



December 15, 2023

City of Mercer Island
Attn: Paul West
9611 SE 36th St
Mercer Island, WA 98040
Via: Email

RE: **Luther Burbank Park Waterfront Improvements Project** SUB3 Review Letter; 2048
84th Ave SE, Mercer Island, WA 98040

Permit Nos. SHL22-023, SHL22-024, SHL22-025, SHL23-043, SHL23-044, SHL23-045, CAO22-018, SEP22-019

Dear Paul West,

The City of Mercer Island Community Planning and Development Department has completed a review for compliance with the zoning code, Title 19 of the Mercer Island City Code (MICC) for the above Shoreline Substantial Development Permit, Shoreline Variance Permits, Shoreline Conditional Use Permit, Critical Areas Ordinance Review Type 2 Permit, and SEPA Threshold Determination applications. The following issues need to be addressed in your resubmission:

Geotech:

1. From Michele Lorilla, City of Mercer Island Third-Party Geotechnical Peer Reviewer: "I reviewed the SUB3 package and my only outstanding comment is the same as before. The geotechnical engineer of record needs to provide a review letter of the planset and an updated statement of risk (SOR). The current package, although mentioning an updated SOR, provided the same one as before dated March 1, 2023"

Planning:

1. The public comment period for the shoreline variance permit applications ran from October 2, 2023 through November 3, 2023. Four comments were received. Please review and prepare responses to the public comments received during the public comment period (attached below).

2. It appears that the scope of the project has changed slightly from the last submittal on April 17, 2023. Please confirm that all of the information in the Critical Areas Study prepared by Anchor QEA, dated April 2023 accurately reflects the scope of the project.
3. There is a “DRAFT” stamp on the Wave and Wake Modeling Report prepared by Blue Coast Engineering, LLC, dated January 9, 2022 (Critical Areas Study Appendix E). Since this study is being used to demonstrate compliance with MICC 19.13.050(G) for the use of breakwaters, jetties, and weirs for protection of shoreline restoration areas, and for the variance criteria justifications, a finalized version of the report is required to be submitted.
4. **SHL22-023 SSDP.** The following comments were provided in the SUB1 review comments, on January 20, 2023. This information is required from the applicant to determine that the proposal complies with the standards in the SMP. These criteria will be used during review by the Hearing Examiner and Ecology to determine if the application is approvable, as discussed in the meeting held on June 26, 2023.
 - a. Provide separate mitigation sequencing specific to the breakwater per MICC 19.13.050(G). Mitigation sequencing is referenced several times in the application materials but does not specifically address this requirement.
 - b. Provide more information on how the dock length or area for the public access pier is the minimum size necessary to meet the needs of the proposed water-dependent use for MICC 19.13.050(H)(3). The application states that the proposed dock is the minimum size necessary to meet the needs of programming at the site. Explain the needs of programming (ie expected attendance, peak hours, uses, etc)
 - c. Provide calculations for compliance with MICC 19.13.050(K)(4) for the increase in hardscape on the lot. If there is a net increase of more than 500 or 1000 square feet, a planting plan is required.
5. **Variances.** The following comments were provided in the SUB2 review comment letter sent on June 26, 2023. More information is required from the applicant to determine that the proposal complies with the standards in the Washington Administrative Code (WAC). These criteria will be used during review by the Hearing Examiner and Ecology to determine if the application is approvable, as discussed in the meeting held on June 26, 2023.
 - a. Explanation of consistency with WAC 173-27-170 “The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020” is missing from the consistency tables for all variances.

