
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

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STAFF REPORT

SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT (SHL22-023)

SHORELINE VARIANCE PERMIT (SHL22-024)

SHORELINE VARIANCE PERMIT (SHL23-043)

SHORELINE VARIANCE PERMIT (SHL23-044)

SHORELINE VARIANCE PERMIT (SHL23-045)

SHORELINE CONDITIONAL USE PERMIT (SHL22-025)

CRITICAL AREA REVIEW TYPE 2 (CAO22-018)

Project Name: Luther Burbank Park Waterfront Improvements Project

Project Numbers: SHL22-023; SHL22-024; SHL22-025; SHL23-043; SHL23-044; SHL23-045; CAO22-018

Description: The City of Mercer Island proposes the Luther Burbank Park Waterfront Improvement Project to repair, maintain, and enhance the waterfront recreational programs and to meet future park use demands. The Applicant submitted the following applications to complete the proposed development:

- A request for a Shoreline Substantial Development Permit, SHL22-023, with SEPA Review (SEP22-019) for in-water and overwater activities and upland improvements at Luther Burbank Park. In-water and overwater activities include repairs to the north dock, central dock, and reconfiguration of the south docks, waterfront gangway and overwater access platform, and restoration of ecological functions including shoreline habitat and natural systems enhancement.
- Four separate Shoreline Variance requests for dimensional standards for dock width (SHL22-024), light transmittance conditions (SHL23-043), fixed pier height conditions (SHL23-044), and pile diameter requirements (SHL23-045).
- A request for a Shoreline Conditional Use Permit (SHL22-025) for new hard structural shoreline stabilization consisting of a rock revetment at the north beach expansion and rock terraces along the south on-grade trail as required by MICC 19.13.040(A) Table A.

- A request for Critical Area Review Type 2 (CAO22-018) for development within potential slide, seismic, and erosion hazard areas.

Applicant / Owner: Paul West (City of Mercer Island) / City of Mercer Island

Site Address: 2048 84th Ave SE, Mercer Island, WA 98040; Identified by King County Assessor tax parcel number 0624059014.

Zoning District: Single Family Residential (R-15)
Park

Staff Contact: Molly McGuire, Planner
molly.mcguire@mercerisland.gov | (206) 275-7712

- Exhibits:**
1. Critical Area Review 2, Shoreline Substantial Development Permit, Shoreline Variance Requests, Shoreline Conditional Use Permit, and SEPA Review Application, received by the City of Mercer Island on October 28, 2022
 2. Revised Development Plan Set, dated October 7, 2022 and received August 31, 2023
 3. Vegetation Plan, received April 30, 2024
 4. Cover Letter, received April 30, 2024
 5. Project Description, received April 17, 2023
 6. Shoreline Letter, received April 17, 2023
 7. JARPA for Waterfront Improvements, received August 31, 2023
 8. JARPA for Overwater Public Access Platform, received August 31, 2023
 9. Shoreline Variance for Dock Width Application Package, received April 30, 2024
 10. Shoreline Variance for Grating Application Package, received April 30, 2024
 11. Shoreline Variance for Pile Diameter Application Package, received April 30, 2024
 12. Shoreline Variance for Fixed Pier Height Application Package, received April 30, 2024
 13. Luther Burbank Dock Repair and Reconfiguration Demand and Allocation Analysis, prepared by Reid Middleton, dated January 2, 2019
 14. Luther Burbank Park Master Plan, dated 2006
 15. Critical Areas Study, prepared by Anchor QEA, LLC, dated April 2024
 16. Geotechnical Report for Upland Improvements prepared by GeoEngineers, Inc., dated August 5, 2022

17. Geotechnical Report for Dock Improvements prepared by GeoEngineers, Inc., dated June 30, 2022
18. Minimum Risk Statement prepared by GeoEngineers, Inc., dated March 1, 2023
19. Minimum Risk Statement prepared by GeoEngineers, Inc., dated August 8, 2024
20. Wave and Wake Modeling Report prepared by Blue Coast Engineering, dated January 9, 2022
21. Hardscape and Lot Coverage within Shoreline Areas Diagram, dated March 29, 2023
22. Biological Evaluation, dated October 2022
23. Cultural Resources Memorandum, dated July 28, 2022
24. Determination of Completeness for CAO22-018, SHL22-023, SHL22-024, SHL22-025, and SEP22-019, dated November 9, 2022
25. Determination of Completeness for SHL22-024 (revised), SHL23-043, SHL23-044, SHL23-045, dated September 27, 2023
26. Notice of Application for CAO22-018, SHL22-023, SHL22-024, SHL22-025, and SEP22-019, dated November 14, 2022
27. Notice of Application for SHL23-043, dated October 2, 2023
28. Notice of Application for SHL23-044, dated October 2, 2023
29. Notice of Application for SHL23-045, dated October 2, 2023
30. Revised Notice of Application for SHL22-024, dated October 2, 2023
31. City of Mercer Island Geotechnical Peer Review Letters
 - 31.1. SUB2 Review Letter, May 3, 2023
 - 31.2. SUB3 Review Letter, September 6, 2023
 - 31.3. Letter of Approval, August 8, 2024
32. Environmental Science Associates Third-Party Peer Review Letters
 - 32.1. SUB1 Review Memo, January 19, 2023
 - 32.2. SUB2 Review Memo, July 28, 2023
33. City of Mercer Island Arborist Review Letters
 - 33.1. SUB1 Review Memo, January 9, 2023
34. State of Washington Department of Ecology Comments
 - 34.1. SEP22-019 Ecology, received December 15, 2022
 - 34.2. Ecology, received October 9, 2023
35. Public Comments

- 35.1. SHL22-024 Sarah Fletcher, received October 6, 2023 via email
- 35.2. SHL23-043 Sarah Fletcher, received October 6, 2023 via email
- 35.3. SHL23-044 Sarah Fletcher, received October 6, 2023 via email
- 35.4. SHL23-045 Sarah Fletcher, received October 6, 2023 via email
- 36. Applicant Response to Public Comments (Microsoft Excel Document), received May 2, 2024
- 37. City of Mercer Island SUB1 Review Comment Letter, sent January 20, 2023
- 38. City of Mercer Island SUB2 Review Comment Letter, sent June 26, 2023
- 39. City of Mercer Island SUB3 Review Comment Letter, sent December 15, 2023
- 40. City of Mercer Island SUB4 Review Comment Letter, sent July 25, 2024
- 41. Applicant Response Letter to SUB1 Comments, dated April 17, 2023
- 42. Applicant Response Letter to SUB2 Comments, dated August 28, 2023
- 43. Applicant Response Matrix to SUB3 Comments (Microsoft Excel Document), received May 2, 2024
- 44. SEPA Checklist, dated October 24, 2022
- 45. SEPA Determination of Nonsignificance Issued by the City of Mercer Island on July 1, 2024

Contact Information:

Applicant's Agent	Applicant	Contractor
Paul West, City of Mercer Island Phone: (206) 677-1028 Email: paul.west@mercerisland.gov	Same as Agent	None Listed

Terms used in this staff report:

Term	Refers to, unless otherwise specified:
Applicant	City of Mercer Island
Applicant's Agent	Paul West, City of Mercer Island
Proposed development, proposal, and project.	Luther Burbank Park Waterfront Improvements Project
Subject property or site.	The site where development is located as defined in this staff report
City	City of Mercer Island
MICC	Mercer Island City Code
Code Official	Community Planning and Development Director, City of Mercer Island, or a duly authorized designee
SMP	Shoreline Master Program
SMA	Shoreline Management Act

SSDP	Shoreline Substantial Development Permit
SEPA	State Environmental Policy Act
WAC	Washington Administrative Code
CAR2	Critical Area Review 2
SSDP	Shoreline Substantial Development Permit
SCUP	Shoreline Conditional Use Permit
SVAR	Shoreline Variance

I. PROJECT DESCRIPTION

The purpose of the Luther Burbank Park Waterfront Improvement Project (proposed development) is to repair, maintain, and enhance the current and future demands of the waterfront program at Luther Burbank Park.

The proposed development includes repairing and replacing portions of the existing dock structures, including repairs to the north dock structure, and replacing and reconfiguring the central and south dock structures to accommodate waterfront programming and current and projected watercraft uses. Other waterside improvements include installing a grated overwater public access platform adjacent to the nearshore to improve access to the water along the existing plaza area.

The City, through a separate permitting process, is upgrading and making repairs to the waterfront plaza and Boiler Building under Building Permit No. 2302-156. These include Boiler Building repairs (i.e., new roof, seismic retrofits, and new lighting); Boiler Building restroom annex renovation to improve the restroom facilities and construct a new rooftop viewing deck; concession stand repairs; and waterfront plaza renovations and access upgrades.

The proposed development will improve access to the waterfront by creating new Americans with Disabilities Act (ADA)-accessible routes from the plaza to the viewing deck on the existing Boiler Building annex restroom rooftop, and to the expanded north beach area that will be improved with fish habitat gravel and riparian plantings. The ADA route will connect to the adjacent future south shoreline trail that will be constructed as part of a separate application process. The ADA route will also connect to the existing trail that continues north of the proposed development. All proposed waterfront improvements including the dock structures and gangways will also meet ADA requirements.

The waterfront plaza renovations and access upgrades will incorporate low impact development (LID) features that will provide stormwater buffering and biofiltration functions like a vegetated shoreline. An irrigation intake system will also be installed at the south end of the plaza.

II. SITE DESCRIPTION, ZONING, AND LAND USE CONTEXT

The Luther Burbank Park waterfront is widely used by Mercer Island residents and residents of the greater Seattle- Bellevue metro area for recreational activities. Luther Burbank Park is located on the shoreline of Lake Washington at 2040 84th Avenue SE, Mercer Island, Washington. The 55-acre park is managed by the City and contains a play area, trails, an off-leash dog area, picnic areas, tennis courts, a boat dock, a public fishing pier, a swimming beach, two smaller park buildings, a community peapatch, and an outdoor amphitheater.

The docks and other waterfront structures were constructed in 1974 to accommodate small boats in a different shoreline and recreational setting than exists today. The proposed development aims to modernize and optimize public access, recreational uses, and public safety, including reconfiguring the waterfront park to better accommodate small boats and non-motorized watercraft and improve ADA

access to the docks, viewing deck, and beach, while avoiding and minimizing potential impacts to sensitive environments and resulting in no net loss of ecological function.

The proposed development is located on the lake shoreline in the central area of the park. The proposed development area includes the Boiler Building, the Boiler Building restroom annex, the existing dock structure, the north beach area, and the waterfront plaza and bulkhead structure. The proposed development is surrounded by the remainder of the park and park facilities. Adjacent properties outside the park include residential properties located to the west and southeast, and two roadways, North Mercer Way and Interstate 90, located southwest of the park. Lake Washington is located on the north and east sides of the park, and on the east side of the proposed development.

The subject property is zoned Single Family Residential (R-15) and is located within the Urban Park Environment pursuant to Appendix F of Title 19 MICC and described in MICC 19.13.030(B). Adjacent properties are within the R-15, R-12, and R-8.4 zones and contain residential uses.

III. SUMMARY OF APPLICATIONS AND REQUESTS

A. CAO22-018 – Critical Area Review Type 2

A Critical Area Review Type 2 (CAR2) for the upland and in-water improvements subject to the standards of MICC 19.07.160. The proposed development is located within mapped erosion, potential landslide, and seismic hazard areas.

B. SHL22-023 – Shoreline Substantial Development Permit

A Shoreline Substantial Development Permit (SSDP) with State Environmental Policy Act (SEPA) Review (SEP22-019) for in-water and overwater activities and upland improvements at Luther Burbank Park. In-water and overwater activities include north dock repairs, central and south docks reconfiguration, waterfront gangway and overwater access platform, and restoration of ecological functions including shoreline habitat and natural systems enhancement.

The SSDP consists of the following components:

1. A request to retain and repair the approximately 1,504 square foot northernmost segment of the existing north dock, remove approximately 235 square feet of the existing concrete dock connecting to the waterfront plaza and replace with fiberglass-reinforced plastic (FRP) grating, and remove approximately 120 square feet of an existing wood finger dock subject to the standards of MICC 19.13.050.
 - a. Repair of the northernmost segment of the north dock includes removing and replacing the top portion of up to five decayed timber piles with ACZA-treated timber and wrapping 38 creosote-treated timber piles with fiberglass jackets.
2. A request to completely remove the existing central dock fixed concrete structure and construct a new dock in a different configuration subject to the standards of MICC 19.13.050(H). The new dock will include a wave attenuator/mooring float attached to the existing fixed concrete dock by an ADA-compliant gangway. The wave attenuator/mooring float would be 10 feet wide with 2 feet of freeboard and will include light penetration options where possible. The wave attenuator/mooring float is subject to the standards of MICC 19.13.050(G) Breakwaters, jetties, groins, and weirs. The dock width and light penetration will be addressed through proposed Shoreline Variances (SHL22-024 and SHL23-043 respectively).
3. A request to completely remove the existing south dock fixed concrete structure and construct a new dock in a different configuration subject to the standards of MICC 19.13.050(H). The proposed

development includes the reuse of an existing 10-foot by 50-foot grated float and construction of a new 8-foot wide by 50-foot long, 9-inch freeboard general purpose float. The proposed floating structures will connect to the existing fixed dock by an ADA-compliant grated gangway. The floats will attach to new 16-inch diameter piles. The proposed larger pile diameter throughout the new south dock is requested through the proposed Shoreline Variance (SHL23-044).

4. A request to install a new grated overwater platform subject to the standards of MICC 19.13.050(H). Portions of the "Handsome Bollards" chain will be removed to allow access to the overwater platform. The platform will attach to the existing concrete bulkhead. This portion of the proposed development would only be possible with the approval of the Shoreline Variance Permit (SHL23-045) due to the proposed platform extending below the minimum height requirement of 1.5 feet above OHWM.
5. A request to replace one buoy and place two new buoys, which are exempt from SSDP requirements pursuant to WAC 173-27-040(2)(f). Two will be "no wake" buoys located at the east and southeast of the docks and one will be a "nonmotorized vessel" buoy located near the south dock.
6. A request to provide exterior access to the roof of the bathroom annex for a public viewing platform.
7. A request for the approval of a planting plan subject to the requirements in MICC 19.13.050(K)(4) for the installation of new access pathways, plaza paving, and expanded north beach.

C. Shoreline Variance Requests

The applicant requested approval of four Shoreline Variance (SVAR) requests for the dimensional standards pertaining to dock width, light transmittance requirements, pile diameter, and fixed pier height conditions.

1. SHL22-024 - SVAR for Dock Width:

- a. A request for a SVAR subject to the standards of WAC 173-27-170 from the maximum dock width in MICC 19.13.050(H)(4) limiting the dock width to 6-feet.
 - i. The proposed central dock would be 10-foot wide to provide adequate wave attenuation for wave action and to reduce energy for protection of habitat restoration. Based on the described function of the wave attenuator, the structure meets the definition of "breakwater" in MICC 19.16.010 and is Not Permitted except those for restoration of ecological function per MICC 19.13.040 Table B.
 - ii. The proposed south dock floating structure would include 8-foot and 10-foot wide floats to accommodate launching a variety of small craft. The 10-foot wide float is an existing float that is in good condition and will remain as part of the existing structure to be reused for the proposed development per MICC 19.13.020(A).

