

From: [Dave Anderson](#)
To: [Evan Maxim](#)
Cc: [Gordon Ahalt \(gjahalt@gmail.com\)](#); [anderson9200@comcast.net](#); [londonimplant@gmail.com](#); [robertroyalgraham@gmail.com](#); [robin@sammgroup.com](#); [vduchaine@comcast.net](#); "Rick Duchaine"
Subject: MI Treehouse SEPA Review 5637 East Mercer Way, Mercer Island, WA 98040
Date: Sunday, December 1, 2019 4:06:59 PM

Dear Evan,

I hope you had an enjoyable holiday weekend. I have reviewed the recent responses to my previous comments and would like to point out a number of discrepancies.

I disagree with the 10-30-19 response from Mr. Sewall that the foundation drainage system will not impact the hydrology of wetland as the site has "soils that do not appear prone to drainage". The Geotechnical Engineering Study prepared by GEO Group Northwest dated March 13th, 2015 as well as the supplemental information provided in the responses to third party review dated July 30th, 2015 and October 28th, 2015 would appear to contradict this statement. This information shows sandy outwash soils to a depth in excess of 16 feet. The report indicates that this sand contains relatively small percentage of silt and fines. The logs also show very low blow counts which indicate the outwash sand layer is soft and relatively uncompacted. These sandy outwash soils should be considered permeable and I am very surprised by these responses given the previously documented geotechnical report.

It is my understanding that the foundation drainage system including that associated with the proposed retaining wall will be approximately 10 feet below the existing wetland elevation. This is required to prevent hydraulic forces associated with the ground water from applying pressure on these walls. This will require the perched water table elevation to be lowered to below an approximate elevation of 178 feet (at least 18 inches below the garage elevation of 179.5). Much of the water intercepted by these drains would be seeping out of the wetland slope into the existing type 2 watercourse. The movement of this water through a pipe will be quicker and more efficient than this seepage. As the existing sandy soils are very wet or saturated, lowering the perched water table elevation will almost certainly impact the adjacent upland wetland areas. Given the drainage characteristics typically associated with sandy outwash soils and that these soils are currently saturated, the impact to could extend quite some distance to the west. The site plan and the associated disturbed wetland areas still do not reflect or account for these impacts that will be permanent.

Please note that the recommendations included in Section 5.6 of the geotechnical report for drainage are also not acknowledged on the site plan or in the tabulated areas of wetland disturbance. This includes a recommendation to slope the ground surface away from the proposed building at a gradient of at least 3% for a distance of at least 10' away from the building for all areas that are not paved. This would include grading and surface impacts to the existing wetland areas south and west of the building site.

Thank you for your consideration of these important points.

Dave Anderson PE

From: [Dave Anderson](#)
To: [Evan Maxim](#); [gjahalt@gmail.com](#)
Cc: [anderson9200@comcast.net](#); [londonimplant@gmail.com](#); [robertroyalgraham@gmail.com](#); [robin@sammgroup.com](#); [vduchaine@comcast.net](#); "Rick Duchaine"; [Bio Park](#)
Subject: RE: CAO15-001; SEP15-001; VAR18-002; Treehouse SEPA Review 5637 East Mercer Way, Mercer Island, WA 98040
Date: Friday, October 4, 2019 11:33:51 AM

Evan,

The statement that the SEPA submittal and RUE application "*materials are not entirely as detailed*" does not accurately represent what has been provided by MI Treehouse. Details aside, the revised site plan does not include any schematic drainage plan or the proposed discharge locations. The vault and any references to the proposed storm drainage system have been removed from the updated plan. There is no reference whatsoever to the retaining wall drainage, perforated drainage for the proposed detention vault, and any foundation drainage in either the plan or the SEPA checklist. The written responses in the SEPA checklist are limited to vague one-sentence responses. The proposed project is located within a wetland, within water course buffers, and in an area where there has been downstream drainage issues in the past. How can we be expected to provide any meaningful review or comment on the proposal without any information on these drainage systems?

I appreciate the fact that you have directed MI Treehouse to "*update their application material to address the review comments from the City's peer reviews and to provide an updated plan set*" but these reviews either specifically excluded or did not address the drainage impacts. They recommended engaging a hydro-geologist to comment on the impacts to the wetlands and what flows could be expected from the retaining wall drains. This, to my knowledge, has not occurred. The only information that has been provided in this regard from MI Treehouse was the February 21, 2019 letter from CORE Design. This provided some insight to the intent of their goals to minimize the impacts of the project but did not provide any design information for these drainage systems. Please note, this letter did recognize that there will be impacts as a result of the project and the SEPA checklist provided by MI Treehouse did not.

Could you please forward the applicable submittal requirements that were used to consider the SEPA and RUE applications complete. If this information is not available from the City I will make efforts to obtain it through other consultants who made applications during the same time period. It is my experience that at least schematic level drainage and utility plans would typically be required for inclusion with a complete SEPA submittal. Given that these components have been removed from the revised plan, can the SEPA submittal still be considered complete? Submitting a plan that included at least some of this information to get the application through the door and then revising the plan and deleting any references to such an important SEPA part of the project is not right.

Although you did not answer my question directly, it would appear that public comment will not be solicited as a part of the RUE and building permit approvals. Please correct me if this is not the case. If it is, the SEPA process may be the only opportunity we had to provide comment on the proposed development and its impacts to the surrounding and downstream properties. Having to do so without a complete submittal is not fair or reasonable.

Thank you and Mr. Park for your collective consideration of our concerns,

Dave

Dave Anderson PE

9200 SE 57th Street
Mercer Island

From: Evan Maxim <evan.maxim@mercergov.org>
Sent: Monday, September 30, 2019 2:58 PM
To: Dave Anderson <DaveA@dahogan.com>; gjahalt@gmail.com
Cc: anderson9200@comcast.net; londonimplant@gmail.com; robertroyalgraham@gmail.com; robin@sammsgroup.com; vduchaine@comcast.net; 'Rick Duchaine' <rduchaine17@gmail.com>; Bio Park <Bio.Park@mercergov.org>
Subject: RE: CAO15-001; SEP15-001; VAR18-002; Treehouse SEPA Review 5637 East Mercer Way, Mercer Island, WA 98040

Dear Dave Anderson,

Thank you for taking the time to comment. I appreciate that there is a high level of concern around this project and a desire to provide comments throughout the process.

The application guide you are referencing was generated after the application for the RUE, which is why the original materials are not entirely as detailed. However, in sharing your comment with the applicant this morning, I echoed that the guide would be a useful tool in updating the RUE application material.

Prior to this email, I have requested that the applicant update their application material to address the review comments from the City's peer reviews and to provide an updated plan set.

Regards,

Evan Maxim

Director

City of Mercer Island - Community Planning & Development

206.275.7732

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<https://mercerisland.nextrequest.com/>.

