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2
3 **BEFORE THE HEARING EXAMINER FOR THE CITY OF MERCER**
4 **ISLAND**

5 Phil Olbrechts, Hearing Examiner

6 RE: Kathryn and Tim Bauman	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION
7 Reasonable Use and Setback	
8 Deviation	
9 CAO24-029; DEV25-005	

10 **INTRODUCTION**

11 Kathryn and Tim Bauman request a reasonable use exception and a setback deviation to
12 replace a single-family residence with a new 4,097 square foot residence at 5928 77th
13 Avenue SE. The requested setback deviation would reduce the required front yard setback
14 from twenty feet to ten feet. The requested reasonable use exception would reduce the
15 required ten-foot building setback of a Category IV wetland to 2.3 feet, encroach up to 97
feet into the 120-foot buffer of an off-site Type F stream and encroach 31 feet into the 45-
foot setback of a piped watercourse. The applications are approved subject to conditions.

16 This proposal only marginally meets reasonable use criteria. As demonstrated in the
17 comment letter from the Washington State Department of Fish and Wildlife, Ex. 28(3), the
18 large size of the proposed home is significantly more than many would consider minimum
19 reasonable use of the project site. However, this decision must be based upon the evidence
20 presented in this review proceeding. That evidence establishes that the existing home is
21 72 years old and not suitable for long-term occupation. The evidence further establishes
22 that a significantly smaller home would not be feasible given the 2.575 million dollars the
Applicants paid to purchase the property. It is certainly within the realm of possibility that
a detailed market study would reveal that a significantly smaller home would be feasible.
However, that evidence was not presented. The Applicants made a prima facie case that
their proposal was necessary for reasonable use. There was no evidence to the contrary.
The reasonable use request was approved on that basis.

23 Some neighbors asserted that the proposal may not be consistent with a view covenant.
24 The Applicants' attorney responded that the covenant is not recorded. See Ex. 28(1) and
25 29(1). Private disputes regarding view covenants are beyond the scope of this proceeding.
See, e.g. Halverson v. Bellevue, 41 Wn. app. 457 (1985)(Bellevue City Council has no
authority to resolve adverse possession claim between neighbors in subdivision review).
If the neighbors would like to litigate that issue the proper forum would be King Count
Superior Court.

1 **ORAL TESTIMONY**

2 A computer-generated transcript of the hearing has been prepared to provide an
3 overview of the hearing testimony. The transcript is available for informational
4 purposes only as Appendix A. No assurances are made as to accuracy of the transcript.
5 Those needing an accurate transcription will have to purchase a copy of the recording
6 from the City.

7 **EXHIBITS**

8 The 32 exhibits listed on pages 1-2 of the staff report were admitted into the record
9 during the September 26, 2025 hearing.

10 **FINDINGS OF FACT**

11 **Procedural:**

12 1. Applicants. Kathryn and Tim Bauman, 5928 77th Ave SE, Mercer Island,
13 WA 98040-4800.

14 2. Hearing. A virtual hearing was held on the applications at 9:00 am on
15 September 26, 2025.

16 **Substantive:**

17 3. Site/Proposal Description. Kathryn and Tim Bauman request a reasonable
18 use exception and a setback deviation to replace a single-family residence with a new
19 4,097 square foot residence. The requested setback deviation would reduce the
20 required front yard setback from twenty feet (MICC 19.02.020C1a) to ten feet. The
21 requested reasonable use exception would allow the proposal to reduce the required ten
22 foot building setback (MICC 19.07.190C7) to a Category IV wetland to about 2.3 feet,
23 encroach up to 87 feet into the 120-foot buffer and ten foot setback (MICC
24 19.07.190C1 and 7) of an off-site Type F stream and 31 feet into the 45-foot building
25 setback (19.07.180C6b) of a piped watercourse. The entire property is encumbered
with the 120 foot stream buffer.

The project site is a 15,510 square foot lot that is currently developed with a 1,830
square foot single-family residence with no garage that was previously used as a cabin
for a Boy Scouts leader. The residence was constructed in 1953. The applicant further
asserts that the residence does not comply with structural or seismic building code
standards. The east side of the property contains areas with greater than 15 percent
grade, which constitutes a landslide hazard area. The subject site is also encumbered
with a piped watercourse and the buffer to a Type F stream. The adjacent property to
the northeast contains a Category IV wetland which has an associated 40-foot standard
buffer that encroaches onto the subject property.