2. SHL23-043 - SVAR for Light Transmittance:

- a. A request for a SVAR subject to the standards of WAC 173-27-170 from the light transmittance requirement in MICC 19.13.050(H)(5) requiring public access docks to be grated with materials that allow a minimum of 40 percent light transmittance over 100 percent of the surface area.
 - i. The proposed central wave attenuator would be made of concrete which would allow for 0% light transmittance over the surface area of the float to protect shoreline restoration ecological functions and provide safe use and programming for the south dock. The

structure is located as far offshore as practical to reduce the effect of shading on the lake bottom.

3. SHL23-044 - SVAR for Pile Diameter:

- a. A request for a SVAR subject to the standards of WAC 173-27-170 from the pile diameter standards in MICC 19.13.050(H)(7) requiring the first set of piles to be 10-inches in diameter or less, and the remaining piles to be 12-inches in diameter or less.
 - i. 26 12- to 14-inch creosote piles at the central dock would be replaced with 16 24-inch diameter steel piles and one 16-inch diameter steel pile to support the wave attenuator concrete float.
 - ii. 40 12- to 14-inch creosote piles and two 16-inch concrete piles at the south dock would be replaced with six 16-inch diameter steel piles as determined through geotechnical evaluations.

4. SHL23-045 - SVAR for Fixed Pier Height:

- a. A request for a SVAR subject to the standards of WAC 173-27-170 from the fixed pier height requirement in MICC 19.13.050(H)(6) requiring the pier to be a minimum of one and one-half feet above ordinary high water to bottom of pier stringer.
 - i. The proposed fixed public access pier would be zero feet above ordinary high water to allow for greater public access to the water that is currently inaccessible due to a vertical bulkhead, deeper water, and an uneven, unstable beach surface.

D. SHL22-025 – Shoreline Conditional Use Permit

- a. A request for a Shoreline Conditional Use Permit (SCUP) for new hard structural shoreline stabilization consisting of a rock revetment at the north beach expansion and rock terraces along the south on-grade trail as required by MICC 19.13.040(A) Table A.
- b. The SCUP consists of the following components:
 - i. A request for the construction of a rock revetment at the north beach expansion area subject to the standards of MICC 19.13.050(B) and WAC 173-27-160.
 - ii. A request for the construction of rock terraces along the south on-grade trail subject to the standards of MICC 19.13.050(B) and WAC 173-27-160.

IV. GENERAL FINDINGS OF FACT

- 1. The proposed development requires eight separate land use permit applications.
 - a. A CAR2 for the work within geologically hazardous areas.
 - b. A SSDP for the work within the shoreline jurisdiction of Lake Washington, a shoreline of statewide significance.
 - c. A SCUP for the construction of a new hard shoreline stabilization measure as required by the City's Shoreline Master Program (SMP).
 - d. A SVAR to exceed the maximum allowed dock width for public access piers in the City's SMP.

- e. A SVAR to provide dock grating under the minimum required for public access piers in the City's SMP.
 - f. A SVAR to exceed the maximum allowed pile diameter for public access piers in the City's SMP.
 - g. A SVAR to construct a fixed pier that does not meet the minimum height above the OHWM for public access piers in the City's SMP.
 - h. SEPA Review for work within Lake Washington.
2. The proposed development requires the reconfiguration of the existing public access pier, construction of an exterior access stair to the rooftop of the restroom annex at the boiler building, and public access improvements to the shoreline and water.
 3. The subject property size is approximately 995,782 square feet. The park features, including pathways, buildings, and parking make up approximately 143,839 square feet of the parcel. There is an existing boiler room, concrete shoreline stabilization measure, and dock within the proposed project area.
 4. The applications for a SSDP, SCUP, and CAR2 were received on October 28, 2022 and determined to be complete on November 9, 2022 (**Exhibit 24**).
 5. SVAR application SHL22-024 was received on October 28, 2022 and resubmitted for a revised scope of work on September 27, 2023. The application was determined to be complete on September 27, 2023 (**Exhibit 25**).
 6. SVAR applications SHL23-043, SHL23-044, and SHL23-045 were received on September 27, 2023 and determined to be complete on September 27, 2023 (**Exhibit 25**).
 7. Pursuant to MICC 19.15.030, Table A, applications for a SSDP and CAR2 must undergo Type III review. Applications for a SVAR and SCUP must undergo Type IV review. Pursuant to MICC 19.15.030(F), a development proposal that involves the approval of two or more Type II, III and IV reviews may be processed and decided together, including any administrative appeals, using the highest numbered land use decision type applicable to the proposed development applications; therefore, the SSDP, SVAR, SCUP, and CAR2 will undergo Type IV review. The Hearing Examiner will provide a recommendation to the Washington State Department of Ecology (Ecology) for final approval.
 8. The City issued the notice of application for the SSDP, SVAR SHL22-024, SCUP, and CAR2 on November 14, 2022, consistent with the requirements of MICC 19.15.090 (**Exhibit 26**). The notice of application was mailed to neighboring property owners within 300 feet of the subject property, a notice board/sign was posted on the subject property, and the notice was listed in the City's weekly permit bulletin. The public comment period lasted for 30 days, from November 14, 2022 to December 15, 2022.
 9. The City issued the notice of application for the revised SVAR SHL22-024 and the three additional SVAR applications on October 2, 2023, consistent with the requirements of MICC 19.15.090 (**Exhibits 27-30**). The notice of application was mailed to neighboring property owners within 300 feet of the subject property, a notice board/sign was posted on the subject property, and the notice was listed in the City's weekly permit bulletin. The public comment period lasted for 30 days, from October 2, 2023, to November 3, 2023.

10. Public Comment: Public comments from Sarah Fletcher were submitted for each SVAR (**Exhibit Set 35**). Fletcher was included as a party of record for the permits.
11. Response to Public Comments: The applicant provided a Public Comment Response Matrix which addresses the concerns raised in the public comments received by Sarah Fletcher (**Exhibit 36**).
12. The City is the SEPA Lead Agency for the proposed development. The City's SEPA responsible official issued a Determination of Nonsignificance (DNS) for the proposed development on July 1, 2024 following the review of a complete SEPA Checklist (**Exhibit 44**), and utilizing the optional DNS process per Washington Administrative Code (WAC) 197-11-355 (**Exhibit 45**). The SEPA review is identified by City of Mercer Island project number SEP22-019. The DNS appeal period ended on July 15, 2024 and no appeals were filed.
13. A SSDP is required for any development within a shoreline jurisdiction not covered under a Categorical Exemption. Compliance with all applicable federal and state regulations is also required.
14. Development within shoreline jurisdiction that does not meet the standards of Chapter 19.13 MICC requires a SVAR. MICC 19.15.140 indicates that the hearing body is authorized to approve of a SVAR when there are extraordinary or unique circumstances relating to the property such that the strict implementation of the regulations would impose unnecessary hardships on the applicant/property owner.
15. The final decision in approving, approving with conditions, or denying a SCUP or SVAR is rendered by Ecology in accordance with WAC 173-27-200, and all other applicable local, state, or federal laws. The City shall send the permits and documentation of final local decision to the applicant, the department of ecology, the Washington State Attorney General and to all other applicable local, state, or federal agencies. The decision shall be sent to Ecology by return receipt requested mail or as regulated by WAC 173-27-130.
16. The SMP regulations are supplemental to the City of Mercer Island Comprehensive Plan, the Mercer Island Development Code and various other provisions of City, State and Federal laws. Applicants must comply with all applicable laws prior to commencing any use, activity, or development.
17. The City of Mercer Island Comprehensive Plan ensures shoreline protection through the implementation and enforcement of the SMP and other applicable shoreline regulations. Consequently, as conditioned, the proposed development is consistent with the comprehensive plan.
18. The Washington State Legislature enacted the Shoreline Management Act (SMA) in 1971 (Chapter 90.58 RCW) to provide a uniform -set of rules governing the development and management of shoreline areas. As a basis for the policies of the SMA, the Legislature incorporated findings that the shorelines are among the most valuable and fragile of the state's resources, that they are under ever increasing pressure of additional uses and that unrestricted construction on the privately or publicly owned shorelines of the state is not in the best public interest. The Legislature further finds that coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state, while, at the same time, recognizing and protecting private property rights consistent with the public interest.

19. The proposed development, as conditioned, is consistent with the provisions of the SMA. The proposed development protects the public interest associated with the shorelines of the state, while, at the same time, protects private property rights consistent with the public interest.
20. The proposed development includes a planting plan for undisturbed geologically hazardous areas near the project site (**Exhibit 3**).
21. The proposed development would result in a net decrease of 55 square feet of overwater coverage due to the dock reconfiguration.

V. CAO22-018 – CRITICAL AREA REVIEW 2

- A. MICC 19.07.090 describes the purpose and procedures by which the City will review and authorize development and verify consistency with Chapter 19.07 MICC.
 1. Critical Area Review 2. The purpose of a CAR2 is to review critical area studies and mitigation plans in support of proposed buffer averaging and reduction of wetland and watercourse buffers.
 2. 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 CAR2 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 CAR2 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 CAR2 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 Finding: The proposed development is located on a site containing potential landslide, seismic, and erosion hazard areas. The applicant is applying for a CAR2 in advance of construction permits under Project No. CAO22-018; therefore, this requirement is met.

- B. 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:
 1. 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;

2. 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;
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
6. Monitoring the impact and taking appropriate corrective measures to maintain the integrity of compensating measures.

Staff Finding: The applicant provided a Critical Areas Study that summarizes how the proposed development addresses mitigation sequencing (**Exhibit 15, Section 5**). The proposed development avoids further encroachment into critical areas by avoiding material expansion of structures and avoids using less environmentally friendly materials. The proposed development also minimizes impacts by limiting the degree or magnitude of the action to the minimum necessary to complete the proposed development. The proposed development design limits vegetation removal and soil disturbance to the minimum necessary. Areas that are disturbed during construction and that are located outside of pathways, plaza surfacing, and other developed facilities would be revegetated pursuant to the planting plan (**Exhibit 2, Sheet L-010**), which is required to be completed prior to final inspection of the construction permit, as conditioned. The applicant also provided a Luther Burbank Shoreline Vegetation Plan (**Exhibit 3**) which details plans for four designated "Vegetation Units" along the shoreline of the subject property; therefore, this requirement is met.

- C. 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 Finding: The proposed development would result in an alteration to one or more critical areas. The applicant submitted a Critical Areas Study (**Exhibit 15**); therefore, this requirement is met.

- D. MICC 19.07.160 lists standards for development on sites containing geologically hazardous areas.
 1. 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 Finding: The subject property contains potential landslide, seismic, and erosion hazard areas. A Critical Area Study (**Exhibit 15**) was submitted determining that the proposed development would not result in a threat to public health and safety. Appendix C of the Critical Area Study includes a determination that there were no indicators of landslide hazard area during their study. The proposed development does not pose an erosion hazard provided best management practices are implemented, and the erosion and sedimentation control recommendations are followed as outlined in the report. A condition of approval has been included in this decision requiring the proposed development to implement the erosion and sedimentation control recommendations in the report; therefore, this requirement is met.

- E. 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 Finding: The applicant submitted a geotechnical report for both the upland improvements and the dock improvements (**Exhibits 16 and 17**) that conclude that the proposed development can effectively mitigate risks of the hazard. The reports include recommendations for appropriate design and development measures, and a 60 percent post-design memorandum was submitted confirming that the proposed improvements comply with the design recommendations (**Exhibit 19**). A 100 percent post-design memorandum will be required prior to issuance of the construction permits for the proposed development, as conditioned. The geotechnical reports were reviewed by the City of Mercer Island's Third-Party Geotechnical Professional Michele Lorilla, P.E., who provided a letter of conditional approval for the proposed development (**Exhibit 31.3**); therefore, this requirement is met.

- F. 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:
1. Will not adversely impact other critical areas;
 2. Will not adversely impact the subject property or adjacent properties;
 3. 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
 4. Includes the landscaping of all disturbed areas outside of building footprints and installation of hardscape prior to final inspection.

Staff Finding: The geotechnical reports were reviewed and conditionally approved by Michele Lorilla, P.E., (**Exhibit 31.3**). The reports find that the proposed alterations will not adversely impact other critical areas, the subject property, or adjacent properties. The applicant also submitted a

planting plan (**Exhibit 2, Sheet L-010**) and Luther Burbank Shoreline Vegetation Plan (**Exhibit 3**) that includes landscaping for all disturbed areas outside of building footprints and installation of hardscape; therefore, this requirement is met, as conditioned.

- G. 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:
1. An evaluation of site-specific subsurface conditions demonstrates that the proposed development is not located in a landslide hazard area or seismic hazard area;
 2. 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;
 3. 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
 4. The development is so minor as not to pose a threat to the public health, safety and welfare.

Staff Finding: The geotechnical engineer of record provided a plan review and statement of risk letter that was based on the 60 percent designed submittal set (**Exhibit 19**). City of Mercer Island Peer Reviewer Michele Lorilla, P.E. provided a letter of conditional approval, requiring the geotechnical engineer of record to review the 100 percent designed plan set and provide an updated post-design memorandum and updated statement of risk prior to issuance of the required building permit (**Exhibit 31.3**); therefore, this requirement is met.

- H. 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 Finding: The geotechnical report for upland conditions, reviewed and conditionally approved by Michele Lorilla, P.E. (**Exhibit 31.3**), states that there were no indicators of landslide hazard areas observed at the development site; therefore, this requirement does not apply.

- I. 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 Finding: The geotechnical reports for the upland and dock improvements were reviewed and conditionally approved by Michele Lorilla, P.E. (**Exhibit 31.3**). The report includes recommendations for construction within the seismic hazard area and an addendum was submitted stating that the geotechnical aspects of the drawings are generally consistent with the recommendations in the geotechnical reports (**Exhibit 19**). A 100 percent post-design memorandum will be required prior to issuance of the construction permits for the proposed development, as conditioned. The Critical Areas Study also includes mitigation sequencing consistent with MICC 19.07.100; therefore, this requirement is met.

- J. When development is proposed within an erosion hazard area:
 1. All development proposals shall demonstrate compliance with Chapter 15.09 MICC, 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 Finding: The proposed development application was reviewed for compliance with Chapter 15.09 MICC, storm water management program by Ruji Ding, P.E. - Senior Development Engineer, and was approved on December 16, 2022. The geotechnical engineer of record provided a statement of risk that determines that the envisioned construction practices that will be used to construct the proposed alterations will render the development as safe as if it were not located in a geologically hazardous area and are not expected to adversely impact adjacent properties and geologically hazardous areas (**Exhibit 19**). Michele Lorilla, P.E. – City of Mercer Island Geotechnical Peer Reviewer provided a letter of conditional approval which requires the geotechnical engineer of record to submit an updated post-design memorandum and updated statement of risk once the plan set is designed to 100 percent (**Exhibit 31.3**); therefore, this criterion is met.

- K. MICC 19.07.170 lists standards for when development is proposed within fish and wildlife habitat conservation areas.
 1. MICC 19.07.170(A) Designation and typing. Fish and wildlife habitat conversation areas include the following:
 - a. Areas where state or federally listed endangered, threatened, sensitive, or candidate species, or species of local importance, have primary association;

- b. Priority habitats and areas associated with priority species identified by the Washington State Department of Fish and Wildlife;
 - c. Areas used by bald eagles for foraging, nesting, and roosting, or within 660 feet of a bald eagle nest;
 - d. Watercourses and wetlands and their buffers; and
 - e. Biodiversity areas.
2. When development is proposed in the areas described in subsection A of this section, the applicant shall, unless the proposal is specifically exempt pursuant to section 19.07.120, submit a wildlife habitat assessment in the form of a critical area study prepared by a qualified professional including the following information:
- a. Identification of the species referenced in subsection A of this section that has a primary association with habitat on or in the vicinity of the site;
 - b. Extent of wildlife habitat areas, including acreage, and required buffers based on the species;
 - c. Vegetative, faunal, and hydrologic characteristics;
 - d. Evaluation of direct or indirect potential impacts on habitat by the project, including potential impacts to water quality;
 - e. A discussion of any federal, state, or local special management recommendations, including Washington State Department of Fish and Wildlife habitat management recommendations that have been developed for the species or habitats; and
 - f. A discussion of avoidance, minimization, and mitigation impacts pursuant to section 19.07.100.