- b. Consistency with WAC 173-27-170(2)(e) – how is each variance the minimum necessary to afford relief from the hardship imposed by the strict application of the standards in the SMP? (ie. Why does the dock width need to be 10 ft versus 8 ft?)
 - c. Consistency with WAC 173-27-170(3)(a) – provide more detail on how the strict application of the standards in the SMP precludes **reasonable use** of the property.
 - d. SHL23-043 Dock Grating Variance Consistency with WAC 173-27-170(1) states that if the float were grated, light transmittance would be inhibited by structural components required to allow the wave attenuator/mooring float to provide critical safety functions for public use of the dock, including ADA accessibility and protection of shoreline ecological functions. This seems like creation of the hardship due to the design of the dock. The south floating dock is fully grated with an 8-foot width and larger piles. CPD may not be able to support this response in its staff report to the Hearing Examiner. Reconsideration of this response by the applicant is recommended.
6. SHL22-025 SCUP. The following comments were provided in the SUB1 review comments, on January 20, 2023. More information is required to determine if the proposal complies with the standards in the WAC. These criteria will be used during review by the Hearing Examiner and Ecology to determine if the application is approvable, as discussed in the meeting held on June 26, 2023.
- a. Consistency with WAC 173-27-160(1)(a) – the applicant’s answer states that the proposed use of the Project will be consistent with RCW 90.58.020 by preserving the natural character of the shoreline. The application includes alteration of the shoreline by constructing hard shoreline stabilization measures, which does not preserve the natural character. CPD may not be able to support this response in its staff report to the Hearing Examiner. Reconsideration of this response by the applicant is recommended.

The City’s processing of the Shoreline Substantial Development Permit, Shoreline Variance Permits, Shoreline Conditional Use Permit, Critical Areas Ordinance Review Type 2 Permit, and SEPA Threshold Determination applications have been put on hold until these issues are resolved. Pursuant to MICC 19.15.110, all requested information must be submitted within 60 days or a request for extension requested. The deadline for a complete response or request for extension is February 13, 2024. If a complete response is not received or an extension response has been received prior to that date, the application will expire and be canceled for inactivity. No additional notification regarding this deadline or expiration of the application will be provided.

Please note that the Hearing Examiner will provide a recommendation to Ecology for decisions on Shoreline Conditional Use Permits and Shoreline Variance Permits. The Hearing Examiner has the authority to deny the application or recommend approval to

Ecology.

Sincerely,

Molly McGuire

Molly McGuire, Planner
City of Mercer Island Community Planning and Development
molly.mcguire@mercerisland.gov
(206) 275-7712

Molly McGuire

From: Sarah Fletcher <fletchsa1@gmail.com>
Sent: Friday, October 6, 2023 8:40 AM
To: Jessi Bon; Jeff Thomas
Cc: Thomas Acker; Dan Thompson; Planning Commission
Subject: Fwd: Against File No SHL22-024 Type IV Shoreline Variance

And this is the other variance request. There is one more, but I am not sure what that is for. I will have to look at the Notice of Public Applications. Again, this is not acceptable. If they can't work within scope and within our City Codes, then the project needs to be shelved and redone so that it does all come within scope and City code. Please get to the bottom of why the contractor cannot build the docks within scope and code. A City should not be asking for variances. Like I said, it sets a terrible precedence for the whole island and it then means that anyone can have a variance as the City was allowed a variance and if you think that is not the case, then please explain why the City only can have a variance, but not other citizens/homeowners?

This should have gone back to the contractor with a printout of our whole Code and someone in the City should have saved us all a lot of time and money and explained that this is what our Code is and that the docks are to be built within code, please revise it. And if they can't, then go with another contractor who can build within the scope and code. Thanks.

Sarah Fletcher

----- Forwarded message -----

From: Sarah Fletcher <fletchsa1@gmail.com>
Date: Wed, Oct 4, 2023 at 2:12 PM
Subject: Against File No SHL22-024 Type IV Shoreline Variance
To: <molly.mcguire@mercerisland.gov>, <paul.west@mercerisland.gov>, <council@mercerisland.gov>, <alison.vangorp@mercerisland.gov>

Hello, I am sorry, but I just don't get it. This is a City project is it not? And the City Code MICC 19.13.050(H)(4) has for a MAXIMUM DOCK WIDTH OF 6FT does it not? Then 6ft maximum is what it should be, not 7ft, not 8ft, not 9ft, and not 10ft, BUT 6FT!