1 The site is further constrained by an access easement that bisects the property at the
2 south-west corner (Exhibit 16) and a view covenant documented in the 2001 Lot Line
3 Revision (Exhibit 14) that effectively increases the rear yard setback from 25 feet to 42
feet.

4 4. Characteristics of the Area. The project site is surrounded by single-family
5 development. The eight closest surrounding homes have an average of 3,975 square
feet of finished area with 1-3 car garages.

6 5. Reasonable Use Adverse Impacts. As conditioned, the requested
7 reasonable use exception will not create any significant adverse impacts to the stream
8 and wetland resources of the project site. A condition of approval requires that a
9 detailed mitigation plan must be prepared demonstrating compliance with MICC
10 19.07.180(E), which requires a showing of no net loss of ecological function. Such
11 mitigation plans are typically prepared before a final decision on a reasonable use
12 request is made so that hearing participants staff have an opportunity to assess the
13 feasibility and adequacy of proposed mitigation¹. However, staff testified at the
hearing that the current building site and surrounding yards are already degraded.
Under these circumstances it would appear that effective improvements to existing
ecological function can be readily achieved and that this can be fully addressed in the
implementation of the conditions of approval.

14 Some concerns were raised about vehicular access impacts to adjoining homes during
15 construction. Since construction activity is a resulting impact of reasonable use
16 approval, construction impacts are arguably within the scope of review. Condition of
Approval No. 6 mitigates against these potential construction impacts.

17 6. Setback Deviation Adverse Impacts. The proposed setback deviation will not create
18 any adverse impacts. Approval would improve upon existing conditions. The existing
19 home is located five feet from the front property line. The proposed deviation would
20 place the new home ten feet from the front property line. City staff have reviewed the
21 proposal and have not identified any adverse impacts with placement of the within ten
feet of 77th Ave (the front property line). No traffic site distance problems associated
with this proximity are evident from the record and the ten foot separation provides
reasonable space for on-site parking and light and air separation from the street.

22 7. Necessity of Reasonable Use Exception. There are no reasonable alternatives to
23 replacing the existing home within the Type F and piped watercourse buffers.

24 ¹ MICC 19.07.110A requires that a critical areas study be prepared for development proposals that alter
25 critical areas or critical area buffers. The reports are also required “*when required to determine the
potential impact to a critical area.*” The reports include an assessment of critical area impacts and
mitigation sequencing. Such a report is critical to assessing a reasonable use request, since reasonable
use standards require assessment and full mitigation of any critical area impacts. WDFW was correct in
identifying that such a report should have been prepared for the reasonable use request.

1 At the outset it should be recognized that the entire lot is encumbered by the Type F
2 stream buffer. Consequently, the only choices for single-family use as it relates to the
stream buffer is to retain/expand the existing home or replace it as proposed.

3 The existing residence is too old, primitive and dilapidated to be retained as a Mercer
4 Island residence. Retention is not a reasonable option. The existing residence is 72
5 years old and was built as a cabin. According to the Applicant the home doesn't
6 conform to modern building code structural and seismic standards. It is without a
7 garage. A building survey performed by Mercer Builders (Exhibit 6, Appendix C)
finds that the existing residence is undergoing significant rot in the framing of the lower
level on the east side. Movement at the mid span of the east side was also observed by
the outdoor building pad that is sinking or falling away from the house.

8 The Applicants assert and City staff agree that remodeling the residence would require
9 the remediation of the foundation system and portions of the exterior walls would need
10 to be rebuilt. Such actions would likely result in the structural alteration of more than
40 percent of the exterior walls, which would result in the loss of legal nonconforming
status under MICC 19.01.050(D)(1)(b)(iii).

11 8. Minimum Reasonable Use. The most challenging part of the application is
12 ascertaining whether the proposed home size qualifies as minimum reasonable use.
13 Based upon surrounding home sizes, the proposal is found to qualify as minimum
reasonable use of the project site.

14 A 4,097 square foot home is typically not considered the minimum size necessary for
15 reasonable use. However, it is acknowledged that isn't always the case. Mason
16 County, for example, recognizes a 3,000 square foot building footprint (equating to a
6,000 sf two story home) as minimum reasonable use. See Mason County Code
17 8.52.220e; SHR2024-00009 Mason Examiner Variance Decision (detailing legislative
history of Mason minimum reasonable use)².

18 Unlike Mason County, Mercer Island hasn't adopted any standard for what qualifies as
19 a minimum home size necessary for reasonable use. That is typical of most cities and
20 counties. In the absence of any code standard on minimum reasonable use, the
Applicant has fallen back on the common metric of comparing the size of the proposed
21 home to surrounding homes. Surrounding home sizes provide a rough approximation
of the size necessary to make a home marketable in a particular community.