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From: Dave Anderson <DaveA@dahogan.com>

Sent: Friday, September 27, 2019 3:07 PM

To: Evan Maxim <evan.maxim@mercergov.org>; gjahalt@gmail.com

Cc: anderson9200@comcast.net; londonimplant@gmail.com; robertroyalgraham@gmail.com; robin@sammgroup.com; vduchaine@comcast.net; 'Rick Duchaine' <rduchaine17@gmail.com>; Bio Park <Bio.Park@mercergov.org>

Subject: RE: CAO15-001; SEP15-001; VAR18-002; Treehouse SEPA Review 5637 East Mercer Way, Mercer Island, WA 98040

Evan,

I have one additional question that I am hoping you can shed some light on. Whereas the SEPA Checklist instructions refer to a plan set for inclusion in the application per the Land Use Application - Plan Set Guide, the guide itself does not specifically identify the plan sheets that are required for a complete SEPA application. They are very specific on the RUE application which states that the application must include the following:

Site Plan:

- E. Designate areas with greater than six (6) feet of cut and/ or fill
- O. Existing and proposed utility and drainage improvements;

Critical Area Study:

- D. Stormwater and erosion control management plan consistent with MICC 15.09

Conceptual Grading and Utility Plan:

- H. Proposed conceptual drainage system design;
- J. The number of cubic yard of soil to be added, removed, and relocated;
- K. Type and location of fill origin, and destination of any soil to be removed from site, including the foundation areas;
- M. A statement indicating the method to be followed on erosion control and restoration of land during and immediately following the construction period of plat improvements;
- N. Utility drawings:
 - 2. Existing and proposed water, sewer, and storm water utility locations, including: pipe diameter, ditches, slope/ grade, connections, manhole or catch basin locations, inverts, etc.

These items have not been addressed with the SEPA. As noted on my previous e-mail correspondence, a storm water detention vault was shown schematically on the 2015 site plan but was removed from the 2018 plan. None of the plan requirement listed above were included with the SEPA. I am assuming that these will be included in the RUE submittal as listed on the Land Use Application - Plan Set Guide. Will we have an opportunity to review and comment on this submittal?

As you may have deduced from my SEPA comments, of particular interest is the preliminary drainage and erosion control plans for the proposed development. With the potential de-watering of the upland and downstream wetlands, impacts to the surrounding vegetation resulting from this de-watering, and bypass flows that could increase the peak stormwater discharge rates from the site, we have an acute interest in being able to review and comment on these plans. As I am sure you can appreciate, we are concerned that if the proposed development makes it through these early approvals, we will not have the opportunity to review and make comment on these plans.

Thank you, Dave

Dave Anderson PE
Principal Engineer
DA Hogan & Associates
www.dahogan.com

From: Evan Maxim <evan.maxim@mercergov.org>
Sent: Friday, September 27, 2019 1:45 PM
To: gjahalt@gmail.com
Cc: Dave Anderson <DaveA@dahogan.com>; anderson9200@comcast.net;
londonimplant@gmail.com; robertroyalgraham@gmail.com; robin@sammsgroup.com;
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<Bio.Park@mercergov.org>
Subject: RE: CAO15-001; SEP15-001; VAR18-002; Treehouse SEPA Review 5637 East Mercer Way, Mercer Island, WA 98040

Dear Mr. Ahalt,

Some of the concerns in your email appear to be related to a misconceptions regarding the SEPA review process, the scope of the Reasonable Use Exception, and the City's ability to regulate critical areas. The purpose of this email is to provide additional information regarding the SEPA review and Reasonable Use Exception processes.

There were several incorrect assertions in the email below:

- The City can establish limits on any development of the site (e.g. prohibiting drainage of a wetland by a future homeowner). The City has a strong code compliance chapter and strong conditioning authority on this project. If the project is approved, the City has regulatory tools to prevent a future property owner from using the remainder of the undeveloped yard space in an impactful way. If such work were done without permits, the City can require correction.
- The City is not misleading the applicant and has not forced them to spend more money. The city has consistently expressed concerns to the applicant that the City likely cannot recommend approval of the RUE. The applicant is a sophisticated builder who has knowingly engaged in this process and has retained his own experts. Please note that the cost of the application and supporting information is not a factor in issuing a recommendation to approve or deny the RUE.

-

SEPA review:

The SEPA review does not solely determine what impacts are mitigated if the Reasonable Use Exception (RUE) is approved; mitigation is required by the City code independent of the SEPA review – please see the response under the “critical areas review” section of this email.

There are three possible outcomes to a SEPA review: 1) a Determination of Non Significance (DNS);

2) a Mitigated Determination of Non Significance (MDNS); or 3) a Determination of Significance (DS). In essence, the SEPA review is designed to identify and mitigate impacts that are otherwise not addressed by the existing development regulations (i.e. the City of Mercer Island critical area code) and would result in a probable significant impact to the environment (ref. [WAC 197-11-158](#) and [WAC 197-11-330](#)). A [project denial](#) may be based on the SEPA review only if there are significant impacts resulting from the project that cannot be mitigated.

The City initially issued a SEPA DS to further evaluate several of the areas of concern that you have identified (e.g. stability of adjacent property, downstream drainage impacts, etc). The applicant has provided additional information and revised the project design. After consultation with the City's peer review consultants (ESA and Shannon & Wilson), I anticipate that impacts originally identified can be mitigated and there is an insufficient policy basis for a SEPA based project denial. Both of the City's consultants have indicated that issuance of a Mitigated Determination of Non-Significance is appropriate and have identified recommended mitigation conditions.

The SEPA Notice of Application indicated that a MDNS is likely; I have not completed my SEPA review as of the date of this email, but I currently believe this is the likely outcome. The assertion in your email that SEPA MDNS will commit the City to approval of the RUE application is incorrect; the criteria for approval of an RUE are very different than the SEPA review exercise described above.

Critical areas review:

The City understands that the scope of the RUE application is to provide an exception for the applicant to build a home that does not otherwise comply with wetland and watercourse protections. The applicant has not requested an exception to any of the other protections and mitigation requirements contained in the City's [critical areas code](#). In particular the code requires, and the applicant has not requested any exception the following recommendations:

1. An updated statement or risk as required by [MICC 19.07.130](#)
2. Mitigation of wetland impacts as required by [MICC 19.07.180](#)
3. No adverse slope impacts to upslope properties as required by [MICC 19.07.160](#)

There are several criteria for the [approval of a RUE](#). The City previously recommended denial of the RUE based upon the City's assessment that the applicant did not meet several of the criteria. Please note that the scope of the criteria for a RUE are very different than the scope of a SEPA review. For example, the evaluation of whether the RUE proposal is the "minimum necessary to allow for reasonable use" is outside the scope of a SEPA review. Similarly the determination of whether the critical areas code "would deny all reasonable use of the property" is outside the scope of a SEPA review. The City's review for compliance with the critical areas code will continue throughout the permitting process; the detail and level of review increases with each corresponding stage.

Please let me know if you have any additional questions.

