
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

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STAFF REPORT

CRITICAL AREA REVIEW 2

Project No.:	CAO24-020
Description:	A request for a Critical Area Review 2 for the repair of the contiguous shoreline by removing the existing bulkhead and replacing it with a new rock bulkhead and beach cove. Other project elements include construction of a 120 SF barbeque pad, the removal of two trees, and installation of native trees, shrubs, and groundcover plantings.
Applicant / Owner:	Devin Melville (Facet) / Ken Lustig
Site Address:	3820 E Mercer Way, Mercer Island, WA 98040; Identified by King County Assessor tax parcel number: 0824059185, 0824059184, 0824059189, 0824059029, 0824059181, and 0824059240.
Zoning District:	Single Family Residential (R-9.6)
Staff Contact:	Grace Manahan, Code Compliance Planner
Exhibits:	<ol style="list-style-type: none">1. Development Application, received by the City of Mercer Island on May 13, 20242. Development Plan Set, dated December 9, 2024 and received December 10, 20243. Project Narrative, received May 13, 20244. Critical Areas Notice on Title for tax parcel number 0824059189, recorded September 23, 2024 under King County Recorder's Number 202409230003755. Critical Areas Notice on Title for tax parcel number 0824059184, recorded September 24, 2024 under King County Recorder's Number 202409240007936. Critical Areas Notice on Title for tax parcel number 0824059029, recorded September 25, 2024 under King County Recorder's Number 202409250006757. Hazard Report, generated by the City of Mercer Island on January 28, 20258. Determination of Complete Application, dated June 6, 20249. Notice of Application, dated June 17, 202410. City of Mercer Island Review Letters<ol style="list-style-type: none">10.1. Review Letter 1, dated August 22, 2024

- 10.2. Review Letter 2, dated December 9, 2024
11. Applicant Response to City of Mercer Island Review Letters.
 - 11.1. Applicant Response to Review Letter 1, dated October 16, 2024
 - 11.2. Applicant Response to Review Letter 2, dated December 10, 2024
12. Geotechnical Report prepared by GEO Group Northwest, Inc, dated February 7, 2024 and received October 17, 2024
13. Plan review and minimum risk letter prepared by GEO Group Northwest, Inc, dated October 14, 2024, and received October 17, 2024
14. SEPA Determination of Nonsignificance, dated August 26, 2024
15. Notice of Decision, dated February 18, 2025

INTRODUCTION

I. Project Description

The applicant has requested approval of a Critical Area Review 2 for the repair of the contiguous shoreline by removing the existing bulkhead and replacing it with a new rock bulkhead and beach cove. Other project elements include construction of a 120 SF barbeque pad, the removal of two trees, and installation of native trees, shrubs, and groundcover plantings.

The proposal consists of the following components:

1. A request to repair the contiguous shoreline by removing the existing bulkhead and replacing it with a new rock bulkhead and beach cove. Other project elements include construction of a 120 SF barbeque pad, the removal of two trees, and installation of native trees, shrubs, and groundcover plantings subject to the standards of Mercer Island City Code (MICC) 19.07.160, Geologically hazardous areas.

II. Site Description and Context

1. The proposed activity is to occur at 3820 E Mercer Way, Mercer Island, WA 98040. The site is designated Single Family Residential (zoned R-9.6). Adjacent properties are within the R-9.6 zone and contain residential uses. The subject site contains potential landslide, erosion, and seismic geologically hazardous areas (**Exhibit 7**).

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 May 13, 2024. The application was determined to be complete on June 6, 2024 (**Exhibit 8**).
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 9**). The comment period for the public notice period lasted for 30 days, from June 17, 2024 to July 17, 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 during the public comment period.

IV. State Environmental Policy Act (SEPA)

A Determination of Nonsignificance (DNS) was issued by the City of Mercer Island on August 26, 2024 (**Exhibit 14**) following the optional DNS process per Washington Administrative Code (WAC) 197-11-355.

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: A Critical Areas Notice on Title was recorded with the King County Recorder's Office (**Exhibit 4,5,6**); 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 development is proposed on a site containing only geologically hazardous areas. The applicant applied for a critical area review 2 in advance of construction permits; therefore, the review timing and sequence requirements for this permit 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 applicant provided a Geotechnical Report prepared by GEO Group Northwest, Inc (**Exhibit 12**) which addresses mitigation sequencing for the proposed development. The entire development site is encumbered by potential slide, seismic and erosion geologically hazardous areas (**Exhibit 7**), therefore; avoiding the impact altogether is not possible. The applicant proposes to minimize the impact by revegetating and mulching soils exposed due to activities of the proposed project to provide protection against erosion and will surface the proposed beach area with a 1-foot-layer of a washed sand or gravel material. Temporary erosion control measures will be implemented during site work. The project also includes the restoration of the affected environment through the proposed landscaping plan,

which includes the landscaping of all disturbed areas outside the proposed building footprint (**Exhibit 2, Sheet L161**).

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 Report prepared by GEO Group Northwest, Inc (**Exhibit 12**); therefore, this requirement is met for the alteration to one or more critical areas.

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 site contains landslide, seismic, and erosion hazard areas (**Exhibit 7**).

- 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 Geotechnical Report prepared by GEO Group Northwest, Inc (**Exhibit 12**), found that, provided the recommendations presented in the report and addendum are followed during project design and construction, the proposal would not result in adverse impacts to critical areas on the site or neighboring properties. The applicant also provided a post-design memorandum (**Exhibit 13**) confirming that the proposed development has been designed according to the recommendations in the investigation; therefore, this requirement has been 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 Report prepared by GEO Group Northwest, Inc (**Exhibit 12**), 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 2, Sheet L161**).

- 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 Plan review and minimum risk letter prepared by GEO Group Northwest, Inc (**Exhibit 13**) includes a statement of risk, matching statement (c) 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 applicant submitted a Geotechnical Report prepared by GEO Group Northwest, Inc (**Exhibit 12**) for the alteration of the landslide hazard area. No documentation

of historic slides have been found and no indications of active or recent soil instability was observed. The surface conditions of the site were observed to be well vegetated with trees and shrubs. The subject property is entirely encumbered by a potential landslide hazard area; therefore, buffers cannot be applied from the edge of the landslide hazard area. The applicant also provided a post-design memorandum (**Exhibit 13**) confirming that the proposed development has been designed according to the recommendations in the investigation; therefore, this requirement has been 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 GEO Group Northwest, Inc (**Exhibit 12**) found minimal susceptibility to soil liquefaction or lateral soil spreading due to seismic events based on the presence of soils containing a high fraction of fine- and -coarse-grained materials. The report also found that based on observations at the site and from review of the United States Geological Survey and Washington Geological Survey map databases, no recent or historical fault ruptures have been identified on or near the site; therefore, no further measures are needed to mitigate the mapped seismic hazard.

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: The development proposal was approved by Ruji Ding, Senior Development Engineer, who reviewed the development proposal for compliance with chapter 15.09. The Geotechnical Report prepared by GEO Group Northwest, Inc (**Exhibit 12**) finds that excavation and construction of the planned construction can be accomplished without

adverse erosion impacts to the site and surrounding properties by using temporary erosion and sediment controls (TESC).

CONDITIONS OF APPROVAL

1. The project proposal shall be in substantial conformance with **Exhibit 2** 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.
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 application CAO24-020, as depicted in **Exhibit 2**, 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 18th day of February, 2025



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