
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

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STAFF REPORT

CRITICAL AREA REVIEW 2

Project No.:	CAO23-028
Description:	A request for a Critical Area Review 2 with SEPA Review for the alteration of a Category IV wetland by filling and vacating the wetland for the construction of one single-family residence on each lot.
Applicant / Owner:	Dan Alexander (Medici Architects) / BV Homes, LLC & Lapos Ventures, LLC
Site Address:	2436 & 2430 74th Ave SE, Mercer Island, WA 98040; Identified by King County Assessor tax parcel number 5315100455 & 5315100458.
Zoning District:	Single Family Residential (R-9.6)
Staff Contact:	Molly McGuire, Planner
Exhibits:	<ol style="list-style-type: none">1. Development Application, received by the City of Mercer Island on November 7, 20232. Revised Project Narrative, received June 17, 20243. Wetland Assessment prepared by Altmann Oliver Associates, LLC, dated January 13, 2023 and received November 7, 20234. Wetland Map prepared by Altmann Oliver Associates, LLC, dated June 7, 2022 and received June 17, 20245. U.S. Army Corps of Engineers Regulatory Branch NWS-2022-539, dated May 11, 2023 and received June 17, 20246. Mitigation Fee in Lieu Plan prepared by Altmann Oliver Associates, LLC, dated June 30, 2022 and received June 17, 20247. Letter of Complete Application issued by the City of Mercer Island on June 28, 20248. Notice of Application, dated July 8, 20249. SEPA Checklist, dated June 14, 2024 and received June 17, 202410. SEPA Determination of Nonsignificance issued by the City of Mercer Island on September 9, 2024

INTRODUCTION

I. Project Description

The applicant has requested approval of a Critical Area Review 2 for the alteration of a Category IV wetland by filling and vacating the wetland for the construction of one single-family residence on each lot.

The proposal consists of the following components:

1. A request to alter a Category IV wetland by filling and vacating the wetland subject to the standards of Mercer Island City Code (MICC) 19.07.190(D).

II. Site Description and Context

1. The proposed activity is to occur at 2436 & 2430 74th Ave SE, Mercer Island, WA 98040. The site is designated Single Family Residential (zoned R-9.6). Adjacent properties are within the R-9.6 and MF-2 zones and contain residential and retirement home uses. The subject site contains a Category IV wetland which is located on the property line between the two subject properties (**Exhibit 4**).

Findings of Fact & Conclusions of Law

III. Application Procedure

1. The application for a Critical Area Review 2 Permit was received by the City of Mercer Island on November 7, 2023. The application was determined to be incomplete on November 29, 2023, resubmitted on January 18, 2024, determined incomplete on January 18, 2024, and resubmitted again on June 17, 2024. The application was determined to be complete on June 28, 2024 (**Exhibit 7**).
2. Under MICC 19.15.030, Table A, applications for Critical Area Review 2 Permits 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 Permit, as set forth in MICC 19.15.090. The comment period for the public notice period lasted for 30 days, from July 8, 2024 to August 9, 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.

IV. State Environmental Policy Act (SEPA)

A Determination of Nonsignificance (DNS) is being issued concurrently with the approval of this shoreline substantial development permit following the optional DNS process per Washington Administrative Code (WAC) 197-11-355 (**Exhibit 10**). The SEPA application is identified by City of Mercer Island project number SEP24-010.

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: This application is for the fill and vacation of a Category IV wetland (**Exhibit 2**). Following the completion of the development proposal, the subject properties would not contain a wetland; therefore, a notice on title disclosing the presence of the vacated critical area is not required.

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 is applying for a critical area review 2 in advance of construction permits. The application process follows the procedures required for a Type III land use review; therefore, these requirements have 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: The Wetland Assessment prepared by Altmann Oliver Associates, LLC (**Exhibit 3**) provides documentation of consideration and incorporation of mitigation sequencing for the proposed development as follows:

- (a) The wetland is located in the central portion of the site and cannot be avoided as part of any realistic development. A setback deviation would not grant sufficient relief for development.
- (b) The wetland is hydrologically supported by groundwater discharge and leaving a small portion of the wetland would not be functionally viable. Due to the location of the wetland, a setback deviation would not grant sufficient relief from the required buffer for development.
- (c) The wetland would be filled and vacated as part of the development proposal. There would be no on-site opportunity for repair, rehabilitation, or restoration.
- (d) The wetland would be filled and vacated as part of the development proposal. There would be no on-site opportunity for preservation and maintenance operations.
- (e) A mitigation fee in lieu has been prepared for the project using the King County Mitigation Reserves Program (**Exhibit 6**). It is anticipated that use of the King County Mitigation Reserves Program would replace the relatively minor wetland functions lost as part of the project. Mitigation would be conducted as part of this program and is intended to mitigate

for freshwater wetland functions and has proven success in mitigating for lost water quality, hydrologic, and habitat functions.