Regards,

[Evan Maxim](#)
Director

City of Mercer Island - Community Planning & Development
206.275.7732

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From: gjahalt@gmail.com <gjahalt@gmail.com>

Sent: Friday, September 27, 2019 9:07 AM

To: Evan Maxim <evan.maxim@mercergov.org>

Cc: davea@dahogan.com; anderson9200@comcast.net; londonimplant@gmail.com; robertroyalgraham@gmail.com; robin@sammsgroup.com; vduchaine@comcast.net; 'Rick Duchaine' <rduchaine17@gmail.com>; Debbie Bertlin <Debbie.Bertlin@mercergov.org>; Salim Nice <salim.nice@mercergov.org>; Lisa Anderl <lisa.anderl@mercergov.org>; Bruce Bassett <Bruce.Bassett@mercergov.org>; Wendy Weiker <Wendy.Weiker@mercergov.org>; David Wisenteiner <David.Wisenteiner@mercergov.org>; Benson Wong <Benson.Wong@mercergov.org>

Subject: RE: CAO15-001; SEP15-001; VAR18-002; Treehouse SEPA Review 5637 East Mercer Way, Mercer Island, WA 98040

Dear Mr. Maxim:

I appreciate that the SEPA review is distinct from the Reasonable Use Exception review however the two are directly linked by the City approval process that will lead to a final decision by the City. The SEPA review will determine what impacts will have to be mitigated if the City approves the RUE. The shortcoming of the current SEPA review is 1) it is not addressing the impacts on the uphill slope or the impacts of water flow on the downstream neighbors, and 2) it only addresses whether or not a residence can be constructed in a wetland, within the setback of one critical stream, and in the headwater of a second critical stream, and 3) and it fails to address the impact on the wetland and two critical streams by having a family living on this lot and the City's inability to prevent the family from using their undeveloped yard space in an impactful way, such as installing more drain lines, building more retaining walls, installing more impervious surfaces, etc... If this future activity is permitted then it is probably a forgone conclusion that the City will approve the RUE and there will be little or no mitigation requirements.

It appears that the City's process is to move this along one step at a time to the point where the City can't say no. A house in this sensitive location is not a reasonable use to the owner who paid \$32,094 for a lot that was declared a wetland with two critical streams when the prior developer tried to build on this lot. The City is misleading Treehouse by forcing them to spend more money on this approval process, increasing their cost and investment in the property and in essence making the potential economic loss to Treehouse larger.

The Hearing Examiner remanded this to the City to address the impact on the surrounding

property and that has not been done. There is no supporting information in the reports by Treehouse's consultants to back up their claim that there are no negative impacts on the surrounding properties but the City does have the report from Shannon & Wilson dated July 12, 2019 stating that "the proposed development does have potential adverse impacts" and "the Statement of Risk presented in that report is outdated because it was prepared before recent changes to the location and elevation of the proposed residence, not does it provide sufficient discussion to establish that the condition in MICC 19.07.060 D(2a) is met for the current design."

The impacts on the wetland, two critical streams, the surrounding property owners, and the future occupants of this proposed house are not just confined to the building pad (footprint) of this development. The City must address how the entire lot will be utilized by future occupants who would not be there otherwise.

Kicking the can down the road by trying to approve this application one step at a time and failing to address the impact on the surrounding property owners and future occupants on this lot and not balancing these impacts against an investment of \$32,094 by Treehouse is **Gross Negligence** on the part of the City. Please share this statement with the City Attorney because this is where this issue is headed.

Gordon J. Ahalt

From: Evan Maxim <evan.maxim@mercergov.org>

Sent: Thursday, September 26, 2019 4:06 PM

To: Gordon Ahalt <gjahalt@gmail.com>

Cc: davea@dahogan.com

Subject: RE: CAO15-001; SEP15-001; VAR18-002; Treehouse SEPA Review 5637 East Mercer Way, Mercer Island, WA 98040

Dear Gordon Ahalt,

Thank you for taking the time to comment on the SEPA Notice of Application and on this project overall.

In your email below, you requested the definition of "Reasonable Use"; this term is defined in the [City's code](#). I also have copied the definition into my email below the signature line.

Please note that the SEPA review is distinct from the Reasonable Use Exception (RUE) review and that the City has previously recommended denial of the RUE. It is also important to note that the criteria for a SEPA review and determination are very different from the criteria associated with a RUE decision.

It is the nature of an RUE application that the project, if approved, will impact critical areas. If the

City recommends approval of the RUE, it will also include recommended conditions intended to both mitigate and limit impacts.

Regards,

[Evan Maxim](#)

Director

City of Mercer Island - Community Planning & Development

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Reasonable Use: 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.

From: Gordon Ahalt <gjahalt@gmail.com>

Sent: Monday, September 23, 2019 8:05 PM

To: Evan Maxim <evan.maxim@mercergov.org>

Cc: davea@dahogan.com

Subject: CAO15-001; SEP15-001; VAR18-002; Treehouse SEPA Review 5637 East Mercer Way, Mercer Island, WA 98040

Dear Mr. Maxim:

I'm responding with my comments to the Notice of Application – Project SEPA Review. Copy Attached.

I continue to oppose development of the subject lot and approval of the reasonable use exemption. The Hearing Examiner remanded this issue back to the City to address impacts on the uphill slope above the subject property and impacts on the downstream homes as a result of potential increased waterflow resulting from the destruction of the existing wetlands. The documents I have reviewed have failed to address these offsite issues and have only addressed the ability to construct a residence on this site.

The attached Geotechnical Review which the City contracted to have completed as a Peer Review of

the technical reports submitted by Treehouse concluded (highlighted in yellow), “the proposed development does have potential adverse impacts, yet none are identified in the addendum.” , and further states, “In our opinion, The Statement of Risk presented in that report is outdated because it was prepared before recent changes to the location and elevation of the proposed residence, nor does it provide sufficient discussion to establish that the condition in the MICC 19.07.060 D(2a) is met for the current design.”

The City and Treehouse have failed to address the negative impacts on the surrounding properties and have failed to protect the health, safety, and welfare of the residents living adjacent to and downstream from the proposed development site.

The City is also failing to address further negative impacts on the subject wetlands and critical streams that will result from having a new resident live on this site in the wetland and in the two critical streams. It is gross negligence on the part of the City to assume that a new resident will have no negative impact on the wetland, two critical streams, and the surrounding properties during the term of occupy a new home on this site. It is not reasonable to assume that a new resident will not utilize the undeveloped property to improve usage of the surrounding “yard space” which is a wetland. The City cannot reasonably restrict a new property owner from installing drainage systems to drain the wetland to create usable yard space. The wetland impacts will not be limited to only the building footprint.

I request the City to provide the surrounding property owners with a definition of “reasonable use” as it pertains to a lot the developer acquired for approximately \$32,000. Where is the dividing line in usage of this lot between reasonable and unreasonable? I contend that development of a single family residence on this lot is unreasonable and installation of a park bench on the adjacent walking trail would be the limit of reasonableness.

The lot sold for \$32,000 because it is not reasonable to build a house entirely in a wetland, within the buffer of one critical stream, and in the headwaters of the second critical stream.

I reserved my right to speak at the next scheduled Hearing Examiner meeting regarding this issue. I also ask that all of my prior letters regarding this project be incorporated as part of this response.