Staff Finding: The Biological Evaluation (**Exhibit 22**), prepared by Josh Jensen, Anchor QEA that lists four species and critical habitat with federal ESA status likely to occur in the action area of the proposed development. The species include Chinook salmon, Steelhead, Bull trout, and Marbled murrelet. Three additional species listed as potentially occurring within the action area were not addressed in the Biological Evaluation due to lack of suitable habitat within and adjacent to the action area. The evaluation includes discussion of direct and indirect potential impacts on habitat by the project. Mitigation sequencing for the project is discussed in the Critical Area Study (**Exhibit 15**). There are no priority habitat and areas associated with priority species identified by the Washington State Department of Fish and Wildlife, as found in the “PHS on the Web” map available through the Washington State Department of Fish and Wildlife website. Additionally, no areas used by bald eagles, watercourses, or wetlands were identified in or adjacent to the project area.

CAO22-018 –CONCLUSIONS OF LAW

The following conclusions are hereby made based on the findings of fact listed above in **sections IV and V:**

1. The proposed development is consistent with the CAR2 review process pursuant to MICC 19.07.090(B).
2. The proposed development is located within geologically hazardous areas.
3. The proposed development is consistent with the City of Mercer Island Comprehensive Plan in place at the time the application was deemed complete.
4. The proposed development as conditioned meets the applicable requirements of MICC 19.07.160

5. The application materials adequately discuss the existing conditions and impacts of the subject property.
6. The proposed development as conditioned would not have probable significant adverse environmental impacts.
7. Any of the above listed findings of fact that are conclusions are hereby incorporated as conclusions.

CAO22-018 –RECOMMENDED CONDITIONS

1. Landscaping of all disturbed areas outside of building footprints and installation of hardscape pursuant to the approved planting plan (**Exhibit 2, Sheet L-010**) is required prior to final inspection of the building permit.
2. The erosion and sedimentation control measures recommended in the Critical Areas Study (**Exhibit 15**) shall be implemented throughout the duration of the project.
3. A post-design memorandum prepared by a qualified professional confirming that the proposed improvements comply with the design recommendations in the Geotechnical Report for Upland Improvements (**Exhibit 16**) and the Geotechnical Report for Dock Improvements (**Exhibit 17**) and an associated updated statement of risk shall be provided prior to issuance of construction permits.

VI. SHL22-023 – SSDP FINDINGS, CONCLUSIONS, AND RECOMMENDED CONDITIONS OF APPROVAL

- A. MICC 19.13.050(A), table C lists requirements for development located landward from the OHWM:

1. Setbacks for all structures (including fences over 48 inches high) and parking shall be 25 feet from the OHWM and all required setbacks of the development code, except (1) light rail transit facilities and (2) shoreline access structures less than 30 inches above the existing or finished grade, whichever is lower. If a wetland is adjacent to the shoreline, measure the shoreline setback from the wetland's boundary.

Staff Finding: The existing boiler room was constructed before 1946, based on the City's aerial imagery. Pursuant to MICC 19.13.020(A), overwater uses and structures, and uses and structures 25 feet landward from the OHWM, which were legally created may be maintained, repaired, renovated, remodeled and completely replaced to the extent that nonconformance with the standards and regulations of this chapter is not increased. The existing, legal nonconformity would not be increased due to the proposed development. The proposed viewing deck elevated platform would be located greater than 25 feet from the OHWM; therefore, this requirement is met

2. Height limits for all structures shall be the same as height limits specified in the development code by shall not exceed a height of 35 feet above average building elevation, except light rail transit facilities.

Staff Finding: The existing boiler room was constructed before 1946, based on the City's aerial imagery. Pursuant to MICC 19.13.020(A), overwater uses and structures, and uses and structures 25 feet landward from the OHWM, which were legally created may be maintained, repaired, renovated, remodeled, and completely replaced to the extent that the nonconformance with the standards and regulations of this chapter is not increased. The existing legal nonconformity would be maintained as part of the proposed development. The proposed viewing deck elevated access path would be less than 35 feet in height; therefore, this requirement is met.

3. Maximum hardscape and lot coverage shall be 10 percent between 0 and 25 feet from the OHWM and 30 percent between 25 and 50 feet from the OHWM.

Staff Finding: The proposed development would contain approximately 0.71 percent hardscape and lot coverage between 0 and 25 feet from the OHWM and approximately 0.63 percent hardscape and lot coverage between 25 and 50 feet from the OHWM (**Exhibit 21**); therefore, this standard is met.

4. Minimum land area requirements for all semi-private, commercial and noncommercial recreational tracts and areas shall be 200 square feet per family, but not less than 600 square feet, exclusive of driveways or parking areas. Screening of the boundaries with abutting properties.

Staff Finding: The proposed development is not located on a semi-private, commercial or noncommercial recreational tract or area (as defined in MICC Ch. 19.16); therefore, this standard does not apply.

B. MICC 19.13.050(B) lists requirements for bulkheads and shoreline stabilization measures.

1. *MICC 19.13.050(B)(1)* An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents or waves, and the following conditions apply:

- i. The replacement structure should be designed, located, sized, and constructed to assure no net loss of ecological functions.
- ii. Replacement walls or bulkheads shall not encroach waterward of the ordinary high water mark or existing structure unless the primary structure was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure. Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high water mark.
- iii. For purposes of this section standards on shoreline stabilization measures, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.
- iv. Construction and maintenance of normal protective bulkhead common to single-family dwellings requires only a shoreline exemption permit, unless a report is required by the code official to ensure compliance with the above conditions; however, if the construction of the bulkhead is undertaken wholly or in part on lands covered by water, such construction shall comply with SEPA mitigation.

Staff Finding: The proposed development does not include replacement of an existing shoreline stabilization measure; therefore, these requirements do not apply.

2. *MICC 19.13.050(B)(2)* New structures for existing primary structures. New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, are not allowed unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is in danger from shoreline erosion caused by currents or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues

and address drainage problems away from the shoreline edge before considering structural shoreline stabilization. New or enlarged erosion control structure shall not result in a net loss of shoreline ecological functions.

Staff Finding: The proposed development does not include the installation of a new or enlarged structural shoreline stabilization measure for an existing primary structure; therefore, this requirement does not apply.

3. *MICC 19.13.050(B)(3)* New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis, in compliance with subsection (B)(7) of this section and building and construction codes.

Staff Finding: The proposed development does not include new development on steep slopes or bluffs; therefore, this requirement does not apply.

4. *MICC 19.13.050(B)(4)* New structural stabilization measures in support of water-dependent development shall only be allowed when all of the conditions below apply:
 - i. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
 - ii. Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
 - iii. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report, in compliance with subsection (B)(7) of this section and building construction codes.
 - iv. The erosion control structure will not result in a net loss of shoreline ecological functions.

Staff Finding: The proposed development does not include new structural stabilization measures in support of water-dependent development; therefore, these requirements do not apply.

5. *MICC 19.13.050(B)(5)* New structural stabilization measures to protect projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to RCW Chapter 70.105D shall only be allowed when all of the conditions below apply:
 - i. Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

Staff Finding: The applicant has demonstrated that the functions of the proposed structural stabilization measure for protection of the restoration of ecological functions cannot be addressed using only nonstructural methods due to the constrained site conditions along the waterfront and beach area (**Exhibit 6, "Exhibit 3"**); therefore, this condition is met.

- ii. The erosion control structure will not result in a net loss of shoreline ecological functions.

Staff Finding: The applicant submitted a Critical Areas Study prepared by Anchor QEA (**Exhibit 15**) that demonstrates that the proposed development will not result in a net loss of shoreline ecological functions; therefore, this condition is met.

6. *MICC 19.13.050(B)(6)* Bulkheads shall be located generally parallel to the natural shoreline. No filling may be allowed waterward of the ordinary high water mark, unless there has been severe and unusual erosion within two years immediately preceding the application for the bulkhead.

In this event the city may allow the placement of the bulkhead to recover the dry land area lost by erosion.

Staff Finding: The proposed rock revetment and sheet pile wall would be located parallel to the natural shoreline, following the contours of the beach area. No filling for shoreline stabilization is proposed waterward of the OHWM (**Exhibit 2**); therefore, this requirement is met.

7. *MICC 19.13.050(B)(7)* Geotechnical reports pursuant to this section that address the need to prevent potential damage to a primary structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and report on the urgency associated with the specific situation. As a general matter, hard armoring solutions should not be authorized except when a report confirms that there is a significant possibility that such a structure will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures, or where waiting until the need is that immediate would foreclose the opportunity to use measures that avoid impacts on ecological functions. Thus, where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the three years, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.

Staff Finding: The proposed development is not being installed to prevent potential damage to a primary structure; therefore, this requirement does not apply.

8. *MICC 19.13.050(B)(8)* When any structural shoreline stabilization measures are demonstrated to be necessary, pursuant to the above provisions, the following shall apply:
 - i. Limit the size of stabilization measures to the minimum necessary. Use measures designed to assure no net loss of ecological functions. Soft approaches shall be used unless demonstrated not to be sufficient to protect primary structures, dwellings, and businesses.
 - ii. Ensure that the publicly financed or subsidized shoreline erosion control measures do not permanently restrict appropriate public access to the shoreline except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions. See public access provisions: WAC 173-26-221(4). Where feasible, incorporate restoration and public access improvements into the project.
 - iii. Mitigate new erosion control measures, including replacement structures, on feeder bluffs or other actions that affect beach sediment-producing areas to avoid and, if that is not possible, to minimize adverse impacts to sediment conveyance systems. Where sediment conveyance systems cross jurisdictional boundaries, local governments should coordinate shoreline management efforts. If beach erosion is threatening existing development, local governments should adopt master program provisions for a beach management district or other institutional mechanism to provide comprehensive mitigation for the adverse impacts of erosion control measures.

Staff Finding: As stated in Finding VI.B.2, the stabilization measure is not for an existing primary structure, dwelling, or business. The sizes of the proposed stabilization measures are limited to the minimum necessary and supplemented with nonstructural shoreline stabilization measures where practical. The proposed stabilization measures are design to accommodate increased public access to the shoreline at a public park, not restrict. Public access improvements are incorporated into this project as a result of the shoreline stabilization measure. The development is designed to assure no net loss of ecological functions and includes mitigation sequencing to minimize adverse impacts (**Exhibit 15**); therefore, these requirements are met.

- C. MICC 19.13.050(C) lists requirements for transportation and parking.

Staff Finding: The proposed development does not include changes to the existing transportation and parking facilities; therefore, these requirements do not apply.

- D. MICC 19.13.050(D), TABLE D lists requirements for moorage facilities and development located waterward from the OHWM:

1. Setbacks for all moorage facilities, covered moorage, and floating platforms shall be 10 feet from the lateral line, except where the moorage facility is built pursuant to the agreement between adjoining property owners.

Staff Finding: The proposed waterward development would be located greater than 10 feet from the lateral line (**Exhibit 2, Sheet S-010**); therefore, this standard is met.

2. Setbacks for boat ramps and other facilities for launching boats by auto or hand, including parking and maneuvering space, shall be 25 feet from any adjacent private property line.

Staff Finding: The proposed kayak launch on the new south dock would be located greater than 25 feet from any adjacent private property line (**Exhibit 2, Sheet S-010**); therefore, this standard is met.

3. The length or maximum distance from the OHWM for moorage facilities, covered moorage, boatlifts and floating platforms shall be a maximum of 100 feet. In cases where water depth is less than 11.85 feet below the OHWM, length may extend up to 150 feet or to the point where water depth is 11.85 feet at OHWM, whichever is less.

Staff Finding: Pursuant to MICC 19.13.050(H)(2), public access piers, docks, or boardwalks are not required to comply with the requirements of moorage facilities related to width and length listed in Table D; therefore, this standard does not apply.

4. The width of moorage facilities within 30 feet waterward from the OHWM shall be a maximum of 4 feet. This maximum width may increase to 5 feet if one of the following is met:

- a. Water depth is 4.85 feet or more, as measured from the OHWM.
- b. A moorage facility is required to comply with Americans with Disabilities Act (ADA) requirements.
- c. A resident of the property has a documented permanent state disability as defined in WAC 308-96b-010(5).
- d. The proposed development includes mitigation option a, b or c listed in table e; and for replacement actions, there is either a net reduction in overwater coverage within 30 feet waterward from the OHWM, or a site-specific report is prepared by a qualified professional demonstrating no net loss of ecological function of the shorelands. Moorage facility width shall not include pilings, boat ramps and lift stations.

Staff Finding: Pursuant to MICC 19.13.050(H)(2), public access piers, docks, or boardwalks are not required to comply with the requirements of moorage facilities related to width and length listed in Table D; therefore, this standard does not apply.

5. The width of moorage facilities more than 30 feet waterward from the OHWM shall be a maximum of 6 feet. Moorage facility width shall not include pilings, boat ramps and boatlifts.

Staff Finding: Pursuant to MICC 19.13.050(H)(2), public access piers, docks, or boardwalks are not required to comply with the requirements of moorage facilities related to width and length listed in Table D; therefore, this standard does not apply.

6. The maximum height limits for walls, handrails and storage containers located on piers shall be 3.5 feet above the surface of a dock or pier. Ramps and gangways designed to span the area between 0 and 30 feet from the OHWM may be 4 feet above the surface of the dock or pier.

Staff Finding: The proposed gangway on the south dock would extend 3 feet 6 inches above the surface of the existing concrete pier and proposed floating wood dock (**Exhibit 2, Sheet S-021**); therefore, this standard is met.

7. The height limit for mooring piles, diving boards and diving platforms shall be 10 feet above the elevation of the OHWM.

Staff Finding: The proposed development does not include mooring piles, diving boards or diving platforms; therefore, this standard does not apply.

8. The minimum water frontage for a dock used by one single-family lot on the shoreline is 40 feet, shared lots is 40 feet combined, and semi-private recreational tracts is 40 to 275 depending on the number of families served by the tract.

Staff Finding: The proposed development is not located on a single-family lot, shared lot, or semi-private recreational tract; therefore, this standard does not apply.

9. Covered moorage is permitted on single-family residential lots subject to the following:
 - a. Maximum height above the OHWM: 16 feet; 16 to 21 feet subject to criteria of MICC 19.13.050(E)(1).
 - b. Location/area requirements: The covered portion of a moorage shall be restricted to the area lying within a triangle as illustrated in Figure A (MICC 19.13.050(E)), except as otherwise provided in subsection (E)(1) of this section.
 - c. A covered moorage is allowed outside the triangle, or a canopy up to 21 feet in height, if the covered moorage meets all other regulations and: Will not constitute a hazard to the public health, welfare, and safety, or be injurious to affected shoreline properties within the vicinity; Will constitute a lower impact for abutting property owners; and Is not in conflict with the general intent and purpose of the SMA, the shoreline master program and the development code.
 - d. Building area: 600 square feet; however, a covered moorage may be built larger than 600 square feet within the triangle subject to a shoreline conditional use permit.
 - e. Covered moorage shall have open sides.
 - f. Prohibited in semi-private recreational tracts and noncommercial recreational areas.
 - g. Translucent coverings are required.

