

MI TREEHOUSE, LLC
P.O. Box 261
Medina, WA 98039
T: (425) 761-5460

January 24, 2019

Mr. Evan Maxim
City of Mercer Island
9611 S.E. 36th Street
Mercer Island, WA 98040

**RE: MI TREEHOUSE REASONABLE USE EXCEPTION APPLICATION
CAO 15-001 and SEPA15-001**

Dear Evan:

The following is submitted in response to your November 16, 2018, letter requesting additional information and documentation in connection with the above application:

1. A letter from GEO Group Northwest dated November 28, 2018, attached as Exhibit "A", which specifically addresses the project's "modified design" impact on adjacent properties. The letter is both short and direct because the design change simply relocated the house by approximately 15 feet closer to the street, a modification specifically requested by the staff;
2. A letter from Rich Hill responding to the issue of cumulative impacts, which is attached as Exhibit "B";
3. Attached as Exhibit "C" is updated plans and a letter from Sewall Wetland Consulting, Inc., responding to the questions raised in ESA's Memorandum dated October 17, 2018;
4. Attached as Exhibit "D" is a letter from Versatile Drilling Contractors, Inc., pile driving contractors, dated January 21, 2019, responding to the questions raised concerning noise and vibration impacts associated with the installation of 20-25 pin piles;
5. Attached as Exhibit "E" is an additional response to questions concerning the Applicant's reasonable use of its property;
6. Exhibit "F" further explains the reasons supporting the Applicant's efforts to minimize the project's environmental impacts; and
7. Exhibit "G" consists of additional responses to the consideration of alternative locations for wetland mitigation.

We believe that the information and documentation provided to you comprehensively responds to the concerns and questions raised in your November 16, 2018, letter. If any issue hasn't been sufficiently addressed, we request prompt notification so that we can respond before you complete your review. We also request permission for our wetland consultant to contact ESA directly to make certain that no additional information is required to complete its review of the wetland-related documents, again to facilitate the resolution of any outstanding issues.

Sincerely yours,



William C. Summers

cc: G. Richard Hill
Kari Sand

EXHIBIT “A”

Response to: Item 1,a,i

November 28, 2018

G-3837

Mr. William Summers
MI Treehouse LLC
P.O. Box 261
Medina, WA 98039
Email: bill@summersdevelopment.com

Subject: Geotechnical Report Addendum
Response to City of Mercer Island Letter dated November 16, 2018
RE: Proposed Residence
5637 East Mercer Way, Mercer Island, WA 98040

References: GEO Group Northwest, Inc. Geotechnical Engineering Report, dated 3/13/2015
for the Proposed Residence.

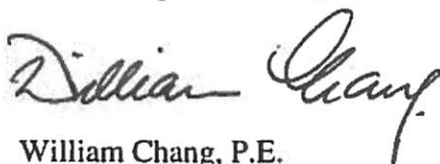
GEO Group Northwest, Inc. Geotechnical Report Addendum, dated May 2, 2017
for the proposed Residence.

Dear Mr. Summers:

At your request, we have reviewed the revised location of the updated location for the proposed residence that places it 15 feet closer to the street in order to minimize impacts to the wetlands.

Accordingly, our conclusions in the May 2, 2017 Addendum Report apply to the updated location of the proposed residence, and will reduce the impact to the wetlands at the site. The potential impacts to adjacent and downhill properties, have been addressed in our report dated May 2, 2017 Geotechnical Report Addendum.

Sincerely,
GEO Group Northwest, Inc.



William Chang, P.E.
Principal



EXHIBIT “B”

Response to: Item 1,b,i

MCCULLOUGH HILL LEARY, PS

Kari Sand
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040

Re: RUE CAO 15-001
Bill Summers

Dear Kari:

This follows up on our recent discussion regarding the “cumulative impacts” question that was raised by Evan Maxim in his letter to Bill Summers dated November 16, 2018. In that letter on p. 2, Evan asked the applicant to “evaluate the possible cumulative impacts to hydrology and habitat by establishing a precedent... for not mitigating impacts on-island.”

In our recent discussion, I provided you with the applicable regulatory, case law, and commentary authority that demonstrates that SEPA would not require discussion of the “possible cumulative impacts” that Evan referred to in his letter. You had suggested that I follow up that discussion with a letter summarizing this authority and how it is pertinent to the environmental review of Mr. Summers’ RUE application.