- (f) The King County Mitigation Reserves Program monitors mitigation sites to ensure all sites are meeting performance standards.
- 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 development proposal would result in an alteration to a Category IV wetland and associated buffer. A critical area study has been prepared by Altmann Oliver Associates, LLC in the form of a Wetland Assessment (**Exhibit 3**), which meets the requirements for a critical area study, as modified; therefore, these criteria have been met.

- 5. MICC 19.07.190 lists development standards for wetlands. Only those standards that apply to the proposed development have been included for analysis in this staff report. The remaining standards do not apply, either because the proposed development results in the vacation of the subject wetland, or because the proposed development does not include certain activities regulated by this section.

- A. Wetland shall be identified and their boundaries delineated in accordance with the approved federal delineation manual and applicable regional supplements described in WAC 173-22-035. Wetland shall be rated according to the Washington State Rating System for Western Washington: 2014 Update (Hruby, 2024), or most current update.

Staff Analysis: The applicant submitted a Wetland Assessment prepared by Altmann Oliver Associates, LLC that includes a Rating Summary (**Exhibit 3, Attachment A**). The wetland has been rated as a Category IV wetland according to the Washington State Rating System for Western Washington; therefore, this standard has been met.

- B. General review requirements.

- 1. In addition to the critical area study requirements listed in section 19.07.110, critical area study, critical area studies on wetland shall also include:

- a. Wetland rating forms and datasheets;
- b. Discussion of landscape setting;
- c. A functional analysis of the project demonstrating that there will be no loss of ecological function; and
- d. A mitigation plan.

Staff Analysis: The Wetland Assessment (**Exhibit 3**) includes wetland rating forms and datasheets that rate the wetland as a Category IV wetland, a discussion of the landscape setting, an analysis of the project demonstrating that there will be no loss of ecological function as a result of the wetland vacation, and a mitigation plan in the form of a Mitigation Fee in Lieu Plan (**Exhibit 6**); therefore, these requirements have been met.

- C. Development standards – additional criteria for specific activities.

1. Alterations to wetlands are allowed when the applicant has demonstrated how mitigation sequencing has been applied pursuant to section 19.07.100, mitigation sequencing, and when the applicant has demonstrated that the wetland is:

Staff Analysis: The Wetland Assessment (**Exhibit 3**) provides mitigation sequencing pursuant to section 19.07.100. Further discussion of the mitigation sequencing is provided in Finding V.3 above. The wetland would be altered by filling and vacating the wetland as part of the proposed development.

- a. All isolated Category IV wetlands less than 4,000 square feet that:

Staff Analysis: The isolated Category IV wetland is approximately 2,010 square feet in size (**Exhibit 3**).

- i. Are not associated with riparian areas or their buffers;

Staff Analysis: The wetland is not associated with riparian areas of buffers (**Exhibit 3**).

- ii. Are not associated with shorelines of the state or their associated buffers;

Staff Analysis: The wetland is not associated with shorelines of the state of an associated buffer. The wetland is located greater than 200 feet from the shoreline of Lake Washington, the closest shoreline of the state (**Exhibit 3**).

- iii. Are not part of a wetland mosaic;

Staff Analysis: The wetland is not part of a wetland mosaic (**Exhibit 3**).

- iv. Do not score five or more points for habitat function based on the 2014 update to the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06-029, or as revised and approved by Ecology);

Staff Analysis: The Wetland Assessment Rating Summary (**Exhibit 3, Attachment A**) finds that the wetland scores four habitat points based on the Washington State Wetland Rating System for Western Washington.

- v. Do not contain a priority habitat or a priority area for a priority species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat, or species of local importance identified in section 19.07.170.

Staff Analysis: The wetland does not contain a priority habitat or priority area for priority species identified by the Washington Department of Fish and Wildlife, or federally listed species or their critical habitat, or species of local importance identified in section 19.07.170 (**Exhibit 3**).

CONDITIONS OF APPROVAL

1. The project proposal shall be in substantial conformance with **Exhibit 2** 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. Landscaping of all disturbed areas outside of building footprints and installation of hardscape is required prior to final inspection of the associated building permit.

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 Permit application **CAO23-028** 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 16th day of September, 2024



Molly McGuire
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