Staff Finding: Covered moorage is not included in the proposed development; therefore, these standards do not apply.

- E. MICC 19.13.050(E) lists standards for covered moorage.

Staff Finding: The proposed development does not include covered moorage; therefore, these standards do not apply.

- F. MICC 19.13.050(F) lists requirements for new and expanded moorage facilities, other than marinas and public access piers or boardwalks.

Staff Finding: The proposed development is a public access pier; therefore, these requirements do not apply.

- G. MICC 19.13.050(G) states that breakwaters, jetties, groins, weirs, and similar structures are prohibited, except for those structures installed to protect or restore ecological functions, such as woody debris installed in streams. Breakwaters, jetties, groins, and weirs shall be designed to protect critical areas and shall provide for mitigation according to the sequence defined in WAC 173-26-201(2)(e).

Staff Finding: The proposed wave attenuator meets the definition of a breakwater pursuant to MICC 19.16.010. The wave attenuator would provide protection to ecological functions in the shoreline restoration area, as shown in the Wake and Wave Modeling Report (**Exhibit 20**). The Cover Letter (**Exhibit 4, Section 2.1.1**) provides for mitigation sequencing for the proposed wave attenuator float. The impact has been avoided by designing the project to not include placing in-water fill that is typically associated with breakwaters. The proposed wave attenuator would be a float that is intended to provide the wave attenuation necessary to protect the restored shoreline area and those areas providing public access to the shoreline. The proposed development minimizes impacts by taking the following steps to avoid or reduce the impacts of the wave attenuator:

Staff Finding: The wave attenuator float would be located further offshore from where the existing concrete pier is located, in response to feedback from the Washington Department of Fish and Wildlife to minimize nearshore shading impacts. Impacts to the aquatic environment from the replacement overwater structure are expected to be minor.

Staff Finding: The wave attenuator float replaces an existing concrete pier and is part of a larger replacement project that will result in a net reduction of overwater coverage.

Staff Finding: The wave attenuator float would be the least impactful option for providing necessary wave attenuation, as compared to other alternatives, including in-water fill to construct more traditional attenuation components such as jetties, weirs, or similar.

- H. MICC 19.13.050(H) lists requirements for public access piers, docks, or boardwalks. New public access piers, docks, or boardwalks on public lands shall comply with the following:

1. *MICC 19.13.050(H)(1)* Public access piers, docks, or boardwalks shall be designed and constructed using WDFW-approved methods and materials.

Staff Finding: As conditioned, the proposed development will meet WDFW-approved methods and materials; therefore, this standard will be met.

2. *MICC 19.13.050(H)(2)* With the exception of the requirements for moorage facilities related to width and length, public access piers, docks, or boardwalks shall comply with design standards required for moorage facilities listed in Table D, Requirements for Moorage Facilities and Development Located Waterward from OHWM.

Staff Finding: Based on the Findings of Fact above, the proposed development complies with the design standards required for moorage facilities listed in Table D, with the exception of those related to width and length (which are not required per the MICC); therefore, this standard is met.

3. *MICC 19.13.050(H)(3)* There is no dock length or area limit for public access piers, docks, or boardwalks; however, public access piers, docks, and boardwalks shall not interfere with navigation and shall be the minimum size necessary to meet the needs of the proposed water-dependent use.

Staff Finding: As conditioned, the proposed development will meet Army Corps of Engineers standards for navigability. The proposed pier does not extend further from the OHWM into Lake Washington than the existing public access pier that was constructed in 1974.

Staff Finding: The proposed public access pier is the minimum size necessary to meet the goals of the Dock/Boiler Building Area in the 2006 Luther Burbank Park Master Plan (**Exhibit 14**). Programming at the site has included public and educational uses since the 1970s. Dock use since that time has changed from motorized watercraft to include small non-motorized watercraft. Programming is coordinated by the City, with peak use occurring during summer months. The Luther Burbank Dock Repair and Reconfiguration Demand and Allocation Analysis (**Exhibit 13**) provides a general analysis of potential types of uses and recommended allocations of uses for the dock facility based on review of existing information and discussion with stakeholders.

Staff Finding: The applicant has demonstrated that the proposed development is the minimum size necessary to meet the needs of the proposed water-dependent use; therefore, this standard is met.

4. Public access piers, docks, or boardwalks may have a width of up to six feet subject to Army Corps of Engineers and/or Washington Department of Fish and Wildlife approval.

Staff Finding: The applicant requested a SVAR approval for a dock with a maximum width of 10 feet. The applicant is required to obtain approval from the U.S. Army Corps of Engineers and Washington State Department of Fish and Wildlife prior to issuance of a building permit for the proposed development; therefore, this standard will be met subject to the approval of SHL22-024.

Staff Finding: There is an existing 10-foot-wide wood float that would be relocated to the south dock. This existing float was constructed in 1976 and is legally nonconforming and allowed to continue pursuant to MICC 19.13.020(A).

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

Staff Finding: The existing north dock is a fixed concrete pier. Proposed repairs to the north dock include the removal of one pile, the removal of a 120 square foot wooden finger pier, and the removal of 235 square feet of concrete overwater coverage, which would be replaced with decking materials that allow a minimum of 40 percent light transmittance. The remaining portions of the north dock are legally nonconforming and are allowed to continue pursuant to MICC 19.13.020(A).

Staff Finding: The proposed south dock would be fully grated with materials that allow a minimum of 40 percent light transmittance; however, the wave attenuator/mooring float portion of the central dock would be a solid float that would not allow for any light transmittance over 100 percent of the surface area (**Exhibit 2, Sheet S-012**). The applicant has requested a Shoreline Variance permit for approval of this portion of the proposed development; therefore, this standard will be met subject to the approval of Shoreline Variance Permit SHL23-043.

6. Minimum of one and one-half feet above ordinary high water to bottom of pier stringer, except the floating section of a dock attached to a pier.

Staff Finding: The proposed central and south pier would be greater than one and one-half feet above ordinary high water to bottom of pier stringer, except the floating section of the central dock and the proposed fixed public access pier. The applicant has requested a Shoreline Variance permit for the approval of a public access pier that would be 0" above ordinary high water to the bottom of pier stringer; therefore, this standard would be met subject to the approval of Shoreline Variance Permit SHL23-045.

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. Piles shall not be treated with pentachlorophenol, creosote, CCA or comparably toxic compounds. If ammoniacal copper zinc arsenate (ACZA) pilings are proposed, the applicant shall meet all of the best management practices, including a post-treatment procedure, as outlined in the amended Best Management Practices of the Western Wood Preservers. All piling sizes are nominal in diameter.

Staff Finding: The proposed piles would be spaced at least 18 feet apart, and the first piles would be at least 18 feet from the OHWM (**Exhibit 2, Sheet S-011**). The applicant has requested a Shoreline Variance permit for the approval of pile sets that are larger than 12 inches in diameter (**Exhibit 2, Sheet S-050**); therefore, this standard would be met subject to the approval of Shoreline Variance Permit SHL23-044.

8. Any paint, stain or preservative applied to components of the overwater structure must be leach resistant, completely dried or cured prior to installation. Materials shall not be treated with pentachlorophenol, creosote, CCA or comparably toxic compounds.

Staff Finding: As conditioned, the proposed development will not be treated with pentachlorophenol, creosote, CCA or comparably toxic compounds; therefore, this standard will be met.

9. Disturbance of bank vegetation shall be limited to the minimum amount necessary to accomplish the proposed development. Disturbed bank vegetation shall be replaced with native, locally adapted herbaceous and/or woody vegetation.

Staff Finding: The applicant has provided documentation that disturbance of bank vegetation is limited to the minimum amount necessary to accomplish the proposed development. Approximately 4,300 square feet of native and non-native riparian and upland vegetation would be removed during construction and 2,020 square feet of native shrub and groundcover vegetation would be installed, including shoreline riparian, upland, and stormwater swale vegetation. The submitted planting plan (**Exhibit 2, Sheet L-010 and L-011**) shows that disturbed bank vegetation will be replaced with native, locally adapted herbaceous and/or woody vegetation. The vegetation is required to be completed prior to final inspection of the construction permits; therefore, this standard is met as conditioned.

10. 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.

Staff Finding: As conditioned, the applicant is required to obtain state and federal agency approvals prior to building permit issuance. The decision includes a condition of approval that requires the applicant to abide by the work windows for listed species established by the U.S.

Army Corps of Engineering and Washington Fish and Wildlife; therefore, this standard will be met.

11. A no net loss plan shall be prepared pursuant to MICC 19.13.020 demonstrating that the proposed project will not create a net loss in ecological function of the shorelands.

Staff Finding: The applicant has provided a No Net Loss Plan within the Critical Areas Study (**Exhibit 15**) demonstrating that the proposed development will not create a net loss in ecological function of the shorelands, provided the mitigation sequencing and construction BMPs described in **Exhibit 15, Section 5** and the planting plan, nearshore habitat restoration, and aquatic habitat improvements discussed in **Exhibit 15, Section 4.1.3** are implemented as conditioned; therefore, this standard is met.

- I. MICC 19.13.050(I) states that the code official may grant relief from shoreline master program development standards and use regulations resulting from shoreline restoration projects consistent with the criteria and procedures in WAC 173-27-215.

Staff Finding: The applicant is not requesting relief from shoreline master program development standards and use regulations; therefore, this section does not apply.

- J. MICC 19.13.050(J) lists standards for dredging.

Staff Finding: The proposed development does not include dredging; therefore, these standards do not apply.

- K. MICC 19.13.050(K)(4) provides requirements for native vegetation coverage for certain new development. New development totaling 500 square feet or more of any combination of additional gross floor area, lot coverage or hardscape, including the primary structures and appurtenances, shall be required to provide native vegetation coverage over 50 percent of the 20-foot vegetation area shown on Figure C. This shall include all gross floor area, lot coverage, and hardscape added in the five years immediately prior to the development proposal.

Staff Finding: Approximately 89 percent, or 41,976 square feet of the 20-foot vegetation area on the subject property is vegetated, while 11 percent, or 5,376 square feet is made up of swim beach and plaza. The submitted Vegetation Plan (**Exhibit 3**) divides the shoreline buffer into four vegetation units based on vegetation composition, management history, and landscape features. Vegetation units 1, 2, and 3 are currently compliant. The maintenance program proposed will ensure that unit 4 will be compliant. When all four vegetation units are compliant, they will provide at least 75 percent native or mature, non-invasive plant coverage on 88.6 percent of the 20-foot shoreline area; therefore, this requirement is met.

- L. WAC 173-27-150 lists Review criteria for substantial development permits.

- a. A substantial development permit shall be granted only when the development proposed is consistent with:

- a. The policies and procedures of the act;
- b. The provisions of this regulation; and

- c. The applicable master program adopted or approved for the area. Provided, that where no master program has been approved for an area, the development shall be reviewed for consistency with the provisions of chapter 173-26 WAC, and to the extent feasible, any draft or approved master program which can be reasonably ascertained as representing the policy of the local government.

Staff Finding: WAC 173-27-150 specifies the approval criteria for shoreline substantial development permits. Based on the provisions of WAC 173-27-150, the proposed development is consistent with the policies and procedures of the act (SMA), the provisions of this regulation, and the applicable master program adopted.

- b. Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

Staff Finding: The City adopted a new SMP with an effective date of March 18, 2015. The proposed request is consistent with the SMP, which is consistent with the SMA.

Staff Finding: The City may attach conditions to the approval of permits as necessary to assure consistency of the proposed development with the act and the local master program. The City is attaching conditions of approval to the revised permit to ensure consistency with the SMA and SMP.

SHL22-023 – Conclusions of Law

The following conclusions are hereby made based on the findings of fact listed above in **sections IV and VI**:

1. Subject to the following Conditions of Approval, the proposed development meets the Mercer Island Shoreline Master Program MICC 19.07.110 Table B - requirements for development located waterward from the Ordinary High Water Mark.
2. The proposed development is consistent with the City of Mercer Island Comprehensive Plan in place at the time the application was deemed complete.
3. The proposed development as conditioned meets the applicable requirements of the Shoreline Management Act under RCW Ch. 90.58 & WAC Ch. 173-27.
4. The application materials adequately discuss the existing conditions and impacts of the site.
5. The proposed development as conditioned would not have probable significant adverse environmental impacts.
6. Any of the above listed findings of fact that are conclusions are hereby incorporated as conclusions.

SHL22-023 – Recommended Conditions of Approval

1. Construction of the proposed development shall only occur during approved fish windows by local, state, and/or federal government agencies. The applicant is responsible for obtaining permit approvals from all state and federal agencies.
2. The applicant shall obtain any permits from state and federal agencies that are applicable to the proposed development. The applicant is also responsible for documenting any required changes in the proposed development due to conditions imposed by any applicable local, state, and federal government agencies.
3. Piles, floats, or other structures in direct contact with the water shall not be treated or coated with toxic substances harmful to the aquatic environment. Chemical treatment of structures shall comply with all applicable state and federal regulations. Any pollutants entering Lake Washington shall be reported immediately to the Department of Ecology N.W. Regional Office: (425) 649-7000 and the City of Mercer Island: (206) 275-7605.
4. The mitigation sequencing and construction BMPs described in **Exhibit 15, Section 5** and the planting plan, nearshore habitat restoration, and aquatic habitat improvements discussed in

Exhibit 15, Section 4.1.3 are required to be implemented prior to final inspection of the building permit.

5. Landscaping of all disturbed areas outside of building footprints and installation of hardscape pursuant to the approved planting plan (**Exhibit 2, Sheet L-010 and L-011**) is required prior to final inspection of the building permit.
6. A financial guarantee shall be provided to the City to cover the mitigation plantings required for the proposed development.

VII. SHL22-024 – SHORELINE VARIANCE: CONCLUSIONS AND PROPOSED CONDITIONS OF APPROVAL

- A. The review criteria for consideration of SVAR are provided in WAC 173-27-170 and within the local master program contained within Chapter 19.13 MICC. The purpose of a shoreline 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 Revised Code of Washington (RCW) 90.58.020.

Staff Finding: The applicant has demonstrated that the site contains extraordinary circumstances due to wave and wake conditions, as shown in the Wave and Wake Modeling Report (**Exhibit 20**). From a structural and safety standpoint, it is infeasible for the 6-foot width requirement at this location to safely support the intended public uses and protect shoreline habitat restoration sites from wind-wave and boat wake forces, which have been modeled to present an extraordinary circumstance for the site.

- B. *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.

Staff Finding: The applicant has demonstrated that the site contains extraordinary circumstances due to wave and wake conditions, as shown in the Wave and Wake Modeling Report (**Exhibit 20**). From a structural and safety standpoint, it is infeasible for the 6-foot width requirement at this location to safely support the intended public uses and protect shoreline habitat restoration sites from wind-wave and boat wake forces, which have been modeled to present an extraordinary circumstance for the site.

Staff Finding: A width of 10 feet is required for the central dock wave attenuator float to provide adequate attenuation for wave action at the site and to protect against the types of waves generated by the wake-surfing boats that frequently operate offshore near the park. The attenuation for wave and wake action at the site is also needed to reduce energy for protection of habitat restoration areas along the shoreline. The Wave and Wake Modeling Report includes graphic depictions of modeling results for both wave and wake modeling completed for the proposed design that demonstrates a reduction of energy at the nearshore.

