



CITY OF MERCER ISLAND

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Critical Area Determination

Submittal Requirements and criteria for an administrative action by the code official pursuant to MICC 19.15.010(E) to allow reduction or averaging of a wetland or watercourse buffer.

FEES: See Development Application form for fee information

The reduction or averaging of a watercourse or wetland buffer requires a Critical Area Determination. The decision authority for a Critical Area Determination is the Code Official as outlined in the Mercer Island Unified Land Development Code Section 19.15.010(E), Administrative Actions. The decision will be made following mailing of a public notice to residents within 300' of the subject property and posting of the site, by the applicant, with a City furnished sign in a location on the property and visible to the public right-of-way. If a buffer reduction or averaging through a Critical Area Determination permit does not provide the necessary relief, then a property owner may apply for a Reasonable Use Exception (19.07.030(B)), which requires a public hearing in front of the Hearing Examiner. Please also see the Critical Area Setback Deviation [MICC 19.02.020(C)(4)].

PRE-APPLICATION: Applicants are required to participate in a pre-application meeting with City staff, per MICC 19.09.010(A). Call Development Services staff to schedule a pre-application meeting. Meetings with the staff provide an opportunity to discuss the proposal in conceptual terms, identify the applicable City requirements and explain the project review process. Applicants are encouraged to talk with their neighbors about their proposal. Meetings or correspondence with the neighborhood serve the purpose of informing the neighborhood of the project proposal prior to the formal notice provided by the City.

CRITICAL AREA MAPS: The approximate location and extent of critical areas are shown on Critical Area Maps available for review at the Development Services Group. These maps are to be used as a reference only. The applicant is responsible for determining the scope, extent and boundaries of any critical areas to the satisfaction of the code official through the Critical Area Report per MICC 19.07.020(C). City reference maps do not constitute a decision by the City that a critical area exists or a classification.

APPLICATION MATERIALS: All applications for permits or actions to the City shall be submitted on forms provided by the Development Services Group, including the "Development Application" form. An application shall contain all information required by the applicable development regulations, and shall include the following general information:

1. A clear and concise written description and summary of the proposed project that requires the Critical Area Determination. A Critical Area Determination is required to reduce or average a wetland or watercourse buffer. The description must clearly state the proposed buffer requested (if wetland or watercourse) and such buffer must be within the range identified for the maximum and minimum buffers in MICC 19.07.070 or MICC 19.07.080.

2. A verified statement by the applicant that the subject property is in the exclusive ownership of the applicant, or that the applicant has submitted the application with the consent of all owners of the property.
3. A legal description of the site and parcel number.
4. A Critical Area Study prepared by a qualified professional (e.g. stream/wetland biologist) containing the information identified in MICC 19.07.050, including:
 - A. Site survey prepared by a Washington State licensed surveyor (showing property lines, adjacent right-of-ways, location of existing and proposed structures, etc.) for the subject property.
 - B. Cover sheet and site construction plan.
 - C. Mitigation and restoration plan to include the following information:
 1. Delineation of critical areas and buffers;
 2. Classification of critical areas based on the requirements of MICC 19.07.060, 19.07.070, 19.07.080 and the definitions contained in Chapter 19.16;
 3. If a reduction of buffer is requested, the report must detail the specific mitigations that are proposed, consistent with the list of mitigation options identified in MICC 19.07.070(B)(2) that results in no net loss of critical area function; See details below.
 4. If buffer averaging is requested, the report must address the criteria identified in MICC 19.07.070(B)(3); See details below.
 5. Location of existing trees and vegetation and proposed removal of same;
 6. Location, type, and number of replacement trees and vegetation;
 7. In the case of a wildlife habitat conservation area, identification of any known endangered or threatened species on the site;
 8. Proposed grading;
 9. Description of impacts to the functions of critical areas; and
 10. Proposed monitoring plan. Please see MICC 19.07.040(J).
A mitigation and restoration plan may be combined with a stormwater and erosion/sediment control management plan or other required plan.
Additional requirements that apply to specific critical areas are located in Watercourses; MICC 19.07.080, Wetlands and MICC 19.07.090, Wildlife Habitat Conservation Areas.
 - D. Stormwater and erosion control management plan consistent with chapter 15.09 MICC. Off-site measures may be required to correct impacts from the proposed alteration.
 - E. Other technical information consistent with the above requirements, as required by the code official.

The critical area study requirement may be waived or modified if the code official determines that such information is not necessary for the protection of the critical area.