Gordon J. Ahalt
9204 SE 57th St.
Mercer Island, WA 98040
206-605-5234

From: [Dave Anderson](#)
To: [Evan Maxim](#); [gjahalt@gmail.com](#)
Cc: [anderson9200@comcast.net](#); [londonimplant@gmail.com](#); [robertroyalgraham@gmail.com](#); [robin@sammgroup.com](#); [vduchaine@comcast.net](#); "Rick Duchaine"; [Bio Park](#)
Subject: RE: CAO15-001; SEP15-001; VAR18-002; Treehouse SEPA Review 5637 East Mercer Way, Mercer Island, WA 98040
Date: Friday, September 27, 2019 3:07:00 PM
Attachments: [LandUseAppPlanSetGuide.pdf](#)

Evan,

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-

SEPA review:

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There are three possible outcomes to a SEPA review: 1) a Determination of Non Significance (DNS); 2) a Mitigated Determination of Non Significance (MDNS); or 3) a Determination of Significance (DS). In essence, the SEPA review is designed to identify and mitigate impacts that are otherwise not addressed by the existing development regulations (i.e. the City of Mercer Island critical area code) and would result in a probable significant impact to the environment (ref. [WAC 197-11-158](#) and [WAC 197-11-330](#)). A [project denial](#) may be based on the SEPA review only if there are significant impacts resulting from the project that cannot be mitigated.

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2. Mitigation of wetland impacts as required by [MICC 19.07.180](#)
3. No adverse slope impacts to upslope properties as required by [MICC 19.07.160](#)

There are several criteria for the [approval of a RUE](#). The City previously recommended denial of the RUE based upon the City's assessment that the applicant did not meet several of the criteria. Please note that the scope of the criteria for a RUE are very different than the scope of a SEPA review. For example, the evaluation of whether the RUE proposal is the "minimum necessary to allow for reasonable use" is outside the scope of a SEPA review. Similarly the determination of whether the critical areas code "would deny all reasonable use of the property" is outside the scope of a SEPA review. The City's review for compliance with the critical areas code will continue throughout the permitting process; the detail and level of review increases with each corresponding stage.

Please let me know if you have any additional questions.

Regards,

Evan Maxim

Director
City of Mercer Island - Community Planning & Development
206.275.7732

mercergov.org/CPD | **LET'S TALK**

If you would like a public record, please fill out a public records request at
<https://mercerisland.nextrequest.com/>.

Notice: Emails and attachments may be subject to disclosure pursuant to the Public Records Act (chapter 42.56 RCW).

From: gjahalt@gmail.com <gjahalt@gmail.com>

Sent: Friday, September 27, 2019 9:07 AM

To: Evan Maxim <evan.maxim@mercergov.org>

Cc: davea@dahogan.com; anderson9200@comcast.net; londonimplant@gmail.com; robertroyalgraham@gmail.com; robin@sammsgroup.com; vduchaine@comcast.net; 'Rick Duchaine' <rduchaine17@gmail.com>; Debbie Bertlin <Debbie.Bertlin@mercergov.org>; Salim Nice <salim.nice@mercergov.org>; Lisa Anderl <lisa.anderl@mercergov.org>; Bruce Bassett <Bruce.Bassett@mercergov.org>; Wendy Weiker <Wendy.Weiker@mercergov.org>; David Wisenteiner <David.Wisenteiner@mercergov.org>; Benson Wong <Benson.Wong@mercergov.org>

Subject: RE: CAO15-001; SEP15-001; VAR18-002; Treehouse SEPA Review 5637 East Mercer Way, Mercer Island, WA 98040

Dear Mr. Maxim:

I appreciate that the SEPA review is distinct from the Reasonable Use Exception review however the two are directly linked by the City approval process that will lead to a final decision by the City. The SEPA review will determine what impacts will have to be mitigated if the City approves the RUE. The shortcoming of the current SEPA review is 1) it is not addressing the impacts on the uphill slope or the impacts of water flow on the downstream neighbors, and 2) it only addresses whether or not a residence can be constructed in a wetland, within the setback of one critical stream, and in the headwater of a second critical stream, and 3) and it fails to address the impact on the wetland and two critical streams by having a family living on this lot and the City's inability to prevent the family from using their undeveloped yard space in an impactful way, such as installing more drain lines, building more retaining walls, installing more impervious surfaces, etc... If this future activity is permitted then it is probably a forgone conclusion that the City will approve the RUE and there will be little or no mitigation requirements.

It appears that the City's process is to move this along one step at a time to the point where the City can't say no. A house in this sensitive location is not a reasonable use to the owner who paid \$32,094 for a lot that was declared a wetland with two critical streams when the prior developer tried to build on this lot. The City is misleading Treehouse by forcing them to spend more money on this approval process, increasing their cost and investment in the property and in essence making the potential economic loss to Treehouse larger.

The Hearing Examiner remanded this to the City to address the impact on the surrounding property and that has not been done. There is no supporting information in the reports by Treehouse's consultants to back up their claim that there are no negative impacts on the surrounding properties but the City does have the report from Shannon & Wilson dated July 12, 2019 stating that "the proposed development does have potential adverse impacts" and "the Statement of Risk presented in that report is outdated because it was prepared before recent changes to the location and elevation of the proposed residence, not does it provide sufficient discussion to establish that the condition in MICC 19.07.060 D(2a) is met for the current design."

The impacts on the wetland, two critical streams, the surrounding property owners, and the future occupants of this proposed house are not just confined to the building pad (footprint) of this development. The City must address how the entire lot will be utilized by future occupants who would not be there otherwise.

Kicking the can down the road by trying to approve this application one step at a time and failing to address the impact on the surrounding property owners and future occupants on this lot and not balancing these impacts against an investment of \$32,094 by Treehouse is **Gross Negligence** on the part of the City. Please share this statement with the City Attorney because this is where this issue is headed.

Gordon J. Ahalt

From: Evan Maxim <evan.maxim@mercergov.org>

Sent: Thursday, September 26, 2019 4:06 PM

To: Gordon Ahalt <gjahalt@gmail.com>

Cc: davea@dahogan.com

Subject: RE: CAO15-001; SEP15-001; VAR18-002; Treehouse SEPA Review 5637 East Mercer Way, Mercer Island, WA 98040

Dear Gordon Ahalt,

Thank you for taking the time to comment on the SEPA Notice of Application and on this project overall.

In your email below, you requested the definition of "Reasonable Use"; this term is defined in the [City's code](#). I also have copied the definition into my email below the signature line.

Please note that the SEPA review is distinct from the Reasonable Use Exception (RUE) review and that the City has previously recommended denial of the RUE. It is also important to note that the criteria for a SEPA review and determination are very different from the criteria associated with a RUE decision.

It is the nature of an RUE application that the project, if approved, will impact critical areas. If the City recommends approval of the RUE, it will also include recommended conditions intended to both mitigate and limit impacts.

Regards,

[Evan Maxim](#)

Director

City of Mercer Island - Community Planning & Development

206.275.7732

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Reasonable Use: 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.

From: Gordon Ahalt <gjahalt@gmail.com>

Sent: Monday, September 23, 2019 8:05 PM

To: Evan Maxim <evan.maxim@mercergov.org>

Cc: davea@dahogan.com

Subject: CAO15-001; SEP15-001; VAR18-002; Treehouse SEPA Review 5637 East Mercer Way, Mercer Island, WA 98040

Dear Mr. Maxim:

I'm responding with my comments to the Notice of Application – Project SEPA Review. Copy Attached.

I continue to oppose development of the subject lot and approval of the reasonable use exemption. The Hearing Examiner remanded this issue back to the City to address impacts on the uphill slope above the subject property and impacts on the downstream homes as a result of potential increased waterflow resulting from the destruction of the existing wetlands. The documents I have reviewed have failed to address these offsite issues and have only addressed the ability to construct a residence on this site.