Staff Finding: A minimum width of 8 feet is required for the south dock floats to provide sufficient access for first responders to reach firefighting standpipes and operate firefighting equipment on the central dock. The wider dock is also required to provide ADA-compliant access. The south dock would include 8-foot wide and 10-foot-wide floats to accommodate launching a variety of small craft, including one and two person sailboats, which are typically 6 feet wide. The south dock would

also be used for educational purposes, and a 6-foot-wide structure would not provide sufficient stability when students are gathered on one side during educational instruction. An 8-foot-wide float has 50 percent more stability than a 6-foot-wide float, which would be sufficient to maintain adequate reserve freeboard under this condition. The wider float would provide more stability against wave energy that is not attenuated by the central wave attenuator float.

Staff Finding: The 10-foot-wide float at the south dock is an existing float that is in good condition and would remain as part of the existing structure and be reused for the project. The 10-foot-wide float is legally nonconforming and is allowed to be maintained, repaired, renovated, or remodeled to the extent that nonconformance with the standards and regulations of the SMP is not increased pursuant to MICC 19.13.020(A).

Staff Finding: The Luther Burbank Dock Repair and Reconfiguration Demand and Allocation Analysis (**Exhibit 13**) determines the preferred rehabilitation scheme based on a general analysis of potential types of uses and recommended allocations of uses for the dock facility based on review of existing information and discussion with stakeholders. The wider dock width is necessary to provide a safe and stable facility to support future programming at the dock.

Staff Finding: The applicant has demonstrated that the strict implementation of the master program's maximum width of 6 feet for public access piers and docks would impose unnecessary hardships on the applicant; therefore, this requirement has been met.

1. *WAC 173-27-170(1)*: Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

Staff Finding: The applicant has demonstrated that the site contains extraordinary circumstances due to wave and wake conditions, as shown in the Wave and Wake Modeling Report (**Exhibit 20**). These conditions would be addressed through the design of the central dock wave attenuator float and south dock float through the requested variance for public access pier width requirement of 6 feet maximum in MICC 19.13.050(H)(4).

Staff Finding: The proposed central wave attenuator/mooring float would be 10 feet wide to protect users from wave and wake conditions, allow for safe launching of watercraft, better accommodate groups of students, and provide a more stable structure for continued public use.

Staff Finding: The proposed south dock floats would be 8 feet wide and 10 feet wide to allow for fire access to the central dock and provide stability for educational purposes and watercraft launching.

Staff Finding: Other extraordinary circumstances at the site are related to consistently increased use of Luther Burbank Park and the need to provide safe access and improve accessibility for those who visit the park. The new Sound Transit light rail line includes a stop near the park, which will increase park visitors and the need for public access improvements and safety upgrades, which are addressed through the dock width variance request.

Staff Finding: Additionally, the dock structure and platform are located within a shoreline environment that was previously used as a steam plant and is heavily modified from natural conditions. The proposed development is consistent with the statewide standards for shoreline protection in RCW 90.58.020 by incorporating environmental enhancements, avoidance, and minimization measures into the proposed development to demonstrate no net loss of ecological

function. These measures include reducing net overwater coverage, installing functional grating to the extent practicable, and shoreline landscaping and riparian plantings.

Staff Finding: Denial of the variance request would result in the thwarting of the following policies in RCW 90.58.020:

- Ensuring the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest;
- Increase public access to publicly owned areas of the shorelines; and
- Increase recreational opportunities for the public in the shoreline.

Staff Finding: The proposed variance request would promote and enhance the public interest to provide a safe and usable public access pier, while implementing standards for shoreline protection to demonstrate no net loss of ecological function. The proposed development increases public access to the publicly owned shoreline and increases recreational opportunities for the public by increasing the dock width beyond the maximum allowed in the City's SMP; therefore, this criteria is met.

2. *WAC 173-27-170(2)*: Variance permits for development and/or uses that will be located landward of the ordinary high water mark, as defined in RCW 90.58.030(2)(c), and/or landward of any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:

Staff Finding: The proposed development does not include variance permit applications for development and/or uses that will be located landward of the OHWM; therefore, this criterion does not apply, however, the applicant must demonstrate compliance with WAC 173-27-170(3), which includes demonstration of compliance with WAC 173-27-170(2)(b)-(f).

- a. *WAC 173-27-170(2)(a)*: That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property.

Staff Finding: The proposed development does not include variance permit applications for development and/or uses that will be located landward of the OHWM. Pursuant to WAC 173-27-170(3), only demonstration of compliance with WAC 173-27-170(2)(b)-(f) is required; therefore, this criterion does not apply, however, (b) of this subsection relies on the hardship described in (a) of this subsection. The applicant determines that the standards in the City's SMP related to dock width cannot be met due to hardships related to wave and wake conditions that are specific to the property. The strict application of the bulk, dimensional or performance standards related to dock width would interfere with reasonable use of the property as a public access pier. A wider dock width is necessary for the safety of the public and protection of shoreline ecological functions against the higher wave and wake action at the site. The dock at Luther Burbank Park is a focal point of waterfront programming at the park and is used by the public for water-based programming such as, small motorized and non-motorized watercraft users that require safe access to the water. There is a high and growing public demand for kayak and sailing programs at Luther Burbank Park. This was expressed in the 2006 Luther Burbank Park Master Plan (**Exhibit 14**), which envisioned this waterfront complex as a small craft boating center. Based upon the needs of the project applicant and the character and scale of the subject parcels and other similar waterfront parks in the vicinity, the denial of a safe dock width for public and ADA-

accessible use from this project precludes “reasonable use” of the property. The application materials include a discussion on how the notion of “reasonable use” has changed over time and how the project, as proposed, would result in a reasonable use of the parcel (**Exhibit 9**); therefore, this criteria is met.

- b. *WAC 173-27-170(2)(b)*: That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions.

Staff Finding: The hardship for meeting the standards of the City’s SMP is specifically related to the property and the necessity to ensure that the park provide publicly accessible features consistent with the modern standard for urban waterfront parks on Lake Washington. The wider dock width is proposed to protect shoreline restoration ecological functions as well as the structure and its users against wave and wake action experienced at the site, which present extraordinary circumstances that are not a result of the applicant’s own actions and that can be addressed through the design of the project; therefore, this criterion is met.

- c. *WAC 173-27-170(2)(c)*: That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment.

Staff Finding: The proposed development includes replacing an existing dock and providing waterfront improvements that are compatible with existing authorized uses and programs at the park. The proposed development is consistent with the uses and goals identified in the 2006 Luther Burbank Park Master Plan, cited in the comprehensive plan and is consistent with the uses authorized in the SMP under MICC 19.13.040 Table A and B. The proposed development will result in no net loss of ecological function at the site; therefore, this criterion is met.

- e. *WAC 173-27-170(2)(d)*: That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area.

Staff Finding: The requested variance would provide needed safety at a public dock in a unique waterfront environment and is not expected to constitute a grant of special privilege not enjoyed by other properties in the area, including similarly sized waterfront parks on Lake Washington, including Gene Coulon Park, Marina Park, and Meydenbauer Bay Park. The existing dock structure to be replaced is designed to specifically protect against wave and wake conditions at the site that have potential to impact user safety if not addressed through structural methods; therefore, this criterion is met.

- f. *WAC 173-27-170(2)(e)*: That the variance requested is the minimum necessary to afford relief.

Staff Finding: The requested dock width variance is the minimum necessary to afford relief. The dock replacement activities are designed to safely support existing programming based on modeled site conditions. This includes providing the minimum dock width necessary to safely support public access as well as access by emergency responders. The applicant provided a Luther Burbank Dock Repair and Reconfiguration Demand and Allocation Analysis (**Exhibit 13**), which demonstrates the dock is designed to meet the demand of programming at the park; therefore, this criterion is met.

- g. *WAC 173-27-170(2)(f)*: That the public interest will suffer no substantial detrimental effect.

Staff Finding: The dock width variance is being requested to protect the shoreline restoration ecological function and public dock users from wave and wake conditions in a unique waterfront environment. It is expected that the public will benefit from the proposed waterfront improvements; therefore, this criterion is met.

- c. *WAC 173-27-170(3)*: Variance permits for development and/or uses that will be located waterward of the ordinary high water mark, as defined in RCW 90.58.030(2)(c), or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:

- a. *WAC 173-27-170(3)(a)*: That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property.

Staff Finding: The strict application of the dimensional standards set forth in the City's SMP regarding dock width interferes with the reasonable use of the property by requiring dock dimensions that limit the applicant's ability to replace the existing structure in a manner that accommodates the unique waterfront environment, including challenging wave and wake conditions, and adequate protection for public users while improving access to the shoreline. The standards set forth in the City's SMP interferes with the reasonable use of the property by requiring dock dimensions that limit the City's ability to replace the existing structure in a manner that is consistent with conditions found at similar waterfront parks on Lake Washington. Further discussion of reasonable use can be found in **Exhibit 9, Section 3**; therefore, this criterion is met.

- b. *WAC 173-27-170(3)(b)*: That the proposal is consistent with the criteria established under subsection (2)(b) through (f) of this section.

Staff Finding: The proposed development is consistent with the criteria established in subsection (2)(b) through (f) of WAC 173-27-170 as demonstrated in Findings of Fact & Conclusions of Law VIII.B.2.a - f; therefore, this criterion is met.

- c. *WAC 173-27-170(3)(c)*: That the public rights of navigation and use of the shorelines will not be adversely affected.

Staff Finding: As conditioned, the applicant is required to obtain any permits from state and federal agencies, including the U.S. Army Corps of Engineers for review of navigation and use of shorelines. The proposed pier would not extend further waterward from the OHWM into Lake Washington than the existing public access pier that was constructed in 1973. Additionally, the proposed development is consistent with the 2006 Luther Burbank Park Master Plan, which is cited in the City's Comprehensive Plan, which encourages public access to the shoreline (**Exhibit 14**). The public use of the shoreline would be increased as a result of the proposed development; therefore, this criterion is met.

- D. *WAC 173-27-170(4)*: In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

Staff Finding: No variances were granted to other developments and/or uses in the area where similar circumstances exist; therefore, this criterion does not apply.

- E. *WAC 173-27-170(5)*: Variances from the use regulations of the master program are prohibited.

Staff Finding: The proposed variance does not include a request for a variance from the use regulations of the master program. Public access piers, docks, and boardwalks are a permitted use in the Urban Park Shoreline Environment Designation; therefore, this criterion is met.

SHL22-024 – Conclusions of Law

The following conclusions are hereby made based on the findings of fact listed above in **sections IV and VII**:

1. As conditioned, the proposed SVAR to vary the maximum dock width of 6 feet for public access piers in MICC 19.13.050(H)(4) to 8-10 feet is consistent with the standards in the MICC, SMP, and WAC; therefore, the SVAR, SHL22-024, should be approved.
2. The proposed development is consistent with the City of Mercer Island Comprehensive Plan in place at the time the application was deemed complete.
3. The proposed development as conditioned meets the applicable requirements of the Shoreline Management Act under RCW Ch. 90.58 & WAC Ch. 173-27.
4. The application materials adequately discuss the existing conditions and impacts of the site.
5. The proposed development as conditioned would not have probable significant adverse environmental impacts.
6. Any of the above listed findings of fact that are conclusions are hereby incorporated as conclusions.

SHL22-024 – Proposed Conditions of Approval

1. The applicant shall obtain any permits from state and federal agencies that are applicable to the proposed development. The applicant is also responsible for documenting any required changes in the proposed development due to conditions imposed by any applicable local, state, and federal government agencies.
2. Piles, floats, or other structures in direct contact with the water shall not be treated or coated with toxic substances harmful to the aquatic environment. Chemical treatment of structures shall comply with all applicable state and federal regulations. Any pollutants entering Lake Washington shall be reported immediately to the Department of Ecology N.W. Regional Office: (425) 649-7000 and the City of Mercer Island: (206) 275-7605.
3. Construction of the proposed development shall only occur during approved fish windows by local, state, and/or federal government agencies. The applicant is responsible for obtaining permit approvals from all state and federal agencies.

VIII. SHL23-043 – SHORELINE VARIANCE: FINDINGS, CONCLUSIONS, AND PROPOSED CONDITIONS OF APPROVAL

- A. *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.

Staff Finding: The applicant has demonstrated that the site contains extraordinary circumstances due to wave and wake conditions, as shown in the Wave and Wake Modeling Report (**Exhibit 20**). The strict implementation of the City's SMP grating requirements that 100 percent of the dock surface be fully grated with materials that allow a minimum 40 percent light transmittance for public access piers and docks would impose unnecessary hardship on the applicant. The float reduces wave energy from both storm waves present during winter months and large boat wakes present primarily during summer months. The attenuation structure would have concrete decking and no grated surfaces. If the decking were grated, light transmittance would be inhibited by structural components required to allow the wave attenuator float to provide critical safety functions for public use of the dock, including ADA accessibility, and protection of shoreline ecological functions.

Staff Finding: Denial of the variance request would result in the thwarting of the following policies in RCW 90.58.020:

- Ensuring the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest;
- Increase public access to publicly owned areas of the shorelines; and
- Increase recreational opportunities for the public in the shoreline.

Staff Finding: The proposed variance request would promote and enhance the public interest to provide a safe and usable public access pier, while implementing standards for shoreline protection to demonstrate no net loss of ecological function. The proposed development increases public access to the publicly owned shoreline and increases recreational opportunities for the public by increasing the dock width beyond the maximum allowed in the City's SMP; therefore, this criterion is met.

1. WAC 173-27-170 (1) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

Staff Finding: The applicant has demonstrated that the site contains extraordinary circumstances due to wave and wake conditions, as shown in the Wave and Wake Modeling Report (**Exhibit 20**). These conditions would be addressed through the design of the central float through the requested variance from the 40 percent light transmittance over 100 percent of the surface area of the dock requirement in MICC 19.13.050(H)(5).

Staff Finding: The proposed central float would reduce wave energy from both storm waves present during winter months and large boat wakes present primarily during summer months. The attenuation structure would have concrete decking and no grated surfaces. 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 and protection of shoreline ecological functions.

Staff Finding: Other extraordinary circumstances at the site are related to consistently increased use of Luther Burbank Park and the need to provide safe access and improve accessibility for those who visit the park. The new Sound Transit light rail line includes a stop near the park, which

will increase park visitors and the need for public access improvements and safety upgrades, which are addressed through the grating variance request.

Staff Finding: Additionally, the dock structure and platform are located within a shoreline environment that was previously used as a steam plant and is heavily modified from natural conditions. The proposed development is consistent with the statewide standards for shoreline protection in RCW 90.58.020 by incorporating environmental enhancements and avoidance and minimization measures into the proposed development to demonstrate no net loss of ecological function. These measures include reducing net overwater coverage, installing functional grating to the extent practicable, and shoreline landscaping and riparian plantings.

2. WAC 173-27-170(2) Variance permits for development and/or uses that will be located landward of the ordinary high water mark, as defined in RCW 90.58.030(2)(c), and/or landward of any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:
 - a. WAC 173-27-170(2)(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property.

Staff Finding: The proposed development does not include variance permit applications for development and/or uses that will be located landward of the ordinary high water mark. Pursuant to WAC 173-27-170(3), only demonstration of compliance with WAC 173-27-170(2)(b)-(f) is required; therefore, this criterion does not apply, however, (b) of this subsection relies on the hardship described in (a) of this subsection. The applicant determines that the standards in the City's SMP related to dock grating cannot be met due to hardships related to wave and wake conditions that are specific to the property, as shown in the Wave and Wake Modeling Report (**Exhibit 20**). The strict application of the bulk, dimensional or performance standards related to dock grating would interfere with reasonable use of the property as a public access pier. A concrete float is necessary for the safety of the public and protection of shoreline ecological functions against the higher wave and wake action at the site. The dock at Luther Burbank Park is a focal point of waterfront programming at the park and is used by the public for water-based programming such as, small motorized and non-motorized watercraft users that require safe access to the water. There is a high and growing public demand for kayak and sailing programs at Luther Burbank Park. This was expressed in the 2006 Luther Burbank Park Master Plan (**Exhibit 14**), which envisioned this waterfront complex as a small craft boating center. Based upon the needs of the project applicant and the character and scale of the subject parcels and other similar waterfront parks in the vicinity, the denial of a safe concrete float for public and ADA-accessible use from this project precludes "reasonable use" of the property. The application materials include a discussion on how the notion of "reasonable use" has changed over time and how the project, as proposed, would result in a reasonable use of the parcel (**Exhibit 10, Section 3**); therefore, this criteria is met.