BUFFER REDUCTION CRITERIA: All requests to reduce a buffer must detail the specific mitigations that are proposed, consistent with the list of mitigation options identified in MICC 19.07.070(B)(2). The code official may allow the standard buffer

width to be reduced to not less than the minimum width in accordance with an approved critical area study when he/she determines that all of the following apply:

- That a smaller area is adequate to protect the watercourse;
- The impacts will be mitigated by using combinations of the mitigation options; and
- The proposal will result in no net loss of watercourse and buffer functions*
- However, in no case shall a reduced buffer contain a steep slope

In determining a buffer, the code official may consider the following mitigation options:

- Permanent removal of impervious surfaces and replacement with native vegetation;
- Installation of biofiltration/infiltration mechanisms such as bioswales, created and/or enhanced wetlands, or ponds supplemental to existing storm drainage and water quality requirements;
- Removal of noxious weeds, replanting with native vegetation and 5 year monitoring;
- Habitat enhancement within the watercourse such as log structure placement, bioengineered bank stabilization, culvert removal, improved salmonid passage and/or creation of side channel or backwater areas;
- Use of best management practices (e.g. oil/water separators) for storm water quality control exceeding standard requirements;
- Installation of pervious material for driveway or road construction;
- Use of “green” roofs in accordance with the standards of the LEED Green Building Rating System;
- Restoration of off-site area if no on-site area is possible;
- Removal of sources of toxic material that predate the applicant’s ownership; and
- Opening of previously channelized and culverted watercourses on or off-site.

**Please note that the City reserves the right to require third party review of the Critical Area Report prepared by the qualified professional at the applicant’s expense to verify conclusions, methods, etc.*

BUFFER AVERAGING CRITERIA FOR APPROVAL: The code official may allow the standard buffer width to be averaged if:

- The proposal will result in a net improvement of critical area function;
- The proposal will include replanting of the averaged buffer using native vegetation;
- The total area contained in the averaged buffers on the development proposal site is not decreased below the total area that would be provided if the maximum width were not averaged;
- The standard buffer width is not reduced to a width that is less than the minimum buffer width at any location; and
- That portion of the buffer that has been reduced in width shall not contain a steep slope.

WATERCOURSE BUFFERS: Standard buffer widths shall be as follows, measured from the ordinary high water mark (OHWM), or top of bank if the OHW cannot be determined through simple non-technical observations. The code official may allow a reduction up to the minimum buffer width as previously described in the criteria.

1. **Type 1 Watercourse.** Watercourses or reaches of watercourses used by fish, or are downstream of areas used by fish.

2. **Type 2 Watercourse.** Watercourses or reaches of watercourses with year-round flow, not used by fish.
3. **Type 3 Watercourse.** Watercourses or reaches of watercourses with intermittent or seasonal flow and not used by fish.
4. **Restored Watercourse.** Any Type 1, 2 or 3 Watercourse created from the opening of previously piped, channelized or culverted watercourses.

| Watercourse Type | Standard (Base) Buffer Width (feet) | Minimum Buffer Width with Enhancement (ft) |
|-------------------|-------------------------------------|--|
| Type 1* | 75 | 37 |
| Type 2 | 50 | 25 |
| Type 3 | 35 | 25 |
| Restored or Piped | 25 | Determined by the code official |

* There are no known Category I wetlands in the City.

WETLAND BUFFERS: Standard buffer widths shall be established from the outer edge of wetland boundaries and wetland rating shall be based on the categories set forth in the Washington State Wetland Rating System for Western Washington, Publication #04-06-025 dated August 2004, updated in June 2006 (Version 2). A summary of the classification system is provided below:

1. **Category I Wetlands.** Category I wetlands are those that meet the following criteria:
 - a. Wetlands that are identified by scientists as high quality or high-function wetlands;
 - b. Bogs larger than one-half acre;
 - c. Mature and old-growth forested wetlands larger than 1 acre; or
 - d. Wetlands that are undisturbed and contain ecological attributes that are impossible to replace within a human lifetime.
2. **Category II Wetlands.** Category II wetlands are not defined as Category I wetlands and meet the following criteria:
 - a. Wetlands that are identified by scientists as containing “sensitive” plant species;
 - b. Bogs between one-quarter and one-half acre in size; or
 - c. Wetlands with a moderately high level of functions.
3. **Category III Wetlands.** Category III wetlands do not satisfy Category I or II criteria, and have a moderate level of functions. These wetlands generally have been disturbed in some ways, and are often less diverse or more isolated from other natural resources than Category II wetlands.
4. **Category IV Wetlands.** Category IV wetlands do not satisfy Category I, II or III criteria; and have the lowest level of functions; and are often heavily disturbed.

| Wetland Type | Standard (Base) Buffer Width (feet) | Minimum Buffer Width with Enhancement (ft) |
|--------------|-------------------------------------|--|
| Category I | 100 | 50 |
| Category II | 75 | 37 |
| Category III | 50 | 25 |
| Category IV | 35 | 25 |

PUBLIC NOTICE AND REVIEW PROCESS: Critical Area Determinations require public notice in the City Permit Bulletin. The City will provide the applicant a public notice sign to post on the site (subject to a refundable deposit) and will mail the notice to all property owners within 300 feet of the subject property following the Determination of Completeness. The public may provide written comments on the proposal for a minimum of 14 days prior to the decision. A Notice of Decision will be mailed to the applicant and anyone who provides written comments on the proposal. Critical Area Determination decisions may be appealed to the Planning Commission. Appeals must be filed within 14 days following issuance of the Notice of Decision as provided in MICC 19.15.020(J).

Application for a Critical Area Determination involves substantial time, expense, and risk for a property owner. Application does not guarantee approval. Request must meet difficult criteria, and applicants are proceeding “at their own risk”.

Signature of property owner

Date

Site Address