The attached Geotechnical Review which the City contracted to have completed as a Peer Review of the technical reports submitted by Treehouse concluded (highlighted in yellow), “the proposed development does have potential adverse impacts, yet none are identified in the addendum.” , and further states, “In our opinion, The Statement of Risk presented in that report is outdated because it was prepared before recent changes to the location and elevation of the proposed residence, nor does it provide sufficient discussion to establish that the condition in the MICC 19.07.060 D(2a) is met for the current design.”

The City and Treehouse have failed to address the negative impacts on the surrounding properties and have failed to protect the health, safety, and welfare of the residents living adjacent to and downstream from the proposed development site.

The City is also failing to address further negative impacts on the subject wetlands and critical streams that will result from having a new resident live on this site in the wetland and in the two critical streams. It is gross negligence on the part of the City to assume that a new resident will have no negative impact on the wetland, two critical streams, and the surrounding properties during the term of occupy a new home on this site. It is not reasonable to assume that a new resident will not utilize the undeveloped property to improve usage of the surrounding “yard space” which is a wetland. The City cannot reasonably restrict a new property owner from installing drainage systems to drain the wetland to create usable yard space. The wetland impacts will not be limited to only the building footprint.

I request the City to provide the surrounding property owners with a definition of “reasonable use” as it pertains to a lot the developer acquired for approximately \$32,000. Where is the dividing line in usage of this lot between reasonable and unreasonable? I contend that development of a single family residence on this lot is unreasonable and installation of a park bench on the adjacent walking trail would be the limit of reasonableness.

The lot sold for \$32,000 because it is not reasonable to build a house entirely in a wetland, within the buffer of one critical stream, and in the headwaters of the second critical stream.

I reserved my right to speak at the next scheduled Hearing Examiner meeting regarding this issue. I also ask that all of my prior letters regarding this project be incorporated as part of this response.

Gordon J. Ahalt
9204 SE 57th St.
Mercer Island, WA 98040
206-605-5234

From: [Dave Anderson](#)
To: [Evan Maxim](#)
Cc: anderson9200@comcast.net; gjahalt@gmail.com
Subject: RE: Parcel # 1924059312 (5637 East Mercer Way or MI Treehouse LLC)
Date: Friday, March 22, 2019 4:53:33 PM

Good Afternoon Evan,

I have reviewed the recent civil and wetland consultant responses associated with the proposed development for parcel # 1924059312 (5637 East Mercer Way or MI Treehouse LLC). These responses provided written descriptions that identify a general approach to how the storm water and wetland impacts will be potentially mitigated. However, to accurately quantify the extent of these impacts, a more detailed drainage analysis is required as elaborated below:

The response from the wetland consultant relative to ESA's comments and my previous e-mail includes the statement that water will be conveyed from the retaining wall drain to a spreader northwest of the building site that would recharge the existing wetlands. However, the elevation of the retaining wall drain will be below the existing surface grades in the wetlands to the northwest. This will not allow for positive drainage from a gravity system. The existing wetland elevation at the northwest corner of the proposed residence is 182. To achieve positive drainage from the wall to the northwest, the spreader trench would need to be very close to the water course to daylight at an elevation around 178. This would create additional temporary and permanent impacts to the existing wetlands beyond what are currently accounted for in the area summaries identified in the current reports and site plans. I appreciate the fact that detailed design documents are typically not part of a SEPA process. But short written responses do not accurately quantify the wetland, watercourse, and associated storm water impacts. Preliminary or design development level drainage plans that account for the site topography, the water table elevation, and required discharge elevations must be provided to accurately identify the wetland and watercourse buffer impacts.

Please note the location of the southern watercourse has changed on the more recent plans from pervious site plans. The 2018 plan shows the southern watercourse shifted to the north further away from the proposed building site and from the low area as designated by the contour lines. If the revised location for the watercourse is correct it would appear that the topography in this area may need to be adjusted on the plan. If the topography is correct, then the watercourse location should be more thoroughly confirmed and could conflict with the proposed building location.

To date, there still has not been any revised documents that show what certainly will be a permanent impact to the existing up-gradient wetland areas. As previously noted in earlier correspondence a perforated drain placed well below the surface will almost certainly be a permanent impact on the existing wetland areas south, west, and potentially northwest of the proposed building location. A portion of this area is indicated on the 2018 site plan as temporary wetland disturbance due to grading activities. The wall construction with drainage collection well below the wetland surface will permanently impact the wetland area and could de-water a significant portion of the potentially including those that extend beyond the parcel limits.

The level spreader devices proposed are most effective when used in areas that have fairly uniform downstream slopes. In this application, the spreader would be effectively on a high point between two existing water courses. It would be reasonable to expect that the flow immediately downstream of the spreader would quickly converge or concentrate in a relatively short distance into the watercourses significantly reducing its effectiveness for recharging the wetlands. As these flows would bypass the storm water detention facility, it is also reasonable to expect by intercepting both surface water and ground water with the retaining wall backfill and foundation drain and conveying it quickly to the watercourse that the peak stormwater discharge rates from the site would be increased.

As previously discussed, it is possible that the bypass flows for the sloped sections of driveway and perimeter that do not have detention storage and flow control could exceed those of the existing site conditions resulting in increased peak discharge rates from the site. The previous runoff calculations that were submitted did not account for any bypass and included area quantities that differed from those indicated on the current plans. Previous statements have been made by the developer's consultants that the development would not adversely impact previously documented downstream storm water issues and that in some cases they may even be improved. As part of the SEPA process is appropriate and reasonable to have these statements backed up with an accurate analysis.

If it is "reasonable" to expect to realize a dramatic increase in property value from what was described by MI Treehouse to the State of Washington Board of Tax Appeals in 2017 as an "arm's-length transaction" of \$32,094 to a value "approaching \$1,000,000" by excavating a wetland next to two watercourses, it should be reasonable to expect that the plans and environmental documents accurately account for all of the impacts. Detailed representations have been made quantifying the precise areas of wetland and watercourse buffer impacts. Presumably, these influence the City's consideration and evaluation of "Reasonable Use". Incorporation of what will certainly be additional impacts with these representations is appropriate and should not be differed until building permit submittal and review.

Thank you for your consideration of my thoughts and comments. Please feel free to call me if you have any questions or if you feel that these items require more clarification on my behalf, Dave

Dave Anderson PE
9200 SE 57th Street
Mercer Island, WA
(206) 660-8944

Dave Anderson PE
Principal Engineer
DA Hogan & Associates
www.dahogan.com

From: Dave Anderson

Sent: Thursday, November 15, 2018 12:26 PM

To: 'evan.maxim@mercergov.org' <evan.maxim@mercergov.org>

Cc: anderson9200@comcast.net; 'gjahalt@gmail.com' <gjahalt@gmail.com>

Subject: Parcel # 1924059312 (5637 East Mercer Way or MI Treehouse LLC)

Evan,

Thank you for soliciting input from ESA on the wetland impacts associated with the proposed development for parcel # 1924059312 (5637 East Mercer Way or MI Treehouse LLC). They make some excellent points, however, without a detailed drainage plan it will not be feasible to accurately evaluate the extent of both the temporary and permanent impacts on the existing wetland areas and adjacent water courses. There are additional technical factors associated with proposed development that must be considered beyond those addressed in the October 1st, 2018 ESA memorandum to truly quantify the permanent impacts to the existing water course and surrounding wetlands.