- b. WAC 173-27-170(2)(b) That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions.

Staff Finding: The applicant determined the standards in the City's SMP related to grating requirements cannot be met due to hardships related to the property and unique

conditions. A concrete decking wave attenuation float is proposed to protect shoreline restoration ecological functions and users against high wave and wake action experienced at the site, which present extraordinary circumstances as demonstrated in the Wake and Wave Modeling Report (**Exhibit 20**). To provide adequate attenuation for wave action at the site and to protect against the types of waves generated by the wake surfing boats that frequently operate offshore near the park, the wave attenuator cannot be retrofitted with functional grating due to the size and underlying structural components required for the structure; therefore, this criterion is met.

- c. *WAC 173-27-170(2)(c)* That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment.

Staff Finding: The proposed development includes replacing an existing dock and providing waterfront improvements that are compatible with existing authorized uses and programs at the park. The proposed development is consistent with the uses and goals identified in the 2006 Luther Burbank Park Master Plan (**Exhibit 14**), cited in the comprehensive plan and is consistent with the uses authorized in the SMP under MICC 19.13.040 Table A and B. The proposed development will result in no net loss of ecological function at the site; therefore, this criterion is met.

- d. *WAC 173-27-170(2)(d)* That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area.

Staff Finding: The existing dock structure does not currently provide wave and wake protection to the shoreline or existing dock infrastructure. The proposed dock would protect shoreline habitat restoration along the south shoreline area. The variance for dock grating requirements would protect against wave and wake conditions at the site that have the potential to impact user safety if not addressed through structural methods. The variance would provide needed safety at a public dock and ADA accessibility in a unique waterfront environment and is not expected to constitute a grant of special privilege not enjoyed by other properties in the area as the proposed solid decking features are consistent with those found at other, more recently updated waterfront parks on Lake Washington; therefore, this criterion is met.

- e. *WAC 173-27-170(2)(e)* That the variance requested is the minimum necessary to afford relief.

Staff Finding: The applicant demonstrated that the request to provide no grating over 100 percent of the float area is the minimum necessary to afford relief. The solid, concrete float structure is proposed to provide safe programming to users of the dock and also to protect nearby habitat restoration areas along the shoreline. Any grating on the solid float may limit the floats' ability to function as necessary for the safety of users and shoreline protection. The proposed solid decking features are consistent with those found at other, more recently updated waterfront parks on Lake Washington; therefore, this criterion is met.

- f. *WAC 173-27-170(2)(f)* That the public interest will suffer no substantial detrimental effect.

Staff Finding: The dock grating variance is being requested to protect the shoreline restoration ecological function and public dock users from wave and wake conditions in a unique waterfront environment. It is expected that the public will benefit from the proposed

waterfront improvements, by providing a safe and stable dock for the public to use; therefore, this criterion is met.

3. WAC 173-27-170(3) Variance permits for development and/or uses that will be located waterward of the ordinary high water mark, as defined in RCW 90.58.030(2)(c), or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:

- a. WAC 173-27-170(3)(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property.

Staff Finding: The strict application of the dimensional standards set forth in the City's SMP regarding dock grating interferes with the reasonable use of the property by requiring grating that limits the applicant's ability to provide a safe float design. The grating requirement of 40 percent light transmittance over 100 percent of the dock surface is infeasible due to the need to install heavier than typical float components, including the float and structural bracing, to provide adequate protection against anticipated wave and wake energy. The proposed dock repairs are included in the 2006 Luther Burbank Park Master Plan (**Exhibit 14**), which is cited in the most recent comprehensive plan. The Luther Burbank Park Master Plan was used to guide the design process, which provides a vision of a waterfront activity center that is centered around small boats. The standards set forth in the City's SMP interferes with the reasonable use of the property by requiring dock dimensions that limit the City's ability to replace the existing structure in a manner that is consistent with conditions found at similar waterfront parks on Lake Washington. Further discussion of reasonable use can be found in **Exhibit 10, Section 3**; therefore, this criterion is met.

- b. WAC 173-27-170(3)(b) That the proposal is consistent with the criteria established under subsection (2)(b) through (f) of this section.

Staff Finding: The proposed development is consistent with the criteria established in subsection (2)(b) through (f) of WAC 173-27-170 as demonstrated in Findings of Fact & Conclusions of Law VIII.B.2.a - f; therefore, this criterion is met.

- c. WAC 173-27-170(3)(c) That the public rights of navigation and use of the shorelines will not be adversely affected.

Staff Finding: As conditioned, the applicant is required to obtain any permits from state and federal agencies, including the U.S. Army Corps of Engineers for review of navigation and use of shorelines. The proposed pier would not extend further waterward from the OHWM into Lake Washington than the existing public access pier that was constructed in 1973. Additionally, the proposed development is consistent with the 2006 Luther Burbank Park Master Plan (**Exhibit 14**), which encourages public access to the shoreline. The use of the shoreline would be increased as a result of the proposed development; therefore, this criterion is met.

4. WAC 173-27-170(4) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

Staff Finding: No variances were granted to other developments and/or uses in the area where similar circumstances exist; therefore, this criterion is met.

5. WAC 173-27-170(5) Variances from the use regulations of the master program are prohibited.

Staff Finding: The proposed variance does not include a request for a variance from the use regulations of the master program. Public access piers, docks, and boardwalks are a Permitted use in the Urban Park Shoreline Environment Designation; therefore, this criterion is met.

SHL23-043 – Conclusions of Law

The following conclusions are hereby made based on the findings of fact listed above in sections IV and VIII:

1. As conditioned, the proposed Shoreline Variance to vary the minimum grating standards requiring docks to be fully grated with materials that allow a minimum 40 percent light transmittance in MICC 19.13.050(H)(5) to allow the wave attenuator portion of the central dock to be concrete with no light transmittance is consistent with the standards in the MICC, SMP, and WAC; therefore, the proposed Shoreline Variance SHL23-043 should be allowed.
2. The proposed development is consistent with the City of Mercer Island Comprehensive Plan in place at the time the application was deemed complete.
3. The proposed development as conditioned meets the applicable requirements of the Shoreline Management Act under RCW Ch. 90.58 & WAC Ch. 173-27.
4. The application materials adequately discuss the existing conditions and impacts of the site.
5. The proposed development as conditioned would not have probable significant adverse environmental impacts.
6. Any of the above listed findings of fact that are conclusions are hereby incorporated as conclusions.

SHL23-043 – Proposed Conditions of Approval

1. The applicant shall obtain any permits from state and federal agencies that are applicable to the proposed development. The applicant is also responsible for documenting any required changes in the proposed development due to conditions imposed by any applicable local, state and federal government agencies.
2. Piles, floats, or other structures in direct contact with the water shall not be treated or coated with toxic substances harmful to the aquatic environment. Chemical treatment of structures shall comply with all applicable state and federal regulations. Any pollutants entering Lake Washington shall be reported immediately to the Department of Ecology N.W. Regional Office: (425) 649-7000 and the City of Mercer Island: (206) 275-7605.
3. Construction of the proposed development shall only occur during approved fish windows by local, state, and/or federal government agencies. The applicant is responsible for obtaining permit approvals from all state and federal agencies.

IX. SHL23-044 – SHORELINE VARIANCE: FINDINGS, CONCLUSIONS, AND PROPOSED CONDITIONS OF APPROVAL

- A. 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.

Staff Finding: The applicant has demonstrated that the site contains extraordinary circumstances due to wave, wake, and geological conditions, as shown in the Wave and Wake Modeling Report (**Exhibit 20**) and Geotechnical Report for Dock Improvements (**Exhibit 17**). The strict implementation of the master program's maximum pile diameter requirements for public access piers and docks would impose unnecessary hardship on the applicant due to the extraordinary circumstances discussed above. The greater pile diameter requirements were determined through geotechnical evaluations completed at the site, wave and wake modeling completed by the coastal engineer, and structural engineering analysis. Because of wave and wake conditions at the site, larger pile diameters are required to support the dock from shifting or breaking in typical conditions. The proposed improvements would bring the park up to standards that are consistent with those that are present in other, more recently updated, waterfront parks on Lake Washington.

Staff Finding: Other extraordinary circumstances at the site are related to consistently increasing use of Luther Burbank and the need to provide safe access and improve accessibility for those with mobility limitations that visit the park.

Staff Finding: The dock structure and platform are located within a shoreline environment that was previously used as a steam plant and is heavily modified from natural conditions, including shoreline fill and overwater development and structures. The project is compliant with statewide standards for shoreline protection. The project incorporates environmental enhancements and avoidance and minimization measures to demonstrate no net loss of ecological functions.

Staff Finding: Denial of the variance request would result in the thwarting of the following policies in RCW 90.58.020:

- Ensuring the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest;
- Increase public access to publicly owned areas of the shorelines; and
- Increase recreational opportunities for the public in the shoreline.

Staff Finding: Allowing a larger pile diameter would allow for the dock to be constructed to standards that would withstand the wave, wake, and geological conditions at the site to provide protection to the shoreline ecological functions and users of the central and south docks; therefore, this criterion is met.

1. *WAC 173-27-170(1)* Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

Staff Finding: The proposed development does not include variance permits for development and/or uses that will be located landward of the ordinary high water mark; therefore, this criterion does not apply, however, the applicant must demonstrate compliance with WAC 173-27-170(3), which includes demonstration of compliance with WAC 173-27-170(2)(b)-(f).

Staff Finding: The applicant has demonstrated that the site contains extraordinary circumstances due to wave and wake conditions, as shown in the Wave and Wake Modeling Report (**Exhibit 20**) and geotechnical requirements. The pile diameter requirements were

determined through geotechnical evaluations completed at the site and structural engineering analysis (**Exhibit 17**). Because of the wave and wake conditions at the site, larger pile diameters are required to support the dock from shifting or breaking in typical conditions. The applicant is requesting a variance from the pile diameter requirements in MICC 19.13.050(H)(7) which requires the first set of piles at the dock structure to be maximum 10-inches in diameter and the remaining piles to be maximum 12-inches in diameter. The variance request is for 16-inch diameter piles to be installed along the south dock, and 24-inch diameter piles to be installed to support the wave attenuation float.

2. WAC 173-27-170(2) Variance permits for development and/or uses that will be located landward of the ordinary high water mark, as defined in RCW 90.58.030(2)(c), and/or landward of any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:

- a. WAC 173-27-170(2)(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property.

Staff Finding: The proposed development does not include variance permit applications for development and/or uses that will be located landward of the ordinary high water mark. Pursuant to WAC 173-27-170(3), only demonstration of compliance with WAC 173-27-170(2)(b)-(f) is required; therefore, this criterion does not apply, however, (b) of this subsection relies on the hardship described in (a) of this subsection. The applicant determined that the standards in the City's SMP related to pile diameter cannot be met due to hardships related to wave, wake, and geological conditions that are specific to the property (**Exhibits 17 and 20**). The strict application of the bulk, dimensional or performance standards related to pile diameter would interfere with reasonable use of the property as a public access pier. Larger pile diameter is necessary for the safety of the public and structural integrity of the public access pier against the higher wave and wake action at the site. The dock at Luther Burbank Park is a focal point of waterfront programming at the park and is used by the public for water-based programming such as, small motorized and non-motorized watercraft users that require safe access to the water. There is a high and growing public demand for kayak and sailing programs at Luther Burbank Park. This was expressed in the 2006 Luther Burbank Park Master Plan (**Exhibit 14**), which envisioned this waterfront complex as a small craft boating center. Based upon the needs of the project applicant and the character and scale of the subject parcels and other similar waterfront parks in the vicinity, the denial of a safe concrete float for public and ADA-accessible use from this project precludes "reasonable use" of the property. The application materials include a discussion on how the notion of "reasonable use" has changed over time and how the project, as proposed, would result in a reasonable use of the parcel (**Exhibit 11, Section 3**); therefore, this criteria is met.

- b. WAC 173-27-170(2)(b) That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions.

Staff Finding: The applicant determines the standards in the City's SMP related to pile diameter requirements cannot be met due to hardships related to the property and unique conditions. The proposed pile diameters would accommodate the dock structure in response to evaluated geological conditions, and to protect users against high wave and

wake action which present extraordinary circumstances as demonstrated in the Wake and Wave Modeling Report (**Exhibit 20**) and the Geotechnical Report for Dock Improvements (**Exhibit 17**); therefore, this criterion is met.

- c. WAC 173-27-170(2)(c) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment.

Staff Finding: The proposed development includes replacing an existing dock and providing waterfront improvements that are compatible with existing authorized uses and programs at the park. The proposed development is consistent with the uses and goals identified in the 2006 Luther Burbank Park Master Plan (**Exhibit 14**), cited in the comprehensive plan and is consistent with the uses authorized in the SMP under MICC 19.13.040 Table A and B. The proposed development will result in no net loss of ecological function at the site; therefore, this criterion is met.

- d. WAC 173-27-170(2)(d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area.

Staff Finding: The existing dock structure to be replaced is designed specifically to protect shoreline restoration ecological functions and protect against geological, wave, and wake conditions at the site that have the potential to impact user safety if not addressed through structural methods (**Exhibit 17**). The variance to allow larger pile diameter would provide needed safety at a public dock and ADA accessibility in a unique waterfront environment and is not expected to constitute a grant of special privilege not enjoyed by the other properties in the area. The geologic, wake, and wave conditions create a unique circumstance where larger piles are necessary to provide safety for a functioning public dock; therefore, this criterion is met.

- e. WAC 173-27-170(2)(e) That the variance requested is the minimum necessary to afford relief.

Staff Finding: The requested pile diameter variance is the minimum necessary to afford relief, as demonstrated in the Geotechnical Report for Dock Improvements, dock piles conclusions and recommendations (**Exhibit 17**); therefore, this criterion is met.

- f. WAC 173-27-170(2)(f) That the public interest will suffer no substantial detrimental effect.

Staff Finding: The pile diameter variance is being requested to protect public dock users from wave and wake conditions in a unique waterfront environment. It is expected that the public will benefit from the proposed waterfront improvements; therefore, this criterion is met.

- 3. WAC 173-27-170(3) Variance permits for development and/or uses that will be located waterward of the ordinary high water mark, as defined in RCW 90.58.030(2)(c), or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:

- a. WAC 173-27-170(3)(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property.