The action for which SEPA review is being conducted is a proposal for a single-family residence on property that is environmentally constrained. Because the property is environmentally constrained, primarily due to wetlands and wetland buffers, it is necessary to obtain a reasonable use exception from the City’s critical areas ordinance. Otherwise, no reasonable use of the property could be achieved.

Professor Settle, in his treatise on the Washington State Environmental Policy Act, addresses the issue of cumulative impacts at Section 14.01(1)(c). He points out that the SEPA Rules, without explanation or definition, require environmental checklists to include a discussion of such impacts. WAC 197-11-060(4)(d)-(e). He suggests that the term should likely mean that cumulative impacts would be the combined effects of the proposal, along with those of other actual or potential proposals.

He emphasizes that unless reasonably limited, the analysis of such impacts “could infinitely expand the scope of environmental review.” Therefore, SEPA limits that scope to impacts that are “probable” and “significant.” RCW 43.21C.031. And the impacts of potential future proposals must be cumulatively assessed only when the instant proposal would be a necessary antecedent for such potential future proposals. See *Boehm v. City of Vancouver*, 111

Wn.App. 711 (2002). Most fundamentally, the scope of cumulative impact analysis is limited by the rule of reason that does not require assessment of “remote and speculative impacts.” See *Cheney v. Mountlake Terrace*, 87 Wn.2d 338 (1976).

Applying these principles to the facts of this case demonstrates that no cumulative impacts analysis should be required. There is no reasonable basis to assume that this unique and exceptional reasonable use application will be a precedent for future proposals. It would be “remote and speculative” to evaluate cumulative impacts when there is neither any similar RUE application in the City’s pipeline, nor any reasonable basis to assume that there will be. Indeed, since there are no pending or expected applications, it would be nearly impossible to evaluate cumulative impacts. To do so would be speculative in the extreme.

In this light, respectfully, no cumulative impacts analysis of RUE CAO 15-001 would be required under SEPA and no such analysis should be mandated by the City.

Thank you for your consideration. We look forward to the City’s decision on the proposal.

Sincerely,

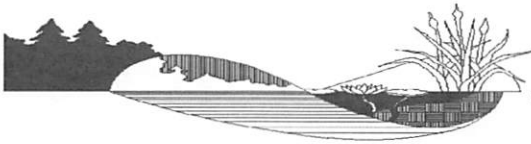


G. Richard Hill

cc: Evan Maxim
Bill Summers

EXHIBIT “C”

Response to: Item 1,b,ii



Sewall Wetland Consulting, Inc.

PO Box 880
Fall City, WA 98024

Phone: 253-859-0515

January 24, 2019

Evan Maxim
Planning Director
City of Mercer Island
9611 SE 36th Street
Mercer Island, Washington 98040

RE: 5637 East Mercer Way – Parcel #1924059312
City of Mercer Island, Washington
SWC Job#14-206

Dear Evan,

This letter is a response to questions in the ESA memorandums dated 10-17-19, regarding Parcel #1924059312

Below is a response to the recommendations in this document;

ESA Memorandum dated October 17, 2108

Summary of Recommendations

In summary from our findings above, we have the following recommendations (in addition to those provide in previous reviews, as applicable) to ensure project consistency with the requirements of MIMC 19.07, provide continued hydrology to an onsite stream and wetland, and implement sufficient mitigation to functionally compensate for project impacts:

1. The March 8th CAR should indicate why the northeast corner of the building footprint is considered temporary and not permanent wetland impact.

Response: The area of the northeast corner of the site is now considered a permanent impact on the attached revised mitigation plan.

2. Provide rationale to support the determination that decks will result in temporary, rather than permanent, wetland impacts.

Response: Although we are proposing to replant the area under the decks, for the purpose of the impact calculations, we now are including

the decks as an impact. This area will now be replanted with slough sedge as a mitigation action

3. The entire square footage of the northern deck should be considered as impact.

Response: As described in the previous response, this area is now considered an impact as requested.

4. For comparison reasons, the applicant should ensure that 2015 impact calculations were based on the entire square footage of the northern deck.

Response: A recalculation of the 2015 impacts assuming the entire deck as an impact, Wetland impacts are 3,450sf, and wetland buffer impacts 1,863sf.

5. The applicant should provide detailed discussion and associated impact calculations, if applicable, of the proposed excavation and grading activities. Grading should be designated as permanent wetland impact and mitigated appropriately.