Would someone like to explain why it has a 6ft maximum width versus 10ft?

- a) Like what are the repercussions of a wider dock width?
- b) why couldn't the contractor just go with what is in the Code - 6ft?
- c) what is the cost difference in going with a 6ft wide deck versus a 10ft wide deck?
- d) why couldn't he build the wider deck within code?

And if he can't, then please use a different contractor who can redo the dock with a 6ft dock width and stop wasting all of our time.

Associated permits: SHL22-023,

Molly McGuire

From: Sarah Fletcher <fletcha1@gmail.com>
Sent: Friday, October 6, 2023 8:35 AM
To: Jessi Bon; Jeff Thomas
Cc: Thomas Acker; Dan Thompson; Planning Commission
Subject: Fwd: Comments on SHL23-043 Public Notice of Application Against it

This is the second variance the City is asking for. It is wholly unacceptable. Why can't the contractor work within the scope and abide by our Codes considering this is a City project? If the variance is permitted, then the Code has to be changed and in order to change a variance, I believe you would have to have the City file a Code amendment/variance. And this sets a terrible precedent.

----- Forwarded message -----

From: **Sarah Fletcher** <fletcha1@gmail.com>
Date: Wed, Oct 4, 2023 at 2:37 PM
Subject: Comments on SHL23-043 Public Notice of Application Against it
To: <molly.mcguire@mercerisland.gov>, <paul.west@mercerisland.gov>, <council@mercerisland.gov>, <alison.vangorp@mercerisland.gov>

Hello, this is what it has in the Code:

5. Public access piers, docks, or boardwalks must be fully grated with materials that allow a minimum of 40 percent light transmittance."

I am sorry, but does "grating with 40 percent light transmission over 100 percent of the dock to construct a concrete float with zero grating at the proposed central dock" sound like it is fully grated with materials that allow a minimum of 40 percent light transmittance? If not, then scrap it or go with what is allowed.

What I am just not comprehending is why are the intake people not consulting with the contractors and explaining to them what the Code states and asking them to come up with a solution that meets the City's Codes?

What are the differences in what the contractor is proposing and what the City Code has?

[Fixed Dock vs. Floating Docks: Pros & Cons \(fwmdocks.com\)](http://fwmdocks.com)

I want to know

a) what impact a concrete float will have on the fish and the wetlands.

b) And is it a floating or fixed dock?

c) What choices were offered?

d) Why did the City want to go with a concrete deck?

e) and have you checked with the Army Corp of Engineers with regards to: Construction of public access piers, docks, or boardwalks shall abide by the work windows for listed species established by the U.S. Army Corps of Engineers and Washington Fish and Wildlife?

I am concerned about the environmental impact to what is proposed as per WAC 220-660-140:

You see, it specifically states that the grating cover the entire dock surface, but the contractor/City is asking for a variance of ZERO GRATING." Again, please do what is in the Code and stop asking for variances and wasting everyone's time. I am just not comprehending why the contractor is asking for so many variances. Why? It doesn't even have for a dock which is 10ft dock width which is applicable to the other variance you are requesting.

(C) In water bodies with a high density of piers and docks, the department may require that grating cover entire deck surface of the pier or dock.

(E) A dock or float **six feet wide or narrower must have at least thirty percent of the deck surface covered in functional grating. A dock or float wider than six feet (up to eight feet wide) must have at least fifty percent of the deck surface covered in functional grating. The grating material's open**

area must be at least sixty percent. In some water bodies the department may require a higher proportion of grating. Locate flotation under the solid decked area only. Orient grating so the lengthwise opening maximizes the amount of light penetration. Any objects that are not part of the structure on, above, or below the grating should not block light penetration."

Residential and public recreational docks, piers, ramps, floats, watercraft lifts, and buoys in freshwater areas.