22 The finished size of the proposed home is 3,753 square feet. The average finished
23 home size of the eight homes in closest proximity to the project site is 3,975 square

24 ² Although 6,000 square foot homes could theoretically be built as minimum reasonable use, the
25 Examiner takes judicial notice of the reasonable use decisions issued over the last 30 years, none of
which proposed any homes close to that size.

1 feet³. Ex. 6, App. A. The proposed size of the home is in line with surrounding home
2 sizes.

3 The owners also purchased the property for \$2,575,000 in 2023. Staff report, p. 12. In
4 the absence of any other real estate data, it would appear difficult to sell a home
5 significantly smaller than proposed for more than \$2,575,000. For a house of such
6 large proposed size, the record could have certainly benefitted from more data about
average home sizes and associated sales prices in Mercer Island. Given surrounding
home sizes, however, it is reasonable to conclude that more likely than not it would be
challenging to sell a home smaller than that proposed for more than \$2,575,000.

7 9. Necessity of Setback Deviation. The requested setback deviation is necessary to
8 minimize critical area impacts. Approval of the deviation would eliminate the 7.58
9 foot encroachment of the proposal into the 40-foot on-site wetland buffer, would
decrease the Type F buffer encroachment and piped water course encroachment by
about ten feet each and the landslide hazard encroachment by about three feet.

10 CONCLUSIONS OF LAW

11 Procedural:

12 1. Authority of Hearing Examiner. The hearing examiner has authority to hold
13 a hearing and issue a final decision on the reasonable use and deviation requests. MICC
14 19.15.030 provides that reasonable use requests are Type IV reviews and that setback
15 deviation requests are Type II requests. The two applications are consolidated under
16 the highest review process, Type IV, pursuant to MICC 19.15.030(F). MICC 19.15.030
Table D provides that the hearing examine shall hold hearings and issue final decision
on Type IV applications.

17 Substantive:

18 2. Zoning Designations. The area is zoned Single-Family Residential (R-12).
19

20 3. Review Criteria and Application. The criteria for reasonable use exceptions to
21 critical area stream and wetland buffers are governed by MICC 19.07.140A. The
22 criteria for setback deviation requests are governed by MICC 19.06.110C. Applicable
criteria are quoted in italics below and applied through corresponding conclusions of
law.

23 Reasonable Use

24 **MICC 19.07.140A1:** *...The hearing examiner may approve the application for a*
25 *reasonable use exception only if the development proposal meets all of the following*
criteria:

³ The reference to 6088th 77th in appendix A is presumably a typographical error for 6008 77th.

1. The application of this chapter would deny all reasonable use of the property;

4. Criterion Met. The criterion is met.

MICC 19.16.010 defines reasonable use as follows:

A legal concept that has been and will be articulated by federal and state courts in regulatory takings and substantive due process cases. The decisionmaker must balance the public's interests against the owner's interests by considering the nature of the harm the regulation is intended to prevent, the availability and effectiveness of alternative measures, the reasonable use of the property remaining to the owner and the economic loss borne by the owner. Public interest factors include the seriousness of the public problem, the extent to which the land involved contributes to the problem, the degree to which the regulation solves the problem, and the feasibility of less oppressive solutions. A reasonable use exception set forth in MICC 19.07.140 balances the public interests against the regulation being unduly oppressive to the property owner.

The City's definition does in fact faithfully reflect federal and state regulatory takings cases. There is surprisingly little case law directly addressing stream and wetland regulations. However, the little that there is makes it clear that takings liability is a major hazard in application of those standards. In the context of regulatory takings caused by wetland regulations, a taking will most often occur under either a *Lucas* analysis where the property owner is deprived of all reasonable economical use or a *Penn Central* analysis where the burden on the property owner is weighed against the public need and benefit of the regulations in question.

The *Lucas* analysis comes from the US Supreme Court Case, *Lucas v. South Carolina Coastal Commission*, 505 U.S. 1003 (1992). In that case, a property owner owned two vacant oceanfront lots in South Carolina. The Beachfront Management Act, passed two years after his purchase of the lots, effectively prevented him from erecting homes on properties due to the effects it would have on the public beach. The *Lucas* case set the precedent for "categorical takings", where no balancing of public verses private interests is required to determine if a property owner is entitled to compensation under the takings clause. The U.S. Supreme Court in *Lucas* ruled that when regulations deprive a property owner of all economically viable use, a categorical takings has occurred and compensation is due unless the regulations fall into some very limited exceptions.