Response: As requested, all structures and grading are now considered a permanent impacts as shown on the attached Wetland and Buffer Impact Site plan dated revised 12-17-18.

6. Provide detailed information about the fence or wall that surrounds the development.

Response: There is no fence or wall around the proposed development. The only fencing will be a temporary silt fence during construction.

7. If the area encompassed by the perimeter fence or wall will be permanently disturbed, then appropriate mitigation should be implemented based on the impact area.

Response: The retaining wall is now considered a permanent impact.

8. A house maintenance area should be calculated and mitigated.

Response: A 5' BSBL area has been calculated as an impact as requested.

9. An additional offset or paper buffer of 5 feet from the maintenance area is appropriate; impacts should be calculated and mitigation implemented.

Response: A 5' BSBL area has been calculated as an impact as requested.

10. Recalculate buffer impacts applying the 50-foot wetland buffer.

Response: The total wetland buffer impact area using 50' has been calculated as requested, and results in 3,479sf of buffer impact.

11. Include the northern retaining wall in the impact area calculation.

Response: The northern wall has been calculated as a permanent impact.

12. Consider installing conveyance from the proposed grading area located at the southwestern portion of the development to route water around the house and discharge and spread flow north and northwest of the house to provide continued hydrology to the down-gradient wetland and stream. Provide discussion as to how the proposed stormwater facility affects the delivery of groundwater and surface waters to the down-gradient wetland and stream.
-

Response: Water from the excavated areas will be collected through footing drains and discharged through a spreader into the wetland to the northwest as requested. This will help maintain current hydrologic patterns and maintain hydrology to the wetland and stream located north of the structure.

13. Apply Core Design BMPs to the proposed project.

Response: BMPs recommended in Core's March 23, 2018 Report will be adopted & implemented

14. Mitigation discussion within the CAR should clarify the type of onsite mitigation.

Response: The mitigation for the project will consist of two actions;

1. On-site buffer enhancement to include under planting the existing buffer with conifers, as well as replanting areas that are graded

and under the elevated decks. This is depicted on the attached Critical Area Enhancement Plan revised to 1-24-19.

2. Purchase of off-site credits from the King County Mitigation Reserves program to compensate for permanent wetland impacts.

15. Mitigate onsite to compensate for permanent buffer impacts.

Response: On-site wetland buffer enhancement includes removal of any blackberry and under planting with conifers as depicted on the attached Critical Area Enhancement Plan revised to 1-24-19.

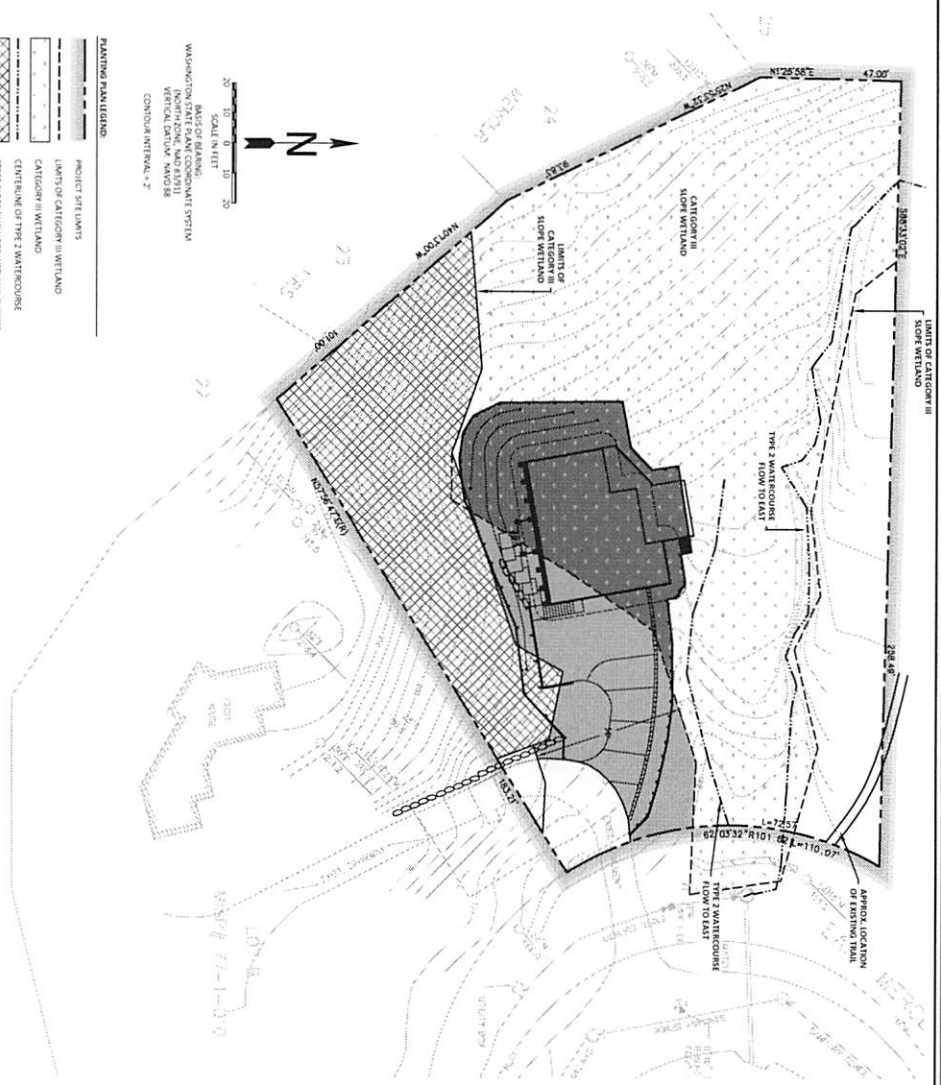
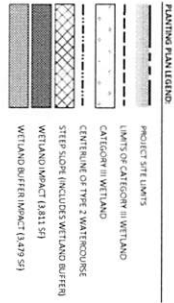
If you have any questions in regards to this report or need additional information, please feel free to contact me at (253) 859-0515 or at esewall@sewallwc.com.