The requirements in this section apply to location, design, and construction of permanent and seasonal docks, piers, ramps (gangways), floats, watercraft lifts, and mooring buoys.

(1) **Description:** Docks are structures that are fixed to the shoreline but floating upon the water. Piers are fixed, piling-supported structures. Floats (rafts) are floating structures that are moored, anchored, or otherwise secured in the water that are not directly connected to the shoreline. A ramp is a structure that connects a pier or shoreline to a float and provides access between the two. Pilings usually associated with these structures are timber, steel, reinforced concrete, or composite posts that are driven, jacked, or cast vertically into the bed. A watercraft lift is a structure that lifts boats and personal watercraft out of the water. A mooring buoy is a structure floating on the surface of the water that is used for private and commercial vessel moorage.

(2) **Fish life concerns:**

(a) Over-water and in-water structures can alter physical processes that create or maintain habitat that supports fish life. These processes include light regime, hydrology, substrate conditions, and water quality. However, light reduction is a main impact to fish life at critical life stages. Light reduction, or shading, by over-water or in-water structures reduces survival of aquatic plants. Aquatic plants provide food, breeding areas, and protective nurseries for fish life.

(b) Shallow water provides juvenile fish a refuge from predators like larger fish. Over-water and in-water structures can alter movement of juvenile salmon, steelhead, and other fish species. Structures grounding on the bed can physically block migration and cause other impacts. The light/dark contrast of shading/no shading of over-water and in-water structures can affect migration behavior. Fish respond by moving into deeper water which increases the risk of predation. These structures may increase the exposure of juvenile salmon, steelhead, and other small fish to predators by providing predator habitat.

(3) **Residential and public recreational dock, pier, ramp, float, watercraft lift and buoy design - General:**

(a) The design and location of structures must follow the mitigation sequence to protect freshwater habitats of special concern.

(b) Design and locate structures to protect fish spawning areas.

(c) Design and locate structures to protect juvenile salmonid migration, feeding, and rearing areas where shading impacts are a concern.

(i) Limit the width of residential piers and docks to six feet for the first thirty feet from the shoreline (measured from mean low water). Limit the width of recreational piers to the minimum width needed to accommodate the intended use.

(A) In certain river systems alternative residential pier and dock criteria may apply.

(B) For the Columbia River, limit the width of residential piers and docks to six feet for the first fifty feet from the shoreline. Docks must have twenty feet of water depth below them (both criteria measured at mean low water).

(ii) Piers must extend far enough from the shoreline so floats do not impact juvenile salmonid migration, feeding, and rearing areas. Grounding of floats is approved in reservoirs and impoundments only at times of the year when the water level is dropped.

(iii) The underside of pier must be at least one and one-half feet above the OHWL elevation unless prohibited by local land use regulations.

(iv) The department will require residential pier, dock, ramp and float designs to include grating. The department may require public recreational pier, dock, ramp and float designs to include grating.

(A) North/south oriented piers (338 to 22 degrees, or 158 to 202 degrees) greater than four feet in width must have at least thirty percent of the entire deck surface covered in functional grating. The grating must be installed parallel to the length of the pier for the entire length of the pier.

(B) Northeast/southwest, northwest/southeast and east/west oriented piers (23 to 157 degrees, 203 to 337 degrees) must have at least fifty percent of the entire deck surface covered in functional grating regardless of width. The grating must be installed parallel to the width of the pier, evenly spaced along the entire length of the pier.

(C) In water bodies with a high density of piers and docks, the department may require that grating cover entire deck surface of the pier or dock.

(D) Limit the width of residential ramps to four feet wide. Limit the width of public recreational ramps to the minimum width needed to accommodate the intended use. Cover the entire ramp surface with grating.