In the absence of a categorical takings, the remaining way to establish a regulatory takings is through a *Penn Central* analysis. *Penn Central* is a United States Supreme Court case that created the concept of regulatory takings, where just compensation under the federal constitution 5th Amendment takings clause can be required by over-

1 regulation of property without any physical appropriation. *See Penn Central v. New York*
2 *City*, 438 U.S. 104 (1978) The *Penn Central* court ruled that whether a regulatory
3 action that diminishes the value of a claimant's property constitutes a "taking" of that
4 property depends on several factors, including the economic impact of the regulation on
5 the claimant, particularly the extent to which the regulation has interfered with distinct
6 investment-backed expectations, as well as the character of the governmental action.

7 There have been very few cases that have applied 5th Amendment takings claims to
8 wetland and/or stream buffer regulation. None have assessed *Penn Central* takings
9 claims in the State of Washington to wetland regulations. One case outside of
10 Washington provides some insight as to how *Penn Central* should be applied. *See*
11 *Friedenburg v. New York State Dept. of Environmental Conservation*, 3 A.D.3d 86
12 (2003). In *Friedenburg* the property owner was denied a permit to build a single-family
13 home on a 2.5-acre waterfront parcel. The only remaining use for the property was
14 access rights to the shoreline. The denial of the permit devalued the property from
15 \$665,000 to \$31,500. The value of the property would have been \$50,000 if additional
16 use rights alleged by the government defendant applied, such as the construction of a
17 catwalk or moorage for a houseboat. The New York Supreme Court applied federal
18 constitutional takings case law and ruled that a takings occurred whether the property
19 was valued at \$50,000 or \$35,000. The Court reasoned that the property owner
20 experienced either a 95% or 92.5% reduction in value and that in either case the
21 reduction was significant. The Court found that the public benefit conferred by wetlands
22 protection did not justify the taking of public property. It noted that if there are no
23 direct reciprocal benefits to the property owner, the property owner should not bear the
24 burden of providing those benefits to the general public. Due to the significant loss in
25 value and the lack of reciprocity in the benefits of wetland protection, the Court found
a takings under *Penn Central*.

Other opinions have reached similar results. In *Baycrest Manor, Inc. v. City of N.Y.* (In
re New Creek Bluebelt, Phase 3), 2017 N.Y. Slip Op. 7994 (N.Y. App. Div. 2017), the
court found it "likely" in assessing the value of property in a condemnation action that
a property owner would have prevailed in a takings claim solely due to the fact that
wetlands regulations reduced the value of the property by 88%. The court made this
finding even though the takings claim was based upon an owner who would have
purchased the property after adoption of the wetland regulations instead of before (i.e.
the owner would have purchased the property knowing that wetland regulations severely
limited development potential).

The only Washington case that provides some useful insight on when zoning regulations
should be waived to protect private property rights is *Buechel v. Dept. of Ecology*, 125
Wn.2d 196, 884 P.2d 910 (1994). In applying a "reasonable use" term in Mason
County's shoreline variance standards, the *Buechel* court largely used the same factors
employed by the US Supreme Court in its *Penn Central* analysis. In the *Buechel* case,
the Applicant requested a shoreline variance to build a home within a shoreline setback
along Hood Canal. The Mason County shoreline variance criteria at the time required
the Applicant to establish that if he complied with shoreline regulations, "...he cannot

1 *make any reasonable use of his property.*” Without the variance there was no space for
2 a single-family home. The subject lot only had 1,000 square feet of developable space
3 because the rest of the property was submerged. The property was zoned for residential
4 use. The County denied the variance request.

5 The State Supreme Court sustained the County’s denial on the basis that the property
6 could be used for recreational use, such as for a dock or boathouse. Although the
7 Supreme Court did not directly identify takings law in its assessment, the factors it
8 applied are largely the same used in a *Penn Central* takings analysis, probably not
9 coincidentally. In assessing whether recreational use qualified as a reasonable use, the
10 *Buechel* court noted that “[t]he size, location, and physical attributes of a piece of
11 property are relevant when deciding what is a reasonable use of a particular parcel of
12 land.” 125 Wn.2d at 208. Other factors the *Buechel* court found relevant was
13 investment backed expectations, including the zoning of the property at the time of
14 purchase. *Id.* In the *Buechel* case the size of the developable portion of the property
15 was small, the property had significant regulatory and physical constraints at the time
16 of purchase and the use of many surrounding waterfront properties was limited to
17 recreational use. For all these reasons, the Court determined that recreational use was a
18 reasonable use of the property and, therefore, the Applicant was not denied all
19 reasonable use because he wasn’t allowed to build a home.