The proposed development includes a retaining wall on south and west of the proposed building location. With the garage floor elevation of 179.5 the bottom of the wall would typically be below 178 which is approximately 10 feet below the existing grade at the southwest corner of the house. The retaining wall will typically require permeable materials behind the wall with drainage collection at the base of the wall and around the structure foundation or slab. With a perforated drain approximately 10 feet below the surface there will almost certainly be a permanent impact on the existing wetland areas south, west, and potentially northwest of the proposed building location. A portion of this area is indicated on the 2018 site plan as temporary wetland disturbance due to grading activities. The wall construction with drainage collection 10 feet below the wetland surface will permanently impact the wetland area and could de-water a significant portion of the up-gradient wetland areas potentially including those that extend beyond the parcel limits.

The location of the stormwater detention storage tank could also impact the existing wetland area beyond what is shown in the revised 2018 plan. The tank identified in the preliminary calculations included a 17.45' by 17.45' footprint with a 5' depth. The tank would typically need at least 2' of cover from the lowest surface elevation to allow for installation of the driveway and to provide cover for the associated storm drainage conveyance piping that connects the development area to the detention storage. The tank installation would typically include granular bedding and backfill materials. As the excavation would border a wetland, the area would need to be de-watered to install the tank. The granular bedding and backfill would typically include a perforated drain to provide the required de-watering and to eliminate potential buoyancy of the tank. This drain could be in the range of 8' below the driveway elevation further impacting the down-gradient wetland area and flow into the adjacent water course on a permanent basis.

Given very low runoff rates from this type of wooded area, matching or reducing the peak stormwater discharge rates can be very difficult if there are significant areas of impervious surface that bypass the detention and flow control system. The stormwater detention facility location has

been removed from the current plan but has previously been shown just east of the building location at the top of the driveway. With this location, nearly all of the stormwater runoff generated by the driveway would effectively bypass the collection and detention system effectively flowing down to the existing driveway pavement and into the existing collection system on the west side of East Mercer Way without being detained or treated. This was not accounted for in the preliminary runoff calculations which showed no areas as bypassing the detention system.

Locating any detention storage at the bottom of the proposed driveway to avoid these bypass flows would require excavation activities in close proximity to the existing water course or would take the driveway for the adjacent residence out of service. Intercepting and collecting the runoff from all of the driveway areas to eliminate any storm water bypass may not be feasible as the current design for the driveway grading has 20% surface slope and does not include any accommodation for intercepting surface water runoff. If the detention storage facilities were to be located at the lower section of the driveway, the elevation of the detention structure would be even lower, further impacting the adjacent wetlands and water course.

On a separate note that we discussed during our meeting last summer, the stormwater detention calculations did not account for any bypass flows. Typically, the retaining wall and building foundation drains would bypass the stormwater detention and flow control as the flows are relatively minor with a low peak. However, given the depth of the drains with the proposed development occurring within an existing wetland, these flows should be addressed in some manner to ensure that the peak discharge rate is not increased as a result of the development especially given the previous downstream drainage capacity issues. The existing wooded wetland areas provide significant quantities of stormwater storage that will be impacted by the proposed development. With wetland de-watering and the potential for significant bypass flows more detailed design and evaluation is required before the developer can unequivocally state that the flow rates and durations could be limited to the pre-development/forested levels.

Thank you in advance for your consideration of these issue. Please feel free to call me at (206) 230-8373 or (206) 660-8944 if you would like to discuss them with me directly.

Dave Anderson PE

Principal Engineer
DA Hogan & Associates
www.dahogan.com

From: [Dave Anderson](#)
To: [Evan Maxim](#)
Cc: anderson9200@comcast.net; gjahalt@gmail.com
Subject: RE: Parcel # 1924059312 (5637 East Mercer Way or MI Treehouse LLC)
Date: Friday, March 22, 2019 4:51:40 PM

Hi Evan,

It would appear that I missed an important word in my earlier e-mail. The sixth paragraph should read " Previous statements have been made by the developer's consultants that the development would **not** adversely impact previously documented downstream storm water issues and that in some cases they may even be improved". I will re-send the message with the correction. My apologies for the confusion, Dave

Dave Anderson PE
Principal Engineer
DA Hogan & Associates
www.dahogan.com

From: Dave Anderson
Sent: Friday, March 22, 2019 3:45 PM
To: 'Evan Maxim' <evan.maxim@mercergov.org>
Cc: anderson9200@comcast.net; gjahalt@gmail.com
Subject: RE: Parcel # 1924059312 (5637 East Mercer Way or MI Treehouse LLC)

Good Afternoon Evan,

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The response from the wetland consultant relative to ESA's comments and my previous e-mail includes the statement that water will be conveyed from the retaining wall drain to a spreader northwest of the building site that would recharge the existing wetlands. However, the elevation of the retaining wall drain will be below the existing surface grades in the wetlands to the northwest. This will not allow for positive drainage from a gravity system. The existing wetland elevation at the northwest corner of the proposed residence is 182. To achieve positive drainage from the wall to the northwest, the spreader trench would need to be very close to the water course to daylight at an elevation around 178. This would create additional temporary and permanent impacts to the existing wetlands beyond what are currently accounted for in the area summaries identified in the current reports and site plans. I appreciate the fact that detailed design documents are typically not part of a SEPA process. But short written responses do not accurately quantify the wetland, watercourse, and associated storm water impacts. Preliminary or design development level

drainage plans that account for the site topography, the water table elevation, and required discharge elevations must be provided to accurately identify the wetland and watercourse buffer impacts.

Please note the location of the southern watercourse has changed on the more recent plans from previous site plans. The 2018 plan shows the southern watercourse shifted to the north further away from the proposed building site and from the low area as designated by the contour lines. If the revised location for the watercourse is correct it would appear that the topography in this area may need to be adjusted on the plan. If the topography is correct, then the watercourse location should be more thoroughly confirmed and could conflict with the proposed building location.

To date, there still has not been any revised documents that show what certainly will be a permanent impact to the existing up-gradient wetland areas. As previously noted in earlier correspondence a perforated drain placed well below the surface will almost certainly be a permanent impact on the existing wetland areas south, west, and potentially northwest of the proposed building location. A portion of this area is indicated on the 2018 site plan as temporary wetland disturbance due to grading activities. The wall construction with drainage collection well below the wetland surface will permanently impact the wetland area and could de-water a significant portion of the potentially including those that extend beyond the parcel limits.

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precise areas of wetland and watercourse buffer impacts. Presumably, these influence the City's consideration and evaluation of "Reasonable Use". Incorporation of what will certainly be additional impacts with these representations is appropriate and should not be differed until building permit submittal and review.

Thank you for your consideration of my thoughts and comments. Please feel free to call me if you have any questions or if you feel that these items require more clarification on my behalf, Dave

Dave Anderson PE
9200 SE 57th Street
Mercer Island, WA
(206) 660-8944

From: Evan Maxim <evan.maxim@mercergov.org>
Sent: Friday, November 16, 2018 10:58 AM
To: Dave Anderson <davea@dahogan.com>
Cc: anderson9200@comcast.net; gjahalt@gmail.com
Subject: RE: Parcel # 1924059312 (5637 East Mercer Way or MI Treehouse LLC)

Dear Dave Anderson,

Thank you for the emailed comments. I have shared them with the applicant and the City review team.