(E) A dock or float six feet wide or narrower must have at least thirty percent of the deck surface covered in functional grating. A dock or float wider than six feet (up to eight feet wide) must have at least fifty percent of the deck surface covered in functional grating. The grating material's open area must be at least sixty percent. In some water bodies the department may require a higher proportion of grating. Locate flotation under the solid decked area only. Orient grating so the lengthwise opening maximizes the amount of light penetration. Any objects that are not part of the structure on, above, or below the grating should not block light penetration.

(F) If only the minimum deck surface area described in (c)(iv) of this subsection is grated, the grating material's open area must be at least sixty percent unless the grating covers more than the minimum deck area. If the grating covers more than the minimum deck surface area, the grating material's open area can be reduced to at least forty percent open area.

(d) If artificial nighttime lighting is used in the design, use low-intensity lights that are located and shielded to prevent light from attracting fish, unless there are safety constraints."

Molly McGuire

From: Sarah Fletcher <fletchsa1@gmail.com>
Sent: Friday, October 6, 2023 8:32 AM
To: Jessi Bon; Jeff Thomas
Cc: Thomas Acker; Dan Thompson; Planning Commission
Subject: Fwd: Comments to Public Notice of Application SHL23-044 Against it

Hello Jessi, I just do not for the life of me understand what is going on. There are four Notice of Public Applications which have gone up at Luther Burbank Park and each one is asking for a variance from our City Codes (for a City project). I believe it was tom who had brought up the state of the docks and that they were in need of repair, but I do not believe he or anyone would want it at the expense of breaking the Codes for the docks in all four instances. Will you please get down to what is going on and why the contractor cannot do the project within our City Codes? And if variances are required, wouldn't the City have to file official amendments to the Code? And if you, the City, are allowing Code variances, then you are opening the door to every single citizen, developer being able to have variances for their projects. What is good for the goose is good for the gander and if that is not the case, please explain why it is not?

I am sorry, Jessi, but will you please have a word with staff and tell them that allowing variances is just not permitted. Otherwsie, what is the point of having Codes if they can all be broken as is the case with what the City is proposing.

Please look at hiring another contractor if they can't build a dock within scope and within codes and if they can't, then just look at basic repair of the docks.

Thank you.

Sarah Fletcher

----- Forwarded message -----

From: Sarah Fletcher <fletchsa1@gmail.com>
Date: Wed, Oct 4, 2023 at 2:57 PM
Subject: Comments to Public Notice of Application SHL23-044 Against it
To: <molly.mcguire@mercerisland.gov>, <paul.west@mercerisland.gov>, <council@mercerisland.gov>, <alison.vangorp@mercerisland.gov>

Hello, for the life of me, I just do not know why for every single thing, you are asking for a variance. Something is just not right.

It has in the Notice of Public Application: "to allow the first set of piles at the proposed central and south docks to be **GREATER THAN 10 INCHES** IN DIAMETER AND THE REMAINING PILES TO BE GREATER THAN 12 INCHES IN DIAMETER," but there again, it specifically states in the MICC. 19.13.050(H)(7) "**The first in-water** (nearest the OHWM) set of pilings shall be steel, **ten inches in diameter or less**, and at least 18 feet from the OHWM. Piling sets beyond the first shall also be spaced at least 18 feet apart and **shall not be greater than 12 inches in diameter.**"

I just do not know why the contractor is not able to do the docks by what is in the MI City Code. Do you not understand that there is a reason why the Code states that the pilings shall not be greater than 12 inches in diameter?

And are the pilings going to be steel or what?

Do you think you should hire another contractor? Why did you choose this contractor?

Before this even got to the public, someone should have explained to the contractor that the Code has this and worked with the contractor to abide by what is in the Code othwise, why bother with a Code if you can allow it to be broken at every turn? The whole process at the City has to change because you are causing a lot of work for everybody when all of this could have just been nipped in the bud. What should have

happened was the contractor came to the City with a plan for everything to be within Code. You would not have had 3 emails from me as there would have been nothing to email you about as it would have all been within Code end of story.

Sarah Fletcher