Staff Finding: The strict application of the dimensional standards set forth in the City's SMP regarding pile diameter interferes with the reasonable use of the property by requiring dock

dimensions that limit the applicant's ability to replace the existing structure in a manner that accommodates the unique waterfront environment, including challenging wave and wake conditions, and adequate protection for public users while improving access to the shoreline. The SMP's requirements for pile diameter would significantly reduce the dock's structural capacity to reasonably protect shoreline restoration ecological functions and protect facilities against wave and wake and geological conditions experienced at the site as demonstrated through modeling and geotechnical review. The dock at Luther Burbank Park is a focal point of waterfront programming at the park and is used by the public for water-based programming such as, small motorized and non-motorized watercraft users that require safe access to the water. There is a high and growing public demand for kayak and sailing programs at Luther Burbank Park. This was expressed in the 2006 Luther Burbank Park Master Plan (**Exhibit 14**), which envisioned this waterfront complex as a small craft boating center. Based upon the needs of the project applicant and the character and scale of the subject parcels and other similar waterfront parks in the vicinity, the denial of a safe concrete float for public and ADA-accessible use from this project precludes "reasonable use" of the property. The application materials include a discussion on how the notion of "reasonable use" has changed over time and how the project, as proposed, would result in a reasonable use of the parcel (**Exhibit 11, Section 3**); therefore, this criteria is met.

- b. WAC 173-27-170(3)(b) That the proposal is consistent with the criteria established under subsection (2)(b) through (f) of this section.

Staff Finding: The proposed development is consistent with the criteria established in subsection (2)(b) through (f) of WAC 173-27-170 as demonstrated in Findings of Fact & Conclusions of Law IX.B.2.a - f; therefore, this criterion is met.

- c. WAC 173-27-170(3)(c) That the public rights of navigation and use of the shorelines will not be adversely affected.

Staff Finding: As conditioned, the applicant is required to obtain any permits from state and federal agencies, including the U.S. Army Corps of Engineers for review of navigation and use of shorelines. The proposed pier would not extend further waterward from the OHWM into Lake Washington than the existing public access pier that was constructed in 1973. Additionally, the proposed development is consistent with the 2006 Luther Burbank Park Master Plan (**Exhibit 14**) which encourages public access to the shoreline. The use of the shoreline would be increased as a result of the proposed development; therefore, this criterion is met.

- 4. WAC 173-27-170(4) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

Staff Finding: No variances were granted to other developments and/or uses in the area where similar circumstances exist; therefore, this criterion is met.

- 5. WAC 173-27-170(5) Variances from the use regulations of the master program are prohibited.

Staff Finding: The proposed variance does not include a request for a variance from the use regulations of the master program. Public access piers, docks, and boardwalks are a Permitted use in the Urban Park Shoreline Environment Designation; therefore, this criterion is met.

SHL23-044 – Conclusions of Law

The following conclusions are hereby made based on the findings of fact listed above in sections IV and IX:

1. As conditioned, the proposed Shoreline Variance to vary the maximum pile diameter requirements in MICC 19.13.050(H)(7) which requires the first set of piles at the dock structure to be maximum 10-inches in diameter and the remaining piles to be maximum 12-inches in diameter to allow the proposed piles to allow 16-inch diameter piles to be installed along the south dock and 24-inch diameter piles to be installed to support the wave attenuation float is consistent with the standards in the MICC, SMP, and WAC; therefore, the proposed Shoreline Variance SHL23-044 should be allowed.
2. The proposed development is consistent with the City of Mercer Island Comprehensive Plan in place at the time the application was deemed complete.
3. The proposed development as conditioned meets the applicable requirements of the Shoreline Management Act under RCW 90.58 & WAC 173-27.
4. The application materials adequately discuss the existing conditions and impacts of the site.
5. The proposed development as conditioned would not have probable significant adverse environmental impacts.
6. Any of the above listed findings of fact that are conclusions are hereby incorporated as conclusions.

SHL23-044 – Proposed Conditions of Approval

1. The applicant shall obtain any permits from state and federal agencies that are applicable to the proposed development. The applicant is also responsible for documenting any required changes in the proposed development due to conditions imposed by any applicable local, state, and federal government agencies.
2. Piles, floats, or other structures in direct contact with the water shall not be treated or coated with toxic substances harmful to the aquatic environment. Chemical treatment of structures shall comply with all applicable state and federal regulations. Any pollutants entering Lake Washington shall be reported immediately to the Department of Ecology N.W. Regional Office: (425) 649-7000 and the City of Mercer Island: (206) 275-7605.
3. Construction of the proposed development shall only occur during approved fish windows by local, state, and/or federal government agencies. The applicant is responsible for obtaining permit approvals from all state and federal agencies.

X. SHL23-045 – SHORELINE VARIANCE: FINDINGS, CONCLUSIONS, AND PROPOSED CONDITIONS OF APPROVAL

- A. *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.

Staff Finding: The applicant has demonstrated that the site contains extraordinary circumstances due to the site's previous use as a steam plant which resulted in a heavily modified shoreline environment that includes a vertical bulkhead and deeper water directly off the shoreline. The strict

implementation of the master program's fixed pier height requirements for public access piers and docks would impose unnecessary hardships on the applicant since the current site limits access to the water, which is encouraged in the 2006 Luther Burbank Master Plan (**Exhibit 14**), referenced in the City's comprehensive plan; therefore, this criterion is met.

1. *WAC 173-27-170(1)* Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

Staff Finding: The proposed development does not include variance permits for development and/or uses that will be located landward of the ordinary high water mark; therefore, this criterion does not apply, however, the applicant must demonstrate compliance with WAC 173-27-170(3), which includes demonstration of compliance with WAC 173-27-170(2)(b)-(f).

Staff Finding: The applicant has demonstrated that the site contains extraordinary circumstances due to the heavily modified conditions resulting from the previous use as a steam plant, including shoreline fill and overwater development and structures. The proposed structure provides a fixed platform to allow greater access in an area constrained by a vertical bulkhead and deeper water due to the existing development. The constraints on the site are an extraordinary circumstance that make it difficult for people with mobility limitations to access the shoreline on an uneven, unstable beach surface that is separate from the upland by several feet due to a vertical bulkhead. The shoreline variance request from the minimum height of 1.5 feet above the ordinary high water mark for a fixed pier in MICC 19.13.050(H)(6) would improve access to a shoreline area that currently impedes public access to the water due to existing site conditions.

Staff Finding: Denial of the variance request would result in the thwarting of the following policies in RCW 90.58.020:

- Ensuring the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest;
- Increase public access to publicly owned areas of the shorelines; and
- Increase recreational opportunities for the public in the shoreline.

Staff Finding: The proposed development would improve public access and safety at the dock and plaza area and enhance the user experience. The proposed development is consistent with the approved master plan for Luther Burbank Park and is supported by the City's parks, recreation, and open space plan adopted in 2022, which includes encouraging access to the water. The proposed development is not anticipated to result in any detriment to the public interest; therefore, this criterion is met.

1. *WAC 173-27-170(2)* Variance permits for development and/or uses that will be located landward of the ordinary high water mark, as defined in RCW 90.58.030(2)(c), and/or landward of any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:
 - a. *WAC 173-27-170(2)(a)* That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property.

Staff Finding: The applicant determines that the standards in the City's SMP related to fixed pier height cannot be met due to hardships related to historical development creating a heavily modified shoreline that is not accessible, which is specific to the property. The strict application of the bulk, dimensional or performance standards related to fixed pier height would interfere with reasonable use of the property as a public access pier. Lower pier height is necessary to improve access to a shoreline area that currently impedes public access to the water due to existing site conditions. Further discussion of reasonable use can be found in **Exhibit 12, Section 3**; therefore, this criterion is met.

- b. WAC 173-27-170(2)(b) That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions.

Staff Finding: The applicant determines the standards in the City's SMP related to fixed pier height requirements cannot be met due to hardships related to the property and unique conditions. A variance is being requested due to the unique interface between built and natural environments in this area that currently prohibits public access to the water, including uses experiencing limited mobility. These site constraints present extraordinary circumstances that can be addressed through the design of the overwater platform; therefore, this criterion is met.

- c. WAC 173-27-170(2)(c) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment.

Staff Finding: The proposed development includes replacing an existing dock and providing waterfront improvements that are compatible with existing authorized uses and programs at the park. The proposed development is consistent with the uses and goals identified in the 2006 Luther Burbank Park Master Plan (**Exhibit 14**), cited in the comprehensive plan and is consistent with the uses authorized in the SMP under MICC 19.13.040 Table A and B. The proposed development will result in no net loss of ecological function at the site; therefore, this criterion is met.

- d. WAC 173-27-170(2)(d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area.

Staff Finding: The proposed overwater access platform is designed specifically to accommodate park programming, which is unique to the area. This variance is being requested to support a public dock and programming in a unique waterfront environment. Other properties in the area do not contain similar conditions. The proposed variance would allow for users to interact with the waterfront that is currently inaccessible due to the existing bulkhead. This variance is not expected to constitute a grant of special privilege not enjoyed by the other properties in the area; therefore, this criterion is met.

- e. WAC 173-27-170(2)(e) That the variance requested is the minimum necessary to afford relief.

Staff Finding: The overwater access platform is designed to provide the minimum necessary structural support along the promenade to provide access to the water at a safe location along the promenade for limited mobility individuals. The requested fixed pier height variance is the minimum necessary to afford relief; therefore, this criterion is met.

- f. WAC 173-27-170(2)(f) That the public interest will suffer no substantial detrimental effect.

Staff Finding: The fixed pier height variance is being requested to support and improve access to the shoreline for all users, including those with limited mobility, in a unique waterfront environment. It is expected that the public will benefit from the proposed waterfront improvements; therefore, this criterion is met.

3. WAC 173-27-170(3) Variance permits for development and/or uses that will be located waterward of the ordinary high water mark, as defined in RCW 90.58.030(2)(c), or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:

- a. WAC 173-27-170(3)(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property.

Staff Finding: The strict application of the dimensional standards set forth in the City's SMP regarding fixed pier height interferes with the reasonable use of the property by requiring structural height requirements that limit the City's ability to install a platform structure in a manner that accommodates the unique waterfront environment and improves access to the shoreline for users, including for park users that have limited mobility. The strict application of the dimensional standards in the City's SMP interferes with the City's ability to provide reasonable and safe public use of the property in an area that is currently constrained by existing development. The vertical bulkhead adjacent to the shoreline in this area currently restricts access to the water; therefore, this criterion is met.

- b. WAC 173-27-170(3)(b) That the proposal is consistent with the criteria established under subsection (2)(b) through (f) of this section.

Staff Finding: The proposed development is consistent with the criteria established in subsection (2)(b) through (f) of WAC 173-27-170 as demonstrated in Findings of Fact & Conclusions of Law X.B.2.a - f; therefore, this criterion is met.

- c. WAC 173-27-170(3)(c) That the public rights of navigation and use of the shorelines will not be adversely affected.

Staff Finding: As conditioned, the applicant is required to obtain any permits from state and federal agencies, including the U.S. Army Corps of Engineers for review of navigation and use of shorelines. The proposed pier would not extend further waterward from the OHWM into Lake Washington than the existing public access pier that was constructed in 1973. Additionally, the proposed development is consistent with the 2006 Luther Burbank Park Master Plan, which is cited in the City's Comprehensive Plan, which encourages public access to the shoreline. The use of the shoreline would be increased as a result of the proposed development; therefore, this criterion is met.

4. WAC 173-27-170(4) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

Staff Finding: No variances were granted to other developments and/or uses in the area where similar circumstances exist; therefore, this criterion is met.

5. WAC 173-27-170(5) Variances from the use regulations of the master program are prohibited.

Staff Finding: The proposed variance does not include a request for a variance from the use regulations of the master program. Public access piers, docks, and boardwalks are a Permitted use in the Urban Park Shoreline Environment Designation; therefore, this criterion is met.

SHL23-045 – Conclusions of Law:

The following conclusions are hereby made based on the findings of fact listed above in **sections IV and X:**

1. As conditioned, the proposed SVAR to vary the minimum fixed pier height requirements in MICC 19.13.050(H)(6) which requires the distance between the water surface and the bottom structural beam to be at least 1.5 feet to allow the bottom structural beam of the proposed overwater access platform to be 0 feet from the water surface is consistent with the standards in the MICC, SMP, and WAC; therefore, the proposed SVAR, SHL23-045, should be allowed.
2. The proposed development is consistent with the City of Mercer Island Comprehensive Plan in place at the time the application was deemed complete.
3. The proposed development as conditioned meets the applicable requirements of the Shoreline Management Act under RCW Ch. 90.58 & WAC Ch. 173-27.
4. The application materials adequately discuss the existing conditions and impacts of the site.
5. The proposed development as conditioned would not have probable significant adverse environmental impacts.
6. Any of the above listed findings of fact that are conclusions are hereby incorporated as conclusions.

SHL23-045 – Proposed Conditions of Approval:

1. The applicant shall obtain any permits from state and federal agencies that are applicable to the proposed development. The applicant is also responsible for documenting any required changes in the proposed development due to conditions imposed by any applicable local, state, and federal government agencies.
2. Piles, floats, or other structures in direct contact with the water shall not be treated or coated with toxic substances harmful to the aquatic environment. Chemical treatment of structures shall comply with all applicable state and federal regulations. Any pollutants entering Lake Washington shall be reported immediately to the Department of Ecology N.W. Regional Office: (425) 649-7000 and the City of Mercer Island: (206) 275-7605.
3. Construction of the proposed development shall only occur during approved fish windows by local, state, and/or federal government agencies. The applicant is responsible for obtaining permit approvals from all state and federal agencies

XI. SHL22-025 – SHORELINE CONDITIONAL USE PERMIT: FINDINGS, CONCLUSIONS, AND PROPOSED CONDITIONS OF APPROVAL

- A. The purpose of a SCUP is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

Staff Finding: The proposed new hard structural shoreline stabilization is authorized in the City's SMP subject to the approval of a Shoreline Conditional Use Permit. The findings and conditions of approval below demonstrate that the proposal is consistent with the SMA and local master program.

1. WAC 173-27-160(1) lists review criteria for approving a SCUP. Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:
 - a. WAC 173-27-160(1)(a). That the proposed use is consistent with the policies of RCW 90.58.020 and the master program.

Staff Finding: The applicant has demonstrated that the proposed hard structural shoreline stabilization is consistent with RCW 90.58.020 by preserving the natural character of the shoreline in concert with expanding public access. The new rock revetment and sheet pile wall landward of the OHWM would also protect the expanded beach and native vegetation planting and restoration areas and the ADA-accessible public access trail to the expanded beach area. The natural character of the shoreline has been modified over time to support public access in a public park setting. The project provides habitat restoration and beach augmentation to enhance habitat in the vicinity of the promenade and dock structure. Limited hard shoreline stabilization measures are provided based on modeled wave and wake conditions at the site (**Exhibit 20**) and are intended to support the projects public access features, allowing public enjoyment of the shoreline and water, including providing access to the shoreline for those with limited mobility. The shoreline stabilization measures have been minimized to provide necessary support for public access features while preserving the natural character of the shoreline to the extent feasible; therefore, this criterion is met.

- b. WAC 173-27-160(1)(b). That the proposed use will not interfere with the normal public use of public shorelines.

Staff Finding: The proposed hard structural shoreline stabilization would provide protection for public access features that are intended to increase public access to the waterfront; therefore, this criterion is met.

- c. WAC 173-27-160(1)(c). That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program.

Staff Finding: The proposed hard structural shoreline stabilization would improve existing waterfront recreational opportunities and access. The public park use is an authorized use of the Urban Park Shoreline Environment Designation for public parks and open space; therefore, this criterion is met.

- d. WAC 173-27-160(1)(d). That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located.

Staff Finding: The applicant has demonstrated that the proposed hard structural shoreline stabilization would not result in significant adverse effects to the shoreline environment through a Critical Areas Report demonstrating no net loss of ecological function (**Exhibit 15**). The applicant would also implement best management practices during construction to

avoid or minimize potential impacts on the shoreline environment (**Exhibit 8**); therefore, this criterion is met.