Please note that I believe your comments were based on the "draft" review provided by ESA, which was further updated and dated October 17, 2018. Regardless, I would like ESA and our other reviewers to consider your thoughtful input.

Thank you.

Regards,

Evan Maxim

Director of Community Planning and Development
City of Mercer Island Development Services
9611 SE 36th Street, Mercer Island, WA 98040
p: 206.275.7732
f: 206.275.7726

If you would like a public record, please fill out a public records request at <https://mercerisland.nextrequest.com/>.

From: Dave Anderson <davea@dahogan.com>
Sent: Thursday, November 15, 2018 12:26 PM
To: Evan Maxim <evan.maxim@mercergov.org>
Cc: anderson9200@comcast.net; gjahalt@gmail.com
Subject: Parcel # 1924059312 (5637 East Mercer Way or MI Treehouse LLC)

Evan,

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Dave Anderson PE

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From: [Dave Anderson](#)
To: [Evan Maxim](#)
Cc: anderson9200@comcast.net; gjahalt@gmail.com
Subject: RE: Parcel # 1924059312 (5637 East Mercer Way or MI Treehouse LLC)
Date: Friday, March 22, 2019 3:45:11 PM

Good Afternoon Evan,

I have reviewed the recent civil and wetland consultant responses associated with the proposed development for parcel # 1924059312 (5637 East Mercer Way or MI Treehouse LLC). These responses provided written descriptions that identify a general approach to how the storm water and wetland impacts will be potentially mitigated. However, to accurately quantify the extent of these impacts, a more detailed drainage analysis is required as elaborated below:

The response from the wetland consultant relative to ESA's comments and my previous e-mail includes the statement that water will be conveyed from the retaining wall drain to a spreader northwest of the building site that would recharge the existing wetlands. However, the elevation of the retaining wall drain will be below the existing surface grades in the wetlands to the northwest. This will not allow for positive drainage from a gravity system. The existing wetland elevation at the northwest corner of the proposed residence is 182. To achieve positive drainage from the wall to the northwest, the spreader trench would need to be very close to the water course to daylight at an elevation around 178. This would create additional temporary and permanent impacts to the existing wetlands beyond what are currently accounted for in the area summaries identified in the current reports and site plans. I appreciate the fact that detailed design documents are typically not part of a SEPA process. But short written responses do not accurately quantify the wetland, watercourse, and associated storm water impacts. Preliminary or design development level drainage plans that account for the site topography, the water table elevation, and required discharge elevations must be provided to accurately identify the wetland and watercourse buffer impacts.

Please note the location of the southern watercourse has changed on the more recent plans from pervious site plans. The 2018 plan shows the southern watercourse shifted to the north further away from the proposed building site and from the low area as designated by the contour lines. If the revised location for the watercourse is correct it would appear that the topography in this area may need to be adjusted on the plan. If the topography is correct, then the watercourse location should be more thoroughly confirmed and could conflict with the proposed building location.

To date, there still has not been any revised documents that show what certainly will be a permanent impact to the existing up-gradient wetland areas. As previously noted in earlier correspondence a perforated drain placed well below the surface will almost certainly be a permanent impact on the existing wetland areas south, west, and potentially northwest of the proposed building location. A portion of this area is indicated on the 2018 site plan as temporary wetland disturbance due to grading activities. The wall construction with drainage collection well below the wetland surface will permanently impact the wetland area and could de-water a significant portion of the potentially including those that extend beyond the parcel limits.

The level spreader devices proposed are most effective when used in areas that have fairly uniform downstream slopes. In this application, the spreader would be effectively on a high point between two existing water courses. It would be reasonable to expect that the flow immediately downstream of the spreader would quickly converge or concentrate in a relatively short distance into the watercourses significantly reducing its effectiveness for recharging the wetlands. As these flows would bypass the storm water detention facility, it is also reasonable to expect by intercepting both surface water and ground water with the retaining wall backfill and foundation drain and conveying it quickly to the watercourse that the peak stormwater discharge rates from the site would be increased.

As previously discussed, it is possible that the bypass flows for the sloped sections of driveway and perimeter that do not have detention storage and flow control could exceed those of the existing site conditions resulting in increased peak discharge rates from the site. The previous runoff calculations that were submitted did not account for any bypass and included area quantities that differed from those indicated on the current plans. Previous statements have been made by the developer's consultants that the development would adversely impact previously documented downstream storm water issues and that in some cases they may even be improved. As part of the SEPA process is appropriate and reasonable to have these statements backed up with an accurate analysis.

If it is "reasonable" to expect to realize a dramatic increase in property value from what was described by MI Treehouse to the State of Washington Board of Tax Appeals in 2017 as an "arm's-length transaction" of \$32,094 to a value "approaching \$1,000,000" by excavating a wetland next to two watercourses, it should be reasonable to expect that the plans and environmental documents accurately account for all of the impacts. Detailed representations have been made quantifying the precise areas of wetland and watercourse buffer impacts. Presumably, these influence the City's consideration and evaluation of "Reasonable Use". Incorporation of what will certainly be additional impacts with these representations is appropriate and should not be differed until building permit submittal and review.

Thank you for your consideration of my thoughts and comments. Please feel free to call me if you have any questions or if you feel that these items require more clarification on my behalf, Dave

Dave Anderson PE
9200 SE 57th Street
Mercer Island, WA
(206) 660-8944

From: Evan Maxim <evan.maxim@mercergov.org>
Sent: Friday, November 16, 2018 10:58 AM
To: Dave Anderson <davea@dahogan.com>
Cc: anderson9200@comcast.net; gjahalt@gmail.com
Subject: RE: Parcel # 1924059312 (5637 East Mercer Way or MI Treehouse LLC)

Dear Dave Anderson,

Thank you for the emailed comments. I have shared them with the applicant and the City review team.

Please note that I believe your comments were based on the “draft” review provided by ESA, which was further updated and dated October 17, 2018. Regardless, I would like ESA and our other reviewers to consider your thoughtful input.

Thank you.

Regards,

Evan Maxim

Director of Community Planning and Development
City of Mercer Island Development Services
9611 SE 36th Street, Mercer Island, WA 98040
p: 206.275.7732
f: 206.275.7726

If you would like a public record, please fill out a public records request at <https://mercerisland.nextrequest.com/>.

From: Dave Anderson <davea@dahogan.com>
Sent: Thursday, November 15, 2018 12:26 PM
To: Evan Maxim <evan.maxim@mercergov.org>
Cc: anderson9200@comcast.net; gjahalt@gmail.com
Subject: Parcel # 1924059312 (5637 East Mercer Way or MI Treehouse LLC)

Evan,

Thank you for soliciting input from ESA on the wetland impacts associated with the proposed development for parcel # 1924059312 (5637 East Mercer Way or MI Treehouse LLC). They make some excellent points, however, without a detailed drainage plan it will not be feasible to accurately evaluate the extent of both the temporary and permanent impacts on the existing wetland areas and adjacent water courses. There are additional technical factors associated with proposed development that must be considered beyond those addressed in the October 1st, 2018 ESA memorandum to truly quantify the permanent impacts to the existing water course and surrounding wetlands.