20 In its comment letter the Washington State Department of Fish and Wildlife (WDFW)
21 cited two cases purportedly setting precedent against the proposal. Those cases have no
22 legal standing to serve as precedent for the Bauman application. WDFW provided no
23 citation to any court reporter so the issuing courts are unknown. The cases are not any
24 issued Washington Court of Appeals decision, suggesting that they may be superior
25 court cases. Superior court cases don’t serve as legal precedent. The reasoning of the
26 opinions could prove helpful in assessing the merits of the subject application.
27 However, WDFW didn’t provide copies of the decision so that information isn’t
28 available⁴. The distinguishing feature of the proposal is that the existing home is not
29 suitable for any further long-term occupancy and is clearly not consistent with the large
30 size and high property values of the surrounding areas. Without access to the actual
31 court opinions referenced by WDFW, there’s no way of knowing whether those cases
32 have any bearing on the unique characteristics of the Applicants’ proposal.

33 Given the case law above, it is clear that a minimum takings entitlement to a reasonably
34 size lot zoned for single-family use is a single-family home. The 15,510 area of the
35 project site is well above the minimum 12,000 net lot area required for lots in the R12
36 zone required by MICC 19.02.020. As noted in Finding of Fact No. 7, retention of the
37 currently existing 72-year-old home is not a reasonable alternative to construction of a
38 new home. At the least, the Applicants are entitled under federal takings law to
39 demolition and replacement of the existing single-family home. The City’s critical areas

⁴ Legal databases such as Westlaw and Lexus available to attorneys don’t include superior court decisions. If such decisions are used to support a position copies must be provided.

ordinance denies that entitlement because the Type F stream buffer prohibits any residential construction anywhere on Applicants' lot.

MICC 19.07.140A2: *There is no other reasonable use with less impact on the critical area;*

5. Criterion met. The criterion is marginally met for the reasons identified in Finding of Fact No. 8. In showing that the proposed home is of similar size to surrounding homes, the Applicants have established a prima facie case that the home size is the minimum necessary to provide for economical use of the property. Investment backed expectations, as identified in Conclusion of Law No. 4, is an important factor in reasonable use analysis. More likely than not a smaller home would make it much more difficult to recoup the Applicants' \$2,575,000 purchase price. No evidence was presented to show that this investment expectation could be maintained with a smaller home. In any event it is also significant that a smaller home would also not result in any significant added protection of affected critical areas. According to the testimony of staff the project area is significantly degraded by the existing house, terracing and landscaping. Staff do not see any significant public benefit to requiring a smaller home.

MICC 19.07.140A3: *Any alteration to critical areas and associated buffers is the minimum necessary to allow for reasonable use of the property;*

6. Criterion met. The criterion is marginally met. As noted in the staff report the Applicants have generally limited the proposed development to project areas that have already been disturbed. The Applicants have also successfully acquired a front yard setback deviation to maximize separation from critical areas. The proposed design could have reduced the sprawling footprint by proposing a taller, more compacted residence; however, the proposed footprint is generally located where existing development has occurred and will be removed.

MICC 19.07.140A4: *The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;*

7. Criterion met. The criterion is met for the reasons identified in Finding of Fact No. 5.

MICC 19.07.140A5: *The proposal is consistent with the purpose of this chapter and the public interest; and*

8. Criterion met. The criterion is met. The purposes of the City's critical areas ordinance (Chapter 19.07 MICC) are detailed in MICC 19.07.010A-M. Those purposes generally require protection and mitigation of critical areas while also requiring balancing of property owner interests with the public interest. Those purposes are met in the Applicants' proposal by allowing for the reasonable use of property in a manner that is fully mitigated and minimizes adverse impacts to critical areas.

1 **MICC 19.07.140A6:** *The inability of the applicant to derive reasonable use of the*
2 *property is not the result of actions by the current or prior property owner.*

3 9. Criterion met. The criterion is met. The project site is completely encumbered by
4 critical areas and associated buffers. This natural condition has nothing to do with the
5 actions of the current or prior property owner.

6 **Setback Deviation**

7 **MICC 19.06.110C2:** *Criteria. A setback deviation shall be granted by the city only if*
8 *the applicant demonstrates all of the following:*

9 *a: No use deviation shall be allowed;*

10 10. Criterion met. The criterion is met. The proposed single-family home is an allowed
11 use in the R-12 district.

12 **MICC 19.06.110C2b:** *The granting of the deviation will not be materially detrimental*
13 *to the public welfare or injurious to the property or improvements in the vicinity and*
14 *zone in which the property is situated;*

15 11. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
16 6.

17 **MICC 19.06.110C2c:** *The granting of the deviation will not alter the character of the*
18 *neighborhood, nor impair the appropriate use or development of adjacent property;*

19 12. Criterion met. The criterion is met. The modest reduction in front setback will have
20 no discernable impact upon neighborhood character and will have no impact on uses
21 of surrounding properties.

22 **MICC 19.06.110C2d:** *The deviation is consistent with the policies and provisions of*
23 *the comprehensive plan and the development code;*

24 13. Criterion met. The criterion is met for the reasons identified at pages 7-8 of the staff
25 report.

MICC 19.06.110C2e: *The basis for requesting the deviation is not the direct result of*
a past action by the current or prior property owner;

14. Criterion met. The criterion is met. The need for the deviation is to protect critical
areas, which is a natural condition of the property and not a circumstances attributable
to owners of the property.

1 **MICC 19.06.110C2f:** *The setback deviation is associated with the approval of*
2 *development of a single lot or subdivision that is constrained by critical areas or*
3 *critical area buffers;*

4 15. Criterion met. The criterion is met. The sole purpose of the deviation request is to
5 help minimize impacts to critical areas.

6 **MICC 19.06.110C2g:** *The building pad resulting from the proposed deviation will*
7 *result in less impact to critical areas or critical area buffers; and*

8 16. Criterion met. The criterion is met. The deviation request will result in greater
9 separation from critical areas as identified in Finding of Fact No. 9, which in turn
10 minimizes impacts.

11 **MICC 19.06.110C2h.** *Yard setbacks shall not be reduced below the following*
12 *minimums:*

- 13 *i. Front and rear setbacks may not be reduced to less than ten feet each;*
14 *ii. Side setbacks may not be reduced to less than five feet.*

15 17. Criterion met. The criterion is met. The front yard setback will not be
16 reduced to less than ten feet.

17 **DECISION**

18 The reasonable use and deviation requests are approved subject to the following
19 conditions:

20 1. The proposal shall be in substantial conformance with Exhibit 4 and all applicable
21 development standards contained within Mercer Island City Code (MICC) Chapter
22 19.07.

23 2. The applicant is responsible for documenting any required changes in the project
24 proposal due to conditions imposed by any applicable local, state, and/or federal
25 government agencies.

3. Construction or substantial progress toward construction of a development for which
a permit has been granted must be undertaken within three years after the approval of the
permit or the permit shall terminate. The code official shall determine if substantial
progress has been made.

4. The development proposal shall incorporate the measures in MICC
19.07.190(D)(3), unless the applicant can demonstrate that they would result in no net
environmental benefit or that they are not applicable. Implementation shall be
documented in the application for the building permit for the proposed development.

1 5. A mitigation plan for the impacts to the Type F watercourse and associated buffer
2 and the piped watercourse and associated setback shall be prepared by a qualified
3 professional that achieves equivalent or greater ecological function including, but not
4 limited to:

- 5 a. Habitat complexity, connectivity, and other biological functions;
6 b. Seasonal hydrological dynamics, water storage capacity and water quality; and
7 c. Geomorphic and habitat processes and functions.

8 The mitigation plan shall be submitted for review and approval along with the future
9 building permit application for the proposed development.

10 6. As assured in Ex. 29(2), the Applicants' contractor shall provide neighboring
11 homes with a direct mobile phone number of the construction site supervisor to address
12 access and parking problems caused during construction. Neighboring homes are
13 defined at the least as those adjoining homes using the same vehicle access as that used
14 by the project site. The contractor will provide a parking plan for all construction
15 vehicles. The contractor will abide by all the requirements and regulations of the City
16 of Mercer Island regarding construction parking and access.

17 Dated this 10th day of October, 2025.

18 
19 Phil A. Olbrechts

20 Mercer Island Hearing Examiner

21 **Appeal Right and Valuation Notices**

22 This land use decision is final and subject to appeal to superior court as governed by the
23 Land Use Petition Act, Chapter 36.70C RCW.

24 Affected property owners may request a change in valuation for property tax purposes
25 notwithstanding any program of revaluation.