
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

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STAFF REPORT

CRITICAL AREA REVIEW 2 PERMIT

Project No.:	CAO25-009
Description:	A request for a Critical Area Review 2 for an addition on an existing single-family residence in geologically hazardous areas.
Applicant / Owner:	David DiMarco (DiMarco Architecture + Design) / Gregory Kicska & Kathleen Lin
Site Address:	5331 Forest Ave SE, Mercer Island, WA 98040; Identified by King County Assessor tax parcel number 2948900013.
Zoning District:	Single Family Residential (R-15)
Staff Contact:	Madelyn Nelson, Assistant Planner
Exhibits:	<ol style="list-style-type: none">1. Development Application received by the City of Mercer Island on May 8, 2025.2. Development Plan Set, dated May 6, 2025, and received May 8, 20253. Project Narrative, received May 8, 20254. Criteria Compliance Narrative, received May 8, 20255. Geotechnical Engineering Study and Critical Area Study prepared by Geotech Consultants, INC., dated October 8, 2024 and received May 8, 20256. Statement of Minimum Risk prepared by Geotech Consultants, INC., dated May 6, 2025.7. Mitigation Sequencing prepared by Geotech Consultants, INC., dated August 18, 2025.8. Letter of Complete Application, issued by the City of Mercer Island on June 16, 20259. Legal Description, received on June 12, 2025.10. Critical Areas Notice on Title recorded September 19, 2025, under King County Recorder's Number 20250919000528.11. Notice of Application, dated June 23, 202512. Concurrent Review Form13. Hazard Map for 5331 Forest Ave SE, generated on November 25, 2025.14. City of Mercer Island Review Letters<ol style="list-style-type: none">a. Review Letter 1, dated July 1, 2025b. Review Letter 2, dated October 16, 2025c. Review Letter 3, dated November 6, 2025

INTRODUCTION

I. Project Description

The applicant has requested approval of a Critical Area Review 2 Permit for application to add an 874 square foot gross area 2-story ADU to an existing 4,185 sf gross area two-story plus basement existing main house on a 15,070 sf parcel.

The proposal consists of the following components:

1. A request to add 874 SF addition to the existing house subject to the standards of Mercer Island City Code (MICC) 19.02.020 Residential Standards.
2. A request for a Critical Area Review 2 subject to the standards of Mercer Island City Code (MICC) 19.07.090 Critical Area Review.
3. A request for Accessory Dwelling Unit permit subject to the standards of MICC 19.02.030 Accessory Dwelling Unit.

II. Site Description and Context

1. The proposed activity is to occur at 5331 Forest Ave SE, Mercer Island, WA 98040. The site is designated Single Family Residential (zoned R-15). Adjacent properties are within the R-15 zone and contain residential uses. The subject site contains potential slide, seismic, and erosion geologically hazardous areas.

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 May 8, 2025. The application was determined to be incomplete on May 9, 2025, resubmitted on June 11, 2025. The application was determined to be complete on June 16, 2025.
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 June 23, 2025 to July 24, 2025. 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)

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: A critical areas Disclosure and Notice on Title was provided on October 3, 2025. It was notarized on May 20, 2025. It was recorded with King County Assessor's office on September 19, 2025, under recording number 20250919000528 (**Exhibit 10**). The Notice informs the public of the presence of critical areas and proposed mitigation due to the proposed development; 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 12**) requesting consolidated review of the Critical Area Review 2 application and associated building permit application (2504-058) and Accessory Dwelling Unit Application (ADU25-004); therefore, the review timing and sequence is consistent with these standards.

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 Mitigation Sequencing Letter on October 21, 2025 (**Exhibit 7**) which addresses mitigation sequencing for the proposed development. The entire development site is encumbered by potential slide, erosion, and seismic geologically hazardous areas (**Exhibit 13**), therefore avoiding the impact altogether is not possible. The project is described to largely be limited to areas of the site that have already been impacted by development via the existing driveway, leveling, and other site improvements. The undeveloped areas impacted by development were described to be minimal and would not impact the site from a geotechnical engineering standpoint (**Exhibit 5**). The mitigation measures described in the project plans were described as being sufficient in mitigation. The minimal disturbed areas would further be mitigated by being covered with development or landscaping. The geotechnical engineer indicates this would mitigate any future erosion. The impacts have been minimized by using appropriate technology and taking affirmative steps to reduce impacts; therefore, mitigations sequencing has been applied and this requirement is 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.

1. **Staff Analysis:** The applicant submitted a Geotechnical Engineering Study and Critical Area Study prepared by Geotech Consultants, INC., dated October 8, 2024, consistent with the criteria in MICC 19.07.110. 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 potential landslide, erosion, and seismic hazard areas. **(Exhibit 13).**
 - 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 Engineering Study and Critical Areas Study prepared by Geotech Consultants, INC. **(Exhibit 5)**, which found that the proposed development would not result in adverse impacts to critical areas on the site or the neighboring properties.
 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 Critical Areas Study prepared by Geotech Consultants, INC. (**Exhibit 5**), finds that the proper mitigations have been implemented in the current design such that the potential risk of mapped geologic hazards is eliminated or mitigated such that the site is determined to be safe.

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: In a geotechnical letter submitted titled Review of Plans/Statement of Risk (**Exhibit 6**) prepared by Geotech Consultants, INC., contains a statement of risk that indicates the development has been designed so that the risk to the lot and adjacent property is eliminated or mitigated such that the site is determined to be safe. The Statement of Risk also indicates the alteration is so minor as not to pose a threat to public health, safety, and welfare.

- 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: Geotechnical Engineering Study and Critical Area Study prepared by Geotech Consultants, INC. (**Exhibit 5**) states despite evidence of ancient landslides, the site and general vicinity are only inclined around 18% on average, thus the potential for future instability is particularly low due to this low inclination. In addition, the core of the subject site consists of hard glacially-compressed, native silt soils that are not susceptible to deep-seated landslides. Thus, no buffers are necessary to mitigate the mapped Potential Landslide Hazard.

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: Geotechnical Engineering Study and Critical Area Study prepared by Geotech Consultants, INC. (**Exhibit 6**) states the Seismic Hazard mapping appears (**Exhibit 13**) to be unrelated to any site features. The site soils have a very low probability of movement during a large seismic event and they are not susceptible to seismic liquefaction. Thus, the geotechnical engineers do not believe the site is a Seismic Hazard Area.

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: Geotechnical Engineering Study and Critical Area Study prepared by Geotech Consultants, INC. (**Exhibit 5**) describes the work for this project can be accomplished without adverse erosion impacts to the site and surrounding properties because only shallow excavations are needed for the proposed ADU, the area the ADU is not significant, and the area only somewhat moderately sloped. The geotechnical consultants recommended proper erosion control implementation and maintenance to prevent adverse impacts to the site and neighboring properties, particularly regarding the wet season.

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.
5. A post-design memorandum prepared by a qualified professional confirming that the proposed improvements comply with the design recommendations in The Geotechnical Engineering Evaluation and Critical Areas Study prepared by Geotech Consultants, INC. (**Exhibit 5**), is required to be submitted and approved prior to approval of the associated building permit under permit number 2504-058.

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 **CAO25-009**, as depicted in **Exhibit 3**, 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 1 day of December, 2025

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