional confirming that the proposed improvements comply with the design recommendations will be required for each future construction permit on the subject site; therefore, this requirement is met.

- D. When development is proposed within a seismic hazard area:
1. A critical area study shall be required and shall include an evaluation by a qualified professional for seismic engineering and design, a determination of the magnitude of seismic settling that could occur during a seismic event, and a demonstration that the risk associated with the proposed alteration is within acceptable limits or that appropriate construction methods are provided to mitigate the risk of seismic settlement such that there will be no significant impact to life, health, safety, and property.
 2. Seismic hazard areas shall be identified by a qualified professional who references and interprets information in the U.S. Geological Survey Active Faults Database, performs on-site evaluations, or applies other techniques according to best available science.
 3. When development is proposed on a site with an active fault, the follow provisions shall apply:
 - a. A 50-foot minimum buffer shall be applied from latest Quaternary, Holocene, or historical fault rupture traces as identified by the United States Geological Survey or Washington Geological Survey map databases or by site investigations by licensed geologic professionals with specialized knowledge of fault trenching studies; or
 - b. Mitigation sequencing shall be incorporated into the development proposal as recommended based on geotechnical analysis by a qualified professional to prevent increased risk of harm to life and/or property.

Staff Analysis: The geotechnical report prepared by Earth Solutions NW, LLC (**Exhibit 4**), provided the statement of risk determining that the proposed development is not located within a seismic hazard area or active fault; therefore, these provisions do not apply.

- E. 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: As conditioned, future development on the subject properties shall comply with chapter 15.09, storm water management program, and no development or activity within an erosion hazard area may create a net increase in geological instability on or off site; therefore, these requirements are met, as conditioned.

CONDITIONS OF APPROVAL

1. The project proposal shall be in substantial conformance with the application materials and all applicable development standards contained within Mercer Island City Code (MICC) Chapter 19.07.
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.
4. Prior to final inspection of a construction permit on each of the subject properties, a Critical Areas Notice on Title consistent with the standards in MICC 19.07.070, disclosure and notice on title shall be provided.
5. Additional future development proposals on the subject site shall demonstrate compliance with MICC 19.07.100, mitigation sequencing; MICC 19.07.110, critical area study; and MICC 19.07.160, geologically hazardous areas.
6. All development proposals within erosion hazard areas shall demonstrate compliance with chapter 15.09, storm water management program.
7. No development or activity within an erosion hazard area may create a net increase in geological instability on or off site.
8. A post-design memorandum prepared by the qualified professional confirming that the proposed improvements comply with the design recommendations shall be required prior to approval of construction permits on the subject site.
9. Landscaping of all disturbed areas outside of building footprints and installation of hardscape consistent with **Exhibits 10 and 11** shall be required prior to final inspection of construction permits. Future building permits shall also provide landscaping consistent with MICC 19.07.160(B)(2)(d).

DEVELOPMENT REGULATION COMPLIANCE – DISCLOSURE

1. The applicant is responsible for obtaining any required permits or approvals from the appropriate Local, State, and Federal Agencies.
2. All required permits must be obtained prior to the commencement of construction.

DECISION

Based upon the above noted Findings of Fact and Conclusions of Law, Critical Area Review 2 application CAO23-027 is hereby **APPROVED**. This decision is final, unless appealed in writing consistent with adopted appeal procedures, MICC 19.15.130(A), and all other applicable appeal regulations.

Approved this 21st day of April, 2025

A handwritten signature in black ink that reads "Molly McGuire". The signature is written in a cursive, flowing style.

Molly McGuire
Senior Planner
Community Planning & Development
City of Mercer Island