Sincerely,
Sewall Wetland Consulting, Inc.



Ed Sewall
Senior Wetlands Ecologist PWS #212

Attached: *Critical Area Enhancement Plan revised to 1-24-19*



NO.	DATE	NOTES
1	09/08/2015	ADDED STREAM
2	10/21/2015	REVISED PER CITY COMMENTS
3	12/04/2018	REVISED PER NEW SITE PLAN
4	12/17/2018	ADDED IMPACT SITE PLAN
5	01/24/2019	REVISED PLANTING PLAN

DATE: 03/04/2015
 JOB NUMBER: 14-206
 DRAWN BY: EANC
 CHECKED BY: ES

Wetland and Wetland Buffer Impact Site Plan

SHEET 1 OF 2

CRITICAL AREA ENHANCEMENT PLAN
 - MI TREEHOUSE LLC -

5637 EAST MERCER WAY
 MERCER ISLAND, WASHINGTON

Sewall Wetland Consulting, Inc.

27641 Covington Way SW #2, Covington, WA 98042 253-859-0515 Fax 253-852-4712

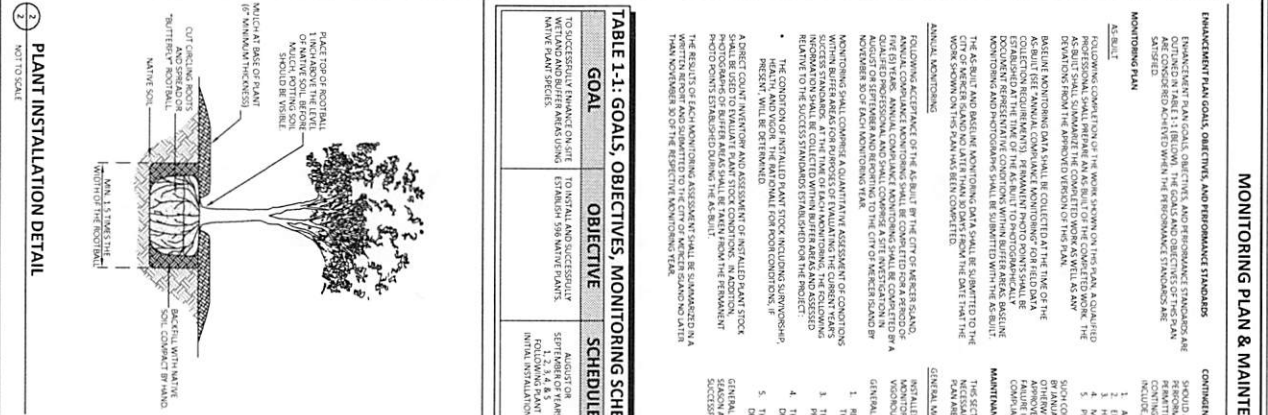
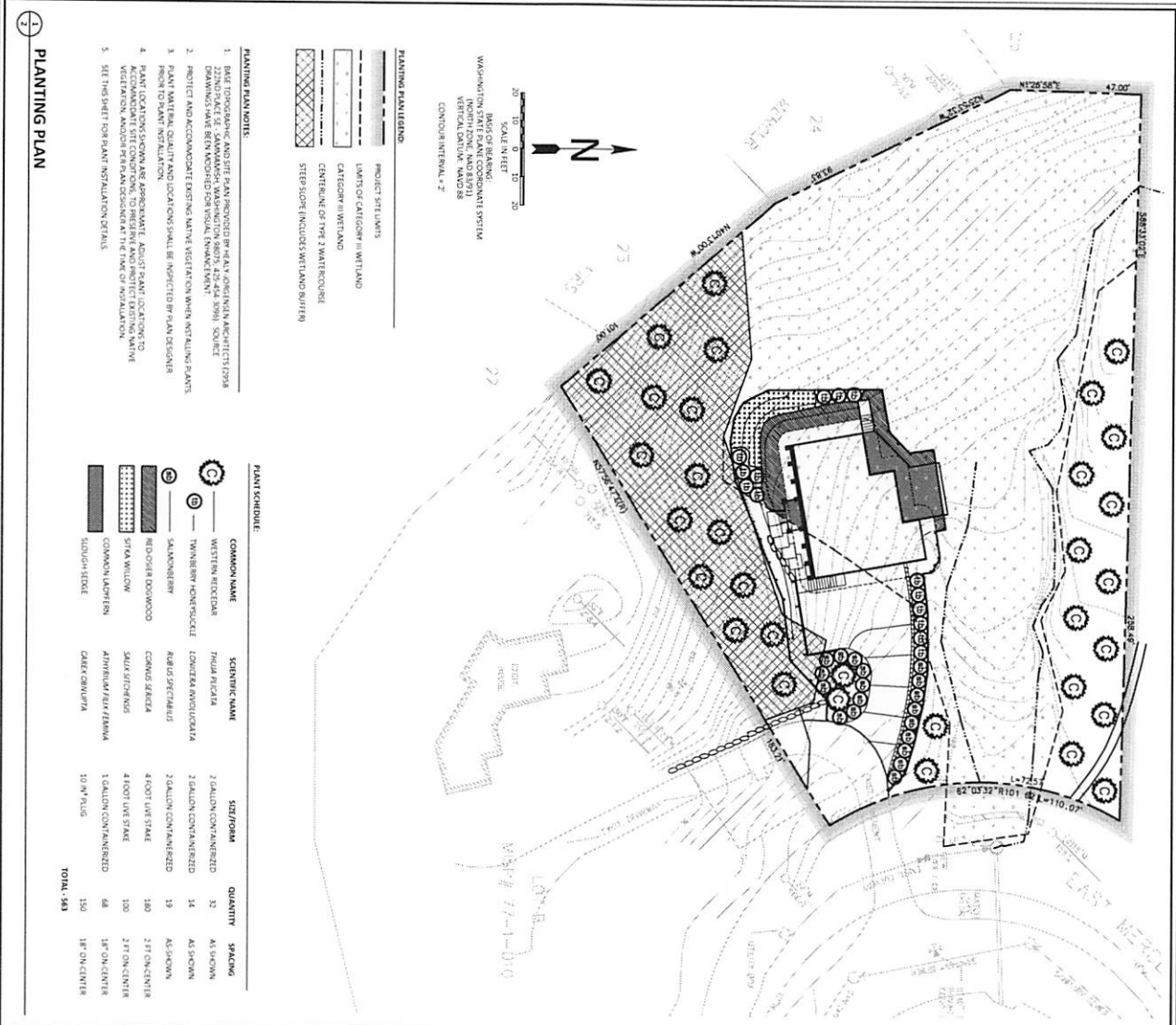


TABLE 1-1: GOALS, OBJECTIVES, MONITORING SCHEDULE, & PERFORMANCE STANDARDS

GOAL	OBJECTIVE	SCHEDULE	PERFORMANCE STANDARDS
TO SUCCESSFULLY FINANCE ON-SITE WETLAND AND BUFFER AREAS USING NATIVE PLANT SPECIES	ESTABLISH 598 NATIVE PLANTS	AS-BUILT OF YEARS FOLLