

**BEFORE the HEARING EXAMINER for the
CITY of MERCER ISLAND**

RECOMMENDATIONS/DECISION

FILE NUMBERS: SHL22-023, SHL22-024, SHL22-025, SHL23-043, SHL23-044, SHL23-045, & CAO22-018

APPLICANT: City of Mercer Island
Department of Public Works
ATTN: Paul West
9611 SE 36th Street
Mercer Island, WA 98040

TYPE OF CASE: Consolidated applications for Luther Burbank Park Waterfront Improvements (listed in the above file number order): 1) Shoreline Substantial Development Permit; 2) Shoreline Variance for wider dock width segments; 3) Shoreline Conditional Use Permit for rock revetment; 4) Shoreline Variance for a dock segment with a solid surface; 5) Shoreline Variance for increased pile diameters; 6) Shoreline Variance for reduced fixed pier height above water surface; and 7) Critical Area Review Type 2 for work within mapped upland erosion, potential landslide, and seismic hazard areas

STAFF RECOMMENDATION: Approve all seven applications subject to conditions

EXAMINER RECOMMENDATIONS/
DECISION: APPROVE all seven applications subject to conditions

DATE OF
RECOMMENDATION/DECISION: September 19, 2024

INTRODUCTION ¹

The City of Mercer Island (“City”) Department of Public Works (“Public Works”) seeks approval of the seven applications listed above for the Luther Burbank Park Waterfront Improvements project.

Public Works filed a basic, overall Development Application on October 28, 2022 (Exhibit 46 ²); four supplemental applications were filed later (Exhibits 9 – 12). The applications, their filing dates, the dates

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

² Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. Citations to exhibits that are available electronically in PDF use PDF page numbers, not source document page numbers. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner’s Decision is based upon all documents in the record.

each was deemed complete by the Mercer Island Department of Community Planning & Development (“CP&D”), and the date a Notice of Application was issued for each are as follows:

Application Number	Date Filed	Date Complete (Vesting Date)	Date Notice of Application Issued
SHL22-023	10-28-2022 (Exhibit 46)	11-9-2022 (Exhibit 24)	11-14-2022 (Exhibit 26)
SHL22-024	4-30-2024 (Exhibit 9)	11-9-2022 (Exhibit 24); revision 9-27-2023 (Exhibit 25)	11-14-2022 (Exhibit 26); revision 10-2-2023 (Exhibit 30)
SHL22-025	10-28-2022 (Exhibit 46)	11-9-2022 (Exhibit 24)	11-14-2022 (Exhibit 26)
SHL23-043	4-30-2024 (Exhibit 10)	9-27-2023 (Exhibit 25)	10-2-2023 (Exhibit 27)
SHL23-044	4-30-2024 (Exhibit 11)	9-27-2023 (Exhibit 25)	10-2-2023 (Exhibit 28)
SHL23-045	4-30-2024 (Exhibit 12)	9-27-2023 (Exhibit 25)	10-2-2023 (Exhibit 29)
CAO22-018	10-28-2022 (Exhibit 46)	11-9-2022 (Exhibit 24)	11-14-2022 (Exhibit 26)

The subject property is located at 2040 84th Avenue SE. ³ Its Assessor’s Parcel Number is 0624059014. (Exhibit 46, PDF 2)

The Mercer Island Hearing Examiner (“Examiner”) viewed the subject property via Google Earth imagery: Overhead imagery captured August 21, 2022; Street View imagery captured in August 2017 and July 2022.

Public Works asked that the seven applications be consolidated for processing. (Testimony) The Examiner held a consolidated remote predecision open record hearing pursuant to MICC 3.40.060 on September 12, 2024, using the “Zoom” platform. The City gave notice of the hearing as required by the MICC. (Exhibit 47)

The following exhibits were entered into the hearing record during the hearing:

- Exhibits 1 - 45: As enumerated in Exhibit 46, the CP&D Staff Report
- Exhibit 46: Staff Report
- Exhibit 47: Notice of Hearing

The City asked during the Examiner’s open record hearing that the Examiner structure his action such that each of the seven applications could stand alone. When asked by the Examiner, City staff stated that CP&D did not expect the Examiner to produce seven entirely separate documents. The intent of the structure of this document is that the titling, Introduction, and Legal Framework sections are common to all applications. The Findings of Fact and Conclusions of Law each contain one section that is common to all applications and seven sections that are specific to each of the applications. The Recommendations/Decision section lists the Examiner’s recommendations/decision for each application separately. The Conditions are set forth separately for each application without need for cross-referencing between documents.

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner’s knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

³ Address based on Exhibit 5, PDF 7, and Exhibit 7, PDF 3.

LEGAL FRAMEWORK ⁴

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

Shoreline Management Act Variance (“SVAR”) and Shoreline Management Act Conditional Use Permit (“SCUP”) applications are Type IV applications. The Examiner conducts an open record hearing and renders a final decision for the City, subject to the right of reconsideration. The Examiner’s Decision on a Type IV application is normally subject to review in Superior Court. However, state law requires that local SVAR and SCUP actions be issued in the form of a recommendation to the State Department of Ecology which has final decision making authority. Ecology’s decision is subject to appeal to the State Shorelines Hearings Board. [MICC 19.15.030(E), Tables A and B; MICC 19.15.140; Chapter 3.40 MICC]

Shoreline Substantial Development (“SSDP”) and Critical Area Review Type 2 (“CAR 2”) applications are Type III administrative land use actions. [MICC 19.15.030(E), Table A] An appeal from a Type III action is subject to an open record hearing before the Examiner. [MICC 19.15.030(E), Table B] The Examiner’s decision on the appeal is final subject to the right of reconsideration and appeal to the Shorelines Hearings Board (SSDPs and revisions only) or Superior Court (all other Type III Permits). [MICC 19.15.030(E), Table B; MICC 3.40.110]

When different typed applications are consolidated for review, the procedures associated with the highest number application type are followed. [MICC 19.15.030(F)] Thus, Type IV procedures apply to these consolidated applications. As noted above, Shoreline applications follow a different process dictated by state law and regulation. The Shorelines Hearings Board has no jurisdiction over CAR 2 decisions. Therefore, even though that application has been consolidated for processing, the nature of the Examiner’s action and the appeal process associated therewith must follow the standard Type IV process.

The Examiner may “1. Approve; 2. Conditionally approve; 3. Continue the hearing; 4. Remand the application to staff; or 5. Deny the application.” [MICC 19.15.140(C)]

Review Criteria

The review criteria for SVAR applications are set forth at WAC 173-27-170. The review criteria for SCUP applications are set forth at WAC 173-27-160. The review criteria for SSDP applications are set forth at WAC 173-27-150.

CAR 2 applications do not have specific review criteria. [MICC 19.07.090(B)] Rather, the purpose of a CAR 2 review is to assure that the proposed treatment of all regulated critical areas on a development site is consistent with all applicable provisions of Chapter 19.07 MICC. [MICC 19.07.090(B)(1) and (B)(2)]

⁴ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

Vested Rights

“Vesting” serves to “fix” the regulations against which a development application is judged. [*Potala Village Kirkland, LLC v. City of Kirkland*, 183 Wn. App. 191 (2014), *review denied*, 182 Wn.2d 1004, 342 P.3d (2015)]

The City has adopted local regulations governing vesting of land use applications.

Complete applications for land use review of Type I land use reviews, building permits, conditional use permits, design review, short subdivisions and long subdivisions, shall vest on the date a complete application is filed. The department’s issuance of a letter of completion for Type III and IV land use decisions, as provided in this chapter, or the failure of the department to provide such a letter as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[MICC 19.15.170(B)]

The vesting dates of the applications are as listed in the table on Page 2, above.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [MICC 19.15.060(A)]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

FINDINGS OF FACT And CONCLUSIONS OF Law

1. Common to All Applications

1.1. Common to All Applications: Findings of Fact

- 1.1.1 Luther Burbank Park (the “Park”) encompasses approximately 55 Acres along the Lake Washington shoreline in the northeast corner of the City. At one time, the Park was a school site. In or around 1968 King County acquired the site and subsequently developed it into a park. The current solid surface dock system was constructed in 1974. The City assumed ownership and responsibility for the Park in or around 2002. In or around 2006, the City completed a Master Plan for the Park. The design for the improvements included in this permit package was developed in 2020 with public input. The design was subsequently approved by the City Council. The improvements covered by the

seven permits addressed in this Recommendation/Decision serve to implement a part of the approved Master Plan. (Exhibits 5, PDF 7; 7, PDF 4; 10, PDF 6; 14; testimony)

1.1.2. The Park contains developed and natural shoreline areas and developed and natural upland areas. The major structural feature along the shoreline is the former Boiler Building. The Boiler Building and its annex are brick structures located close to the shoreline near the midpoint of the eastern edge of the Park. The Boiler Building is currently used primarily for storage; the annex contains public restrooms and a snack bar. A modest plaza lies between the Boiler Building and the shoreline. A large three-armed dock complex (whose components are referred to as the North Dock, Central Dock, and South Dock) extends into the lake in front of the Boiler Building.⁵ The eastern shoreline is backed by a relatively steep 50 to 60 foot high slope into which the Boiler Building is cut into the lower 4 to 5 feet. Trails cut diagonally down the slope to the shoreline at the Boiler Building. A small gravel beach lies a short distance to the north of the Boiler Building. The project area includes mapped landslide, erosion, and seismic hazard areas. (Exhibits 2; 5, PDF 13, 15, 16, & 20; 7, PDF 102, 122, & 135 – 139; 15, PDF 8, 9, 48, & 51 - 53)

1.1.3. The work area within the Park is tightly limited to the minimum necessary to construct the several project elements. (Exhibit 2, PDF 3 & 4) The project subject to SMA jurisdiction includes both in-water/over-water and upland components. The in-water/over-water improvements include the following:

- North dock repairs
- Central and south docks reconfiguration [...]
- Installation of a solid wave attenuation float at the central dock to provide safe use and programming for the south dock and to protect shoreline ecological functions from erosion from modeled wake and wave forces in Lake Washington
- Installation of a waterfront gangway and overwater access platform [...]
- Restoration of ecological functions, including shoreline habitat and natural systems enhancement (installation of cobble underlayment and habitat gravel below OHWM resulting in temporary impacts)

⁵ The MICC definitions of “dock” and “pier” somewhat overlap:

Dock: A structure that floats on the surface of the water without piling supports but that is attached to land. Typically used for boat moorage, swimming, public access, and other activities that require access to deep water. This definition of docks shall also include "piers" for the purposes of this title.

Pier: A structure that projects over and is raised above the water but is attached to land, and that is used for boat moorage, swimming, fishing, public access, float plane moorage, or similar activities requiring access to deep water.

[MICC 19.16.010, “D” and “P” definitions; italic in original] The documents in this record consistently use the term “dock;” the Examiner will do so too.

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(Exhibit 4, PDF 4; see also Exhibit 5, PDF 11 - 20) The upland improvements include the following:

- Boiler Building repairs
- Boiler Building restroom annex renovation
- Concession stand repairs
- Waterfront plaza renovations and access upgrades, including public access trail features
- Waterfront drainage LID
- Restoration of ecological functions, including shoreline habitat and natural systems enhancement
- Fire Department-required updates, including adding a fire water line, fire hydrants, and a fire access apparatus access road and renovating an existing gravel trail

(Exhibit 4, PDF 9; see also Exhibit 5, PDF 11 - 20) The project elements are depicted on Exhibit 2 and described in further detail in Exhibits 4 – 6 and 9 – 12. The proposal will remove some 40 piles from the lake, reduce the overwater dock coverage by some 5 square feet (“SF”), and increase the amount of permeable area. (Exhibit 4, PDF 8, Table 1; testimony)

- 1.1.4. Lake Washington is a water body subject to the Shoreline Management Act of 1971 (“SMA”). Lake Washington is a Shoreline of Statewide Significance under the SMA. The portion of the Park within which the proposed improvements will occur lies within the jurisdiction of the SMA. Each town, city, and county which contains water bodies subject to SMA regulations must prepare a Shoreline Master Program (“SMP”). The SMP contains both policies and regulations regarding the use and protection of regulated shorelines. Each SMP places Shoreline Environment designations on its shorelines based on a series of criteria. The Mercer Island SMP designates the Park’s shoreline as Urban Park. (Exhibit 4, PDF 2) Mercer Island’s SMP is contained in Chapter 19.13 MICC.
- 1.1.5. Mercer Island’s State Environmental Policy Act (“SEPA”) Responsible Official issued a threshold Determination of Nonsignificance (“DNS”) on July 1, 2024, for the elements of the Park improvement covered by the seven applications now before the Examiner. (Exhibit 45) The DNS was not appealed. (Exhibit 46, PDF 10)
- 1.1.6. The record contains three email comments from one person, Sarah Fletcher (“Fletcher”). Fundamentally, Fletcher opposes approval of any variances, believing that the City, as much or more than anyone else, should always comply with all of its adopted land use regulations. (Exhibits 35.1 – 35.3) Public Works submitted a response to Fletcher’s major and minor concerns. (Exhibit 36)

The record contains no other public comment.

- 1.1.7. CP&D prepared an exhaustive analysis of the seven applications. (Exhibit 46, PDF 1 – 50) Based on that analysis, CP&D recommends approval of the seven applications subject to numerous conditions. (Exhibit 46, PDF 50 – 55)
- 1.1.8. Public Works has no objection to any of the recommended conditions of approval. (Testimony)
- 1.1.9. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.
- 1.2. **Common to All Applications: Conclusions of Law**
 - 1.2.1. Fletcher seems to misunderstand the reason why variance (and reasonable use exception) provisions are included in virtually every municipal land use code. Essentially, they serve as a relief valve where strict compliance with adopted code would create a hardship. The hardship must relate to the property or the use, not to the proponent. Economic hardship is generally not an allowed basis for approval of a variance. The variance process recognizes that land use regulations that are workable in most situations may not be workable in all situations. The variance provides relief in the latter situations. SVARs serve the same function within the SMA regulatory system. The City is as entitled as anyone else to seek a variance where it believes that a hardship exists.
 - 1.2.2. The recommended conditions of approval as set forth in Exhibit 46 are reasonable, supported by the evidence, and capable of accomplishment with the following changes.
 - A. The word “applicant” in many of the Recommended Conditions will be replaced with “Permittee.” A land use approval, including a variance, “runs with the land.” That means that the approval remains valid regardless of whether the land is subsequently sold.⁶ Many people interpret the word “applicant” to refer only to the party which initially sought the approval. In order to ensure that no confusion occurs in the future, a word which means the holder of the approval will be substituted for the word “applicant.”
 - B. CP&D recommends that the CAR 2 application be granted subject to the same “General Conditions of Approval” as apply to all of the SMA applications. (Exhibit 46, PDF 54) However, CP&D condition “a” in the “General Conditions of Approval” requires compliance with Chapter 19.13 MICC which is the SMP regulations chapter. The CAR 2 permit is not an SMA permit. Instead of compliance with Chapter 19.13 MICC, the CAR 2 permit should be required to comply with Chapter 19.07 MICC, Environment, in which the critical areas regulations are contained. That change will be made.
 - 1.2.3. While the Luther Burbank Park Waterfront Improvements project requires seven quasi-judicial permits, it is not a controversial project given the near total absence of public participation in the hearing process. Therefore, the Examiner finds and concludes that incorporation of CP&D’s analyses and conclusions by reference is appropriate in lieu of rephrasing that material at length.

⁶ While sale of the Park to another entity is highly unlikely, the principal still applies.

1.2.4. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

2. SHL22-024: Shoreline Variance for wider dock width segments

2.1. SHL22-024: Findings of Fact

2.1.1 Public Works seeks an SVAR from “MICC 19.13.050(H)(4) dock width requirements to allow the central and south dock structures to exceed the 6-foot width requirement”. (Exhibit 4, PDF 3)

2.1.2. When the dock complex was initially constructed in 1974, it’s expected primary use was moorage of motor boats. Current demand and projected usage has shifted to launching and retrieving small, non-motorized craft such as canoes, kayaks, and small sail boats. A 6-foot wide dock is simply not safe for such uses. In addition, the proposed on-dock fire standpipes would not allow safe pedestrian passage on a 6-foot wide dock. (Exhibits 9; 13)

2.1.3. The Central Dock is to be replaced with a reconfigured, wider, concrete floating dock (connected to the inboard end of the North Dock by a 60-foot by 6-foot, fully grated, gangway) which will serve as a wave and boat wake attenuator, protecting the South Dock and the shoreline from strong wave and boat wake action. The adjacent part of Lake Washington is heavily used by wake boarders. A 6-foot wide, grated surface dock would not adequately attenuate waves and boat wakes: The attenuator structure must be wider, heavier, and solid to provide meaningful attenuation. Technical analysis indicates that adequate attenuation can be achieved with a 10-foot wide floating concrete dock. The solid dock will be located in approximately 38 feet of water, so it will have no significant shading effect on the lake bed. (Exhibits 2; 9; 10; 20)

2.1.4. CP&D’s Staff Report contains a detailed analysis of the requested SVAR for dock width. (Exhibit 46, §IV, PDF 8 – 11; Exhibit 46, §VII, PDF 28 – 33) That analysis was not challenged. The Examiner incorporates that analysis herein by reference as if set forth in full.

2.2. SHL22-024: Conclusions of Law

2.2.1. CP&D’s Staff Report contains Conclusions of Law based upon the General and specific Findings of Fact set forth and referenced above. (Exhibit 46, §VII, PDF 33) Those Conclusions of Law were not challenged. The Examiner incorporates those Conclusions of Law herein by reference as if set forth in full.

3. SHL23-043: Shoreline Variance for a dock segment with a solid surface

3.1. SHL23-043: Findings of Fact

3.1.1 Public Works seeks an SVAR from “MICC 19.13.050(H)(5) grating requirements to allow a solid concrete float to be installed at the central dock”. (Exhibit 4, PDF 3)

3.1.2. See §2.1.3, above.

3.1.3. CP&D’s Staff Report contains a detailed analysis of the requested SVAR for a solid surface dock. (Exhibit 46, §IV, PDF 8 – 11; Exhibit 46, §VIII, PDF 33 – 38) That analysis was not challenged. The Examiner incorporates that analysis herein by reference as if set forth in full.

3.2. SHL23-043: Conclusions of Law

- 3.2.1. CP&D's Staff Report contains Conclusions of Law based upon the General and specific Findings of Fact set forth and referenced above. (Exhibit 46, §VIII, PDF 38) Those Conclusions of Law were not challenged. The Examiner incorporates those Conclusions of Law herein by reference as if set forth in full.

4. SHL23-044: Shoreline Variance for increased pile diameters

4.1. SHL23-044: Findings of Fact

- 4.1.1 Public Works seeks an SVAR from "MICC 19.13.050(H)(7) to allow the first set of piles at the dock structure to be greater than 10-inch-diameter and the remaining piles to be greater than 12-inch-diameter maximum requirements". (Exhibit 4, PDF 3 & 4)
- 4.1.2. The larger diameter piles will be employed on the reconstructed Central and South Docks. The Central Dock will also serve as a wave/wake attenuation structure; it will have to endure lateral forces greater than those of the non-attenuation docks. The South Dock will be wider than the existing docks and will require greater pile lateral strength. (Exhibit 11)
- 4.1.3. The proposal calls for "[r]eplacing approximately twenty-six 12- to 14-inch creosote-treated timber piles with approximately sixteen 24-inch-diameter steel piles and one 16-inch-diameter steel pile" supporting the Central Dock and "[r]eplacing approximately 42 piles (forty 12- to 14-inch creosote-treated timber piles; two 16-inch concrete encapsulated piles) with approximately six 16-inch-diameter steel piles" supporting the South Dock. (Exhibit 11, PDF 2)
- 4.1.4. CP&D's Staff Report contains a detailed analysis of the requested SVAR for increased pile diameters. (Exhibit 46, §IV, PDF 8 – 11; Exhibit 46, §IX, PDF 38 – 42) That analysis was not challenged. The Examiner incorporates that analysis herein by reference as if set forth in full.

4.2. SHL23-044: Conclusions of Law

- 4.2.1. CP&D's Staff Report contains Conclusions of Law based upon the General and specific Findings of Fact set forth and referenced above. (Exhibit 46, §IX, PDF 43) Those Conclusions of Law were not challenged. The Examiner incorporates those Conclusions of Law herein by reference as if set forth in full.

5. SHL23-045: Shoreline Variance for reduced fixed pier height above water surface

5.1. SHL23-045: Findings of Fact

- 5.1.1 Public Works seeks an SVAR from "MICC 19.13.050(H)(6) to support installation of the grated overwater access platform lower than the 1.5-foot minimum fixed pier height allowance". (Exhibit 4, PDF 4)
- 5.1.2. This SVAR is for an over-water viewing platform in front of the on-shore plaza. This platform will consist of a 4-foot wide platform at plaza grade with two shallow (5" rise for each step), full-width step-downs extending across the full width of the platform. This feature will look much like a set of

choir risers stepping down from the plaza grade to just above the lake water level. The purpose of this platform is to provide persons with limited mobility the opportunity to experience direct access to the lake. The inboard edge of the platform will be anchored into the face of the existing concrete bulkhead; the outboard edge will be supported on small diameter steel piles. The platform will be fully grated. (Exhibit 2, especially PDF 40 & 43)

5.1.3. Assuming that this over-water platform is a “Public access pier[], dock[], or boardwalk[]” [MICC 19.13.050(H)(1)], it must comply with MICC 19.13.050(H)(6) which requires that there must be a “[m]inimum 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”. The platform’s outboard stringer is a 12” tall beam (Exhibit 2, PDF 43), meaning that the bottom “step” would have to be about 2’ 6” above the water surface, negating the entire purpose for the platform (to facilitate physical water access to persons with impaired mobility). If the platform were floating, the 1’ 6” requirement would not apply. But if the platform were floating, it would be inherently unstable (subject to wave movement) and, thus, not particularly suitable for use by impaired persons.

5.1.4. CP&D’s Staff Report contains a detailed analysis of the requested SVAR for reduced fixed pier height above water surface. (Exhibit 46, §IV, PDF 8 – 11; Exhibit 46, §X, PDF 43 – 47) That analysis was not challenged. The Examiner incorporates that analysis herein by reference as if set forth in full.

5.2. **SHL23-045: Conclusions of Law**

5.2.1. CP&D’s Staff Report contains Conclusions of Law based upon the General and specific Findings of Fact set forth and referenced above. (Exhibit 46, §X, PDF 47) Those Conclusions of Law were not challenged. The Examiner incorporates those Conclusions of Law herein by reference as if set forth in full.

6. **SHL22-025: Shoreline Conditional Use Permit for rock revetment**

6.1. **SHL22-025: Findings of Fact**

6.1.1. By and large, the “revetments” in this project are not separating upland from the lake. Rather, they are retaining the improved, widened trails leading down to the Boiler Building, its plaza, and the small beach to its north. (Exhibit 2)

6.1.2. The “rock terraces” south of the Boiler Building retain an ADA-compliant switch-back trail, allowing it to be constructed without adversely impacting slope stability or encroaching into the lake. The switch-back trail is well above the lake’s ordinary high water mark (“OHWM”). (Exhibit 2, PDF 28 & 29)

6.1.3. The “rock revetment,” “rock terrace,” and “sheet pile wall” north of the Boiler Building are located along a concrete ramp leading from the Boiler Building to the small beach just north of the Boiler Building plaza. The rock revetment is along the lower elevation of the slope. It starts at the north end of the plaza at the OHWM, follows the OHWM for about 20 feet, and then angles shoreward away from the OHWM. The rock terrace is on the high side (upslope side) of the lower 10 feet (\pm) of the

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concrete path to the beach. It is more than 10 feet landward from the OHWM. The sheet pile wall is about 4 feet long, driven such that its concrete cap is at grade at the end of the concrete path. It, too, is about 10 feet landward from the OHWM. (Exhibit 2, PDF 28, 29, & 32)

6.1.4. CP&D's Staff Report contains a detailed analysis of the requested SCUP for rock revetment. (Exhibit 46, §IV, PDF 8 – 11; Exhibit 46, §XI, PDF 47 – 49) That analysis was not challenged. The Examiner incorporates that analysis herein by reference as if set forth in full.

6.2. **SHL22-025: Conclusions of Law**

6.2.1. CP&D's Staff Report contains Conclusions of Law based upon the General and specific Findings of Fact set forth and referenced above. (Exhibit 46, §XI, PDF 49) Those Conclusions of Law were not challenged. The Examiner incorporates those Conclusions of Law herein by reference as if set forth in full.

7. **SHL22-023: Shoreline Substantial Development Permit**

7.1. **SHL22-023: Findings of Fact**

7.1.1 The requested SSDP includes both overwater elements and upland elements as listed in §1.1.3, above.

7.1.2. The North Dock will remain essentially as is except that creosote piles will be encapsulated to prevent pollution of the surrounding waters and some eroded piles will have their top segments replaced. (Exhibits 5; 6)

7.1.3. The Central and South Docks will be replaced in their entirety. New steel piles will be driven. A new 8-foot wide, fully grated gangway will connect the dock system to the plaza on the shore. The gangway leading to the Central Dock wave attenuation section will be grated. The new South Dock will be fully grated. (Exhibit 2)

7.1.4. The landward improvements included in this SSDP are described in Exhibits 3 – 6.

7.1.5. CP&D's Staff Report contains a detailed analysis of the requested SSDP. (Exhibit 46, §IV, PDF 8 – 11; Exhibit 46, §VI, PDF 17 – 27) That analysis was not challenged. The Examiner incorporates that analysis herein by reference as if set forth in full.

7.2. **SHL22-023: Conclusions of Law**

7.2.1. CP&D's Staff Report contains Conclusions of Law based upon the General and specific Findings of Fact set forth and referenced above. (Exhibit 46, §VI, PDF 27) Those Conclusions of Law were not challenged. The Examiner incorporates those Conclusions of Law herein by reference as if set forth in full.

8. **CAO22-018: Critical Area Review Type 2 for work within mapped erosion, potential landslide, and seismic hazard areas**

8.1. **CAO22-018: Findings of Fact**

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- 8.1.1 The improvements project area is within mapped potential landslide, erosion, and seismic hazard areas. (Exhibit 15, PDF 8, 9, 48, & 51 - 53)
- 8.1.2. There is no evidence of any past landslide activity or susceptibility to future landslides. Significant damage from earthquakes is unlikely due to the site's geology. Erosive soils within the development area can be controlled with appropriate construction techniques. (Exhibits 15, PDF 32 – 34; 16)
- 8.1.3. CP&D's Staff Report contains a detailed analysis of the Critical Area Review Type 2 evaluation criteria. (Exhibit 46, §IV, PDF 8 – 11; Exhibit 46, §V, PDF 11 – 16) That analysis was not challenged. The Examiner incorporates that analysis herein by reference as if set forth in full.
- 8.2. **CAO22-018: Conclusions of Law**
- 8.2.1. CP&D's Staff Report contains Conclusions of Law based upon the General and specific Findings of Fact set forth and referenced above. (Exhibit 46, §V, PDF 16 & 17) Those Conclusions of Law were not challenged. The Examiner incorporates those Conclusions of Law herein by reference as if set forth in full.

RECOMMENDATIONS/DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner recommends that the State Department of Ecology:

- I. **GRANT** application SHL22-024, Shoreline Variance for wider dock width segments, **SUBJECT TO THE ATTACHED CONDITIONS.**
- II. **GRANT** application SHL23-043, Shoreline Variance for a dock segment with a solid surface, **SUBJECT TO THE ATTACHED CONDITIONS.**
- III. **GRANT** application SHL23-044, Shoreline Variance for increased pile diameters, **SUBJECT TO THE ATTACHED CONDITIONS.**
- IV. **GRANT** application SHL23-045, Shoreline Variance for reduced fixed pier height above water surface, **SUBJECT TO THE ATTACHED CONDITIONS.**
- V. **GRANT** application SHL22-025, Shoreline Conditional Use Permit for rock revetment, **SUBJECT TO THE ATTACHED CONDITIONS.**
- VI. **GRANT** application SHL22-023, Shoreline Substantial Development Permit, **SUBJECT TO THE ATTACHED CONDITIONS.**

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner **GRANTS** application CAO-018, Critical Area Review Type 2, **SUBJECT TO THE ATTACHED CONDITIONS**.

Recommendations/Decision issued September 19, 2024.

\s\ *John E. Galt*

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ⁷

Kenny Booth
Ryan Harriman

Molly McGuire

NOTICE of RIGHT of RECONSIDERATION

These Recommendations and Decision are the City's final action on the enumerated applications subject to the right of any party of record to file with the Department of Community Planning & Development a written request for reconsideration of one or more specific application(s) within ten calendar days following the issuance of this Recommendation in accordance with the procedures of MICC 3.40.110. Any request for reconsideration must allege one or more of the following errors with respect to the challenged Recommendation/Decision: "1. The decision was based in whole or in part on erroneous facts or information; 2. The decision when taken failed to comply with existing laws or regulations applicable thereto; or 3. An error of procedure occurred that prevented consideration of the interests of persons directly affected by the decision." [MICC 3.40.110(A)] See MICC 3.40.110 for additional information and requirements regarding reconsideration.

NOTICE of RIGHT of APPEAL – SHORELINE CASES

The ultimate decision by the Washington State Department of Ecology on the enumerated Shoreline Management Act applications is final subject to the right of appeal to the State Shorelines Hearings Board. Please see RCW 90.58.180 and Chapter 173-27 WAC for guidance regarding appeal procedures.

⁷ The official Parties of Record register is maintained by the City's Hearing Clerk.

NOTICE of RIGHT of APPEAL – CRITICAL AREA REVIEW

“Any judicial appeal of the hearing examiner’s decision shall be filed in King County superior court pursuant to Chapter 36.70C RCW, the Land Use Petition Act (‘LUPA’). The land use petition must be filed within 21 days of the issuance of the hearing examiner’s decision.” [MICC 3.40.100, ¶ 2]

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.”

CONDITIONS OF APPROVAL SHL22-023, SHL22-024, SHL22-025, SHL23-043, SHL23-044, SHL23-045, & CAO22-018

LUTHER BURBANK PARK WATERFRONT IMPROVEMENTS

The following cases are subject to compliance with all applicable provisions, requirements, and standards of the Mercer Island City Code, standards adopted pursuant thereto, and the following special conditions:

I. SHL22-024: Shoreline Variance for wider dock width segments

- 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 Permittee shall obtain any permits from state and federal agencies that are applicable to the proposed development. The Permittee 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 Permittee is responsible for obtaining permit approvals from all state and federal agencies.
- f. Construction of the proposed development shall only occur during approved construction

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SHL22-023, SHL22-024, SHL22-025, SHL23-043, SHL23-044, SHL23-045, & CAO22-018

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hours by the City of Mercer Island and/or as otherwise restricted by the Building Official.

- g. The Permittee 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 Permittee shall provide the City with an affidavit prior to building permit issuance. The affidavit shall state that the Permittee 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 Permittee 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 Permittee 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 Permittee 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 Permittee shall inform the Mercer Island Maintenance Department at (206) 275-7608

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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.
- n. The Permittee shall obtain any permits from state and federal agencies that are applicable to the proposed development. The Permittee 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.
- o. 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.
- p. Construction of the proposed development shall only occur during approved fish windows by local, state, and/or federal government agencies. The Permittee is responsible for obtaining permit approvals from all state and federal agencies.