The proposed development includes a retaining wall on south and west of the proposed building location. With the garage floor elevation of 179.5 the bottom of the wall would typically be below

178 which is approximately 10 feet below the existing grade at the southwest corner of the house. The retaining wall will typically require permeable materials behind the wall with drainage collection at the base of the wall and around the structure foundation or slab. With a perforated drain approximately 10 feet below the surface there will almost certainly be a permanent impact on the existing wetland areas south, west, and potentially northwest of the proposed building location. A portion of this area is indicated on the 2018 site plan as temporary wetland disturbance due to grading activities. The wall construction with drainage collection 10 feet below the wetland surface will permanently impact the wetland area and could de-water a significant portion of the up-gradient wetland areas potentially including those that extend beyond the parcel limits.

The location of the stormwater detention storage tank could also impact the existing wetland area beyond what is shown in the revised 2018 plan. The tank identified in the preliminary calculations included a 17.45' by 17.45' footprint with a 5' depth. The tank would typically need at least 2' of cover from the lowest surface elevation to allow for installation of the driveway and to provide cover for the associated storm drainage conveyance piping that connects the development area to the detention storage. The tank installation would typically include granular bedding and backfill materials. As the excavation would border a wetland, the area would need to be de-watered to install the tank. The granular bedding and backfill would typically include a perforated drain to provide the required de-watering and to eliminate potential buoyancy of the tank. This drain could be in the range of 8' below the driveway elevation further impacting the down-gradient wetland area and flow into the adjacent water course on a permanent basis.

Given very low runoff rates from this type of wooded area, matching or reducing the peak stormwater discharge rates can be very difficult if there are significant areas of impervious surface that bypass the detention and flow control system. The stormwater detention facility location has been removed from the current plan but has previously been shown just east of the building location at the top of the driveway. With this location, nearly all of the stormwater runoff generated by the driveway would effectively bypass the collection and detention system effectively flowing down to the existing driveway pavement and into the existing collection system on the west side of East Mercer Way without being detained or treated. This was not accounted for in the preliminary runoff calculations which showed no areas as bypassing the detention system.

Locating any detention storage at the bottom of the proposed driveway to avoid these bypass flows would require excavation activities in close proximity to the existing water course or would take the driveway for the adjacent residence out of service. Intercepting and collecting the runoff from all of the driveway areas to eliminate any storm water bypass may not be feasible as the current design for the driveway grading has 20% surface slope and does not include any accommodation for intercepting surface water runoff. If the detention storage facilities were to be located at the lower section of the driveway, the elevation of the detention structure would be even lower, further impacting the adjacent wetlands and water course.

On a separate note that we discussed during our meeting last summer, the stormwater detention calculations did not account for any bypass flows. Typically, the retaining wall and building foundation drains would bypass the stormwater detention and flow control as the flows are relatively minor with a low peak. However, given the depth of the drains with the proposed

development occurring within an existing wetland, these flows should be addressed in some manner to ensure that the peak discharge rate is not increased as a result of the development especially given the previous downstream drainage capacity issues. The existing wooded wetland areas provide significant quantities of stormwater storage that will be impacted by the proposed development. With wetland de-watering and the potential for significant bypass flows more detailed design and evaluation is required before the developer can unequivocally state that the flow rates and durations could be limited to the pre-development/forested levels.

Thank you in advance for your consideration of these issue. Please feel free to call me at (206) 230-8373 or (206) 660-8944 if you would like to discuss them with me directly.

Dave Anderson PE

Principal Engineer

DA Hogan & Associates

www.dahogan.com

From: [Dave Anderson](#)
To: [Evan Maxim](#)
Subject: RE: Parcel # 1924059312 (5637 East Mercer Way or MI Treehouse LLC)
Date: Friday, November 16, 2018 2:31:44 PM

Thank you Evan. Have a good weekend, Dave

Dave Anderson PE
Principal Engineer
DA Hogan & Associates
www.dahogan.com

From: Evan Maxim <evan.maxim@mercergov.org>
Sent: Friday, November 16, 2018 10:58 AM
To: Dave Anderson <davea@dahogan.com>
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Evan Maxim

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To: Evan Maxim <evan.maxim@mercergov.org>

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The proposed development includes a retaining wall on south and west of the proposed building location. With the garage floor elevation of 179.5 the bottom of the wall would typically be below 178 which is approximately 10 feet below the existing grade at the southwest corner of the house. The retaining wall will typically require permeable materials behind the wall with drainage collection at the base of the wall and around the structure foundation or slab. With a perforated drain approximately 10 feet below the surface there will almost certainly be a permanent impact on the existing wetland areas south, west, and potentially northwest of the proposed building location. A portion of this area is indicated on the 2018 site plan as temporary wetland disturbance due to grading activities. The wall construction with drainage collection 10 feet below the wetland surface will permanently impact the wetland area and could de-water a significant portion of the up-gradient wetland areas potentially including those that extend beyond the parcel limits.

The location of the stormwater detention storage tank could also impact the existing wetland area beyond what is shown in the revised 2018 plan. The tank identified in the preliminary calculations included a 17.45' by 17.45' footprint with a 5' depth. The tank would typically need at least 2' of cover from the lowest surface elevation to allow for installation of the driveway and to provide cover for the associated storm drainage conveyance piping that connects the development area to the detention storage. The tank installation would typically include granular bedding and backfill materials. As the excavation would border a wetland, the area would need to be de-watered to install the tank. The granular bedding and backfill would typically include a perforated drain to provide the required de-watering and to eliminate potential buoyancy of the tank. This drain could be in the range of 8' below the driveway elevation further impacting the down-gradient wetland area and flow into the adjacent water course on a permanent basis.

Given very low runoff rates from this type of wooded area, matching or reducing the peak stormwater discharge rates can be very difficult if there are significant areas of impervious surface that bypass the detention and flow control system. The stormwater detention facility location has been removed from the current plan but has previously been shown just east of the building location at the top of the driveway. With this location, nearly all of the stormwater runoff generated by the

driveway would effectively bypass the collection and detention system effectively flowing down to the existing driveway pavement and into the existing collection system on the west side of East Mercer Way without being detained or treated. This was not accounted for in the preliminary runoff calculations which showed no areas as bypassing the detention system.

Locating any detention storage at the bottom of the proposed driveway to avoid these bypass flows would require excavation activities in close proximity to the existing water course or would take the driveway for the adjacent residence out of service. Intercepting and collecting the runoff from all of the driveway areas to eliminate any storm water bypass may not be feasible as the current design for the driveway grading has 20% surface slope and does not include any accommodation for intercepting surface water runoff. If the detention storage facilities were to be located at the lower section of the driveway, the elevation of the detention structure would be even lower, further impacting the adjacent wetlands and water course.

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From: [Dave Anderson](#)
To: [Evan Maxim](#)
Cc: anderson9200@comcast.net; gjahalt@gmail.com
Subject: Parcel # 1924059312 (5637 East Mercer Way or MI Treehouse LLC)
Date: Thursday, November 15, 2018 12:26:02 PM

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