- e. WAC 173-27-160(1)(e). That the public interest suffers no substantial detrimental effects.

Staff Finding: The proposed hard structural shoreline stabilization would enhance public access to the existing waterfront plaza and shoreline and would enhance the use experience. The proposed bulkhead would protect public access features; therefore, this criterion is met.

2. WAC 173-27-160(2). In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

Staff Finding: No SCUPs were granted for other developments in the area where similar circumstances exist; therefore, this criterion is met.

3. WAC 173-27-160(3). Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

Staff Finding: The applicant demonstrated consistency with the requirements of this section and the requirements for SCUP contained in the SMP; therefore, this criterion is met.

4. WAC 173-27-160(4). Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

Staff Finding: The uses are not specifically prohibited by the SMP; therefore, this criterion is met.

SHL22-025 – Conclusions of law

The following conclusions are hereby made based on the findings of fact listed above in **sections IV and XI**:

1. As conditioned, the proposed development, to construct a new hard shoreline stabilization structure, is consistent with the standards in the MICC, SMP, and WAC; therefore, the proposed Shoreline Conditional Use Permit SHL22-025 is allowed.
2. The proposed development is consistent with the City of Mercer Island Comprehensive Plan in place at the time the application was deemed complete.
3. The proposed development as conditioned meets the applicable requirements of the Shoreline Management Act under RCW Ch. 90.58 & WAC Ch. 173-27.
4. The application materials adequately discuss the existing conditions and impacts of the site.
5. The proposed development as conditioned would not have probable significant adverse environmental impacts.
6. Any of the above listed findings of fact that are conclusions are hereby incorporated as conclusions.

SHL22-025 – Proposed Conditions of Approval

1. The applicant shall obtain any permits from state and federal agencies that are applicable to the proposed development. The applicant is also responsible for documenting any required changes in the proposed development due to conditions imposed by any applicable local, state, and federal agencies.
2. Piles, floats, or other structures in direct contact with the water shall not be treated or coated with toxic substances harmful to the aquatic environment. Chemical treatment of structures shall comply with all applicable state and federal regulations. Any pollutants entering Lake Washington shall be reported immediately to the Department of Ecology N.W. Regional Office: (425) 649-7000 and the City of Mercer Island: (206) 275-7605.
3. Construction of the proposed development shall only occur during approved fish windows by local, state, and/or federal government agencies. The applicant is responsible for obtaining permit approvals from all state and federal agencies.

XII. RECOMMENDED CONDITIONS OF APPROVAL

General Conditions of Approval

- a. The proposed development shall be in substantial conformance with Exhibit 2 and all applicable development standards contained within Chapter 19.13 of the Mercer Island City Code (MICC).
- b. The applicant shall obtain any permits from state and federal agencies that are applicable to the proposed development. The applicant is also responsible for documenting any required changes in the proposed development due to conditions imposed by any applicable local, state, and federal government agencies.
- c. Construction shall not be authorized, nor may begin within twenty-one days of the date of filing of the decision as defined in RCW 90.58.140(6).
- d. A City of Mercer Island Building Permit may be required for construction of the proposed development. The Building Official may require an appropriate performance bond in an amount to be determined prior to Building Permit issuance to ensure all required vegetation installation is completed in compliance with applicable code requirements.
- e. Construction of the proposed development shall only occur during approved fish windows by local, state, and/or federal government agencies. The applicant is responsible for obtaining permit approvals from all state and federal agencies.
- f. Construction of the proposed development shall only occur during approved construction hours by the City of Mercer Island and/or as otherwise restricted by the Building Official.
- g. The applicant shall provide the Community Planning and Development Department (CPD) with documentation of approval of the proposed development from the U.S. Army Corps of Engineers and the Washington Department of Fish and Wildlife. This documentation shall be received by CPD prior to issuance of building permits for the proposed development.
- h. The applicant shall provide the City with an affidavit prior to building permit issuance. The affidavit shall state that the applicant has field located the sewer lake line and the location on the site plan (as revised) is the actual location within Lake Washington. The affidavit shall acknowledge that the applicant is responsible for any damages to the sewer lake line caused by the construction. **Please note:** Damage can occur from pile driving, grounding the barge or securing it with vertical steel shafts (spuds), and other possible impacts from the proposed development.

- i. The applicant shall provide the City with development plans that reflect the field verified location of the sewer lake line pre-construction prior to building permit issuance. If the lakebed is being disturbed, please contact Fish and Wildlife and the U.S. Army Corps of Engineers, as a permit may be required. **Please note:** Field verification should be performed with due care as the sewer lake line is pressurized in some locations and the pipe material could be prone to damage.

The applicant shall provide development plans based upon a pre-construction field survey locating the sewer lake line, and shall deliver the results to the City in one of the formats listed below, ranked from top to bottom, (a) being the top preferred method:

- i. A hand-drawn or plotted as-built of the lake line location with accurate distance measurements to multiple visible and permanent reference points. Reference points can include dock corners, utilities, structures, stairs, etc.
 - ii. A CAD file including the lake line and surveyed area in WGS-1984 or Washington State Plane North coordinate systems.
 - iii. A CAD file including the lake line and surveyed area in an assumed coordinate system, including multiple visible and permanent reference points.
 - iv. A list of coordinates denoting the lake line location, in WGS-1984 or Washington State Plane North coordinate systems.
 - v. If none of the above options are viable, the City will consider reasonable efforts to provide field verification of the sewer lake line. Possible constraints that may make field verification nonviable includes, but is not limited to, the following: if the sewer pipe is too deep to locate or if there are fish window constraints.

If a coordinate system is used, the survey must be performed using high accuracy GPS or total station (half-foot accuracy). This **excludes** cellphone or handheld GPS surveys.
- j. The applicant shall inform the Mercer Island Maintenance Department at (206) 275-7608 of the anticipated start date of in-water work prior to commencement of construction.
 - k. Piles, floats, or other structures in direct contact with water shall not be treated or coated with toxic substances harmful to the aquatic environment. Chemical treatment of structures shall comply with all applicable state and federal regulations. Any pollutants entering Lake Washington shall be reported immediately to the Department of Ecology N.W. Regional Office: (425) 649-7000 and the City of Mercer Island: (206) 275-7605.
 - l. Construction or substantial progress toward construction of a development for which a permit has been granted must be undertaken within two years after the approval of the permit or the permit shall terminate. The code official shall determine if substantial progress has been made. A single extension before the end of the time limit, with prior notice to parties of record, for up to one year, based on reasonable factors may be granted.
 - m. A separate shoreline exemption must be obtained for the two “no-wake” buoys and one “non-motorized vessels” buoy prior to the issuance of a construction permit.

CAO22-018 (Critical Area Review 2) Conditions of Approval

- n. Landscaping of all disturbed areas outside of building footprints and installation of hardscape pursuant to the planting plan (**Exhibit 2, Sheet L-010**) is required prior to final inspection of the building permit.

- o. The erosion and sedimentation control measures in the Critical Areas Study (**Exhibit 15**) shall be implemented throughout the duration of the project.
- p. A post-design memorandum prepared by the geotechnical engineer of record confirming that the proposed improvements comply with the design recommendations in the Geotechnical Report for Upland Improvements (**Exhibit 16**) and the Geotechnical Report for Dock Improvements (**Exhibit 17**) and an associated updated statement of risk shall be required prior to issuance of construction permits.

SHL22-023 (Shoreline Substantial Development Permit) Conditions of Approval

- q. Construction of the proposed development shall only occur during approved fish windows by local, state, and/or federal government agencies. The applicant is responsible for obtaining permit approvals from all state and federal agencies.
- r. The applicant shall obtain any permits from state and federal agencies that are applicable to the proposed development. The applicant is also responsible for documenting any required changes in the proposed development due to conditions imposed by any applicable local, state, and federal government agencies.
- s. Piles, floats, or other structures in direct contact with the water shall not be treated or coated with toxic substances harmful to the aquatic environment. Chemical treatment of structures shall comply with all applicable state and federal regulations. Any pollutants entering Lake Washington shall be reported immediately to the Department of Ecology N.W. Regional Office: (425) 649-7000 and the City of Mercer Island: (206) 275-7605.
- t. The mitigation sequencing and construction BMPs described in **Exhibit 15, Section 5** and the planting plan, nearshore habitat restoration, and aquatic habitat improvements discussed in Exhibit 15, Section 4.1.3 are required to be implemented prior to final inspection of the building permit.
- u. Landscaping of all disturbed areas outside of building footprints and installation of hardscape pursuant to the approved planting plan (**Exhibit 2, Sheet L-010 and L-011**) is required prior to final inspection of the building permit.
- v. A financial guarantee shall be provided to the City to cover the mitigation plantings required for the proposed development.

SHL22-024 (Shoreline Variance for Dock Width) Conditions of Approval

- w. The applicant shall obtain any permits from state and federal agencies that are applicable to the proposed development. The applicant is also responsible for documenting any required changes in the proposed development due to conditions imposed by any applicable local, state, and federal government agencies.
- x. Piles, floats, or other structures in direct contact with the water shall not be treated or coated with toxic substances harmful to the aquatic environment. Chemical treatment of structures shall comply with all applicable state and federal regulations. Any pollutants entering Lake Washington shall be reported immediately to the Department of Ecology N.W. Regional Office: (425) 649-7000 and the City of Mercer Island: (206) 275-7605.
- y. Construction of the proposed development shall only occur during approved fish windows by local, state, and/or federal government agencies. The applicant is responsible for obtaining permit approvals from all state and federal agencies.

SHL23-043 (Shoreline Variance for Light Transmittance) Conditions of Approval

- z. The applicant shall obtain any permits from state and federal agencies that are applicable to the proposed development. The applicant is also responsible for documenting any required changes in the proposed development due to conditions imposed by any applicable local, state, and federal government agencies.
- aa. Piles, floats, or other structures in direct contact with the water shall not be treated or coated with toxic substances harmful to the aquatic environment. Chemical treatment of structures shall comply with all applicable state and federal regulations. Any pollutants entering Lake Washington shall be reported immediately to the Department of Ecology N.W. Regional Office: (425) 649-7000 and the City of Mercer Island: (206) 275-7605.
- bb. Construction of the proposed development shall only occur during approved fish windows by local, state, and/or federal government agencies. The applicant is responsible for obtaining permit approvals from all state and federal agencies.

SHL23-044 (Shoreline Variance for Pile Diameter) Conditions of Approval

- cc. The applicant shall obtain any permits from state and federal agencies that are applicable to the proposed development. The applicant is also responsible for documenting any required changes in the proposed development due to conditions imposed by any applicable local, state, and federal government agencies.
- dd. Piles, floats, or other structures in direct contact with the water shall not be treated or coated with toxic substances harmful to the aquatic environment. Chemical treatment of structures shall comply with all applicable state and federal regulations. Any pollutants entering Lake Washington shall be reported immediately to the Department of Ecology N.W. Regional Office: (425) 649-7000 and the City of Mercer Island: (206) 275-7605.
- ee. Construction of the proposed development shall only occur during approved fish windows by local, state, and/or federal government agencies. The applicant is responsible for obtaining permit approvals from all state and federal agencies.

SHL23-045 (Shoreline Variance for Fixed Pier Height) Conditions of Approval

- ff. The applicant shall obtain any permits from state and federal agencies that are applicable to the proposed development. The applicant is also responsible for documenting any required changes in the proposed development due to conditions imposed by any applicable local, state, and federal government agencies.
- gg. Piles, floats, or other structures in direct contact with the water shall not be treated or coated with toxic substances harmful to the aquatic environment. Chemical treatment of structures shall comply with all applicable state and federal regulations. Any pollutants entering Lake Washington shall be reported immediately to the Department of Ecology N.W. Regional Office: (425) 649-7000 and the City of Mercer Island: (206) 275-7605.
- hh. Construction of the proposed development shall only occur during approved fish windows by local, state, and/or federal government agencies. The applicant is responsible for obtaining permit approvals from all state and federal agencies.

SHL22-025 (Shoreline Conditional Use Permit) Conditions of Approval

- ii. The applicant shall obtain any permits from state and federal agencies that are applicable to the proposed development. The applicant is also responsible for documenting any required changes

in the proposed development due to conditions imposed by any applicable local, state, and federal government agencies.

- jj. Construction of the proposed development shall only occur during approved fish windows by local, state, and/or federal government agencies. The applicant is responsible for obtaining permit approvals from all state and federal agencies.

DEVELOPMENT REGULATION COMPLIANCE – DISCLOSURE

1. The applicant is responsible for obtaining any required permits or approvals from the appropriate Local, State, and Federal Agencies. The applicant is responsible for meeting the conditions required by the agencies pursuant to MICC 19.13.010(E) and 19.13.040.
2. All required permits must be obtained prior to the commencement of construction.

RECOMMENDATIONS

CAO22-018 (Critical Area Review Type 2): The City of Mercer Island Department of Planning & Community Development recommends the Hearing Examiner **APPROVE WITH RECOMMENDED CONDITIONS a – m AND n – p** the Luther Burbank Park Waterfront Improvements Project - Critical Area Review Type 2, CAO22-018 as the Applicant has demonstrated that the criteria enumerated within **section V** of this staff report have been met.

SHL22-023 (Shoreline Substantial Development Permit): The City of Mercer Island Department of Planning & Community Development recommends the Hearing Examiner **APPROVE WITH RECOMMENDED CONDITIONS a – m AND q – v** the Luther Burbank Park Waterfront Improvements Project - Shoreline Substantial Development Permit, SHL22-023 as the Applicant has demonstrated that the criteria enumerated within **section VI** of this staff report have been met.

SHL22-024 (Shoreline Variance Request): The City of Mercer Island Department of Planning & Community Development recommends the Hearing Examiner **APPROVE WITH RECOMMENDED CONDITIONS a – m AND w – y** the Luther Burbank Park Waterfront Improvements Project - Shoreline Variance Request, SHL22-024 as the Applicant has demonstrated that the criteria enumerated within **section VII** of this staff report have been met.

SHL23-043 (Shoreline Variance Request): The City of Mercer Island Department of Planning & Community Development recommends the Hearing Examiner **APPROVE WITH RECOMMENDED CONDITIONS a – m AND z – bb** the Luther Burbank Park Waterfront Improvements Project - Shoreline Variance Request, SHL23-043 as the Applicant has demonstrated that the criteria enumerated within **section VIII** of this staff report have been met.

SHL23-044 (Shoreline Variance Request): The City of Mercer Island Department of Planning & Community Development recommends the Hearing Examiner **APPROVE WITH RECOMMENDED CONDITIONS a – m AND bb – ee** the Luther Burbank Park Waterfront Improvements Project - Shoreline Variance Request, SHL23-044 as the Applicant has demonstrated that the criteria enumerated within **section IX** of this staff report have been met.

SHL23-045 (Shoreline Variance Request): The City of Mercer Island Department of Planning & Community Development recommends the Hearing Examiner **APPROVE WITH RECOMMENDED CONDITIONS a – m AND ff – hh** the Luther Burbank Park Waterfront Improvements Project - Shoreline Variance Request, SHL23-045 as the Applicant has demonstrated that the criteria enumerated within **section X** of this staff report have been met.

SHL22-025 (Shoreline Conditional Use Permit): The City of Mercer Island Department of Planning & Community Development recommends the Hearing Examiner **APPROVE WITH RECOMMENDED CONDITIONS a – m AND ii – jj** the Luther Burbank Park Waterfront Improvements Project - Shoreline Conditional Use Permit, SHL22-025 as the Applicant has demonstrated that the criteria enumerated within **section XI** of this staff report have been met.

Recommended this 12th day of September, 2024



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