II. SHL23-043: Shoreline Variance for a dock segment with a solid surface

- 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 Permittee shall obtain any permits from state and federal agencies that are applicable to the proposed development. The Permittee 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

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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 Permittee 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 Permittee 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 Permittee shall provide the City with an affidavit prior to building permit issuance. The affidavit shall state that the Permittee 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 Permittee 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 Permittee 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 Permittee 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

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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 Permittee 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.
- n. The Permittee shall obtain any permits from state and federal agencies that are applicable to the proposed development. The Permittee 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.
- o. 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.
- p. Construction of the proposed development shall only occur during approved fish windows by local, state, and/or federal government agencies. The Permittee is responsible for obtaining permit approvals from all state and federal agencies.

III. SHL23-044: Shoreline Variance for increased pile diameters

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

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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 Permittee 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 Permittee 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 Permittee shall provide the City with an affidavit prior to building permit issuance. The affidavit shall state that the Permittee 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 Permittee 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 Permittee 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 Permittee 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.

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- 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 Permittee 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.
- n. The Permittee shall obtain any permits from state and federal agencies that are applicable to the proposed development. The Permittee 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.
- o. 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.
- p. Construction of the proposed development shall only occur during approved fish windows by local, state, and/or federal government agencies. The Permittee is responsible for obtaining permit approvals from all state and federal agencies.

IV. SHL23-045: Shoreline Variance for reduced fixed pier height above water surface

- 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 Permittee shall obtain any permits from state and federal agencies that are applicable to the proposed development. The Permittee 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 Permittee 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 Permittee 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 Permittee shall provide the City with an affidavit prior to building permit issuance. The affidavit shall state that the Permittee 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 Permittee 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 Permittee 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 Permittee 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:

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- 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 Permittee 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.
- n. The Permittee shall obtain any permits from state and federal agencies that are applicable to the proposed development. The Permittee 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.
- o. 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

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N.W. Regional Office: (425) 649-7000 and the City of Mercer Island: (206) 275-7605.

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

V. SHL22-025: Shoreline Conditional Use Permit for rock revetment

- 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 Permittee shall obtain any permits from state and federal agencies that are applicable to the proposed development. The Permittee 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 Permittee is responsible for obtaining permit approvals from all state and federal agencies.
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- g. The Permittee 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.
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- i. The Permittee shall provide the City with development plans that reflect the field verified

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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 Permittee 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:

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- 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.

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- n. The Permittee shall obtain any permits from state and federal agencies that are applicable to the proposed development. The Permittee 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.
- o. Construction of the proposed development shall only occur during approved fish windows by local, state, and/or federal government agencies. The Permittee is responsible for obtaining permit approvals from all state and federal agencies.

VI. SHL22-023: Shoreline Substantial Development Permit

- 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 Permittee shall obtain any permits from state and federal agencies that are applicable to the proposed development. The Permittee 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 Permittee 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 Permittee 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 Permittee shall provide the City with an affidavit prior to building permit issuance. The affidavit shall state that the Permittee 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 Permittee 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.

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- i. The Permittee 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 Permittee 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 Permittee 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

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“non- motorized vessels” buoy prior to the issuance of a construction permit.

- n. Construction of the proposed development shall only occur during approved fish windows by local, state, and/or federal government agencies. The Permittee is responsible for obtaining permit approvals from all state and federal agencies.
- o. The Permittee shall obtain any permits from state and federal agencies that are applicable to the proposed development. The Permittee 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.
- p. 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.
- q. 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.
- r. 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.
- s. A financial guarantee shall be provided to the City to cover the mitigation plantings required for the proposed development.

VII. CAO22-018: Critical Area Review Type 2 for work within mapped erosion, potential landslide, and seismic hazard areas

- a. The proposed development shall be in substantial conformance with Exhibit 2 and all applicable development standards contained within Chapter 19.07 of the Mercer Island City Code (MICC).
- b. The Permittee shall obtain any permits from state and federal agencies that are applicable to the proposed development. The Permittee 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.

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- e. Construction of the proposed development shall only occur during approved fish windows by local, state, and/or federal government agencies. The Permittee 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 Permittee 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 Permittee shall provide the City with an affidavit prior to building permit issuance. The affidavit shall state that the Permittee 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 Permittee 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 Permittee 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 Permittee 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.

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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 Permittee 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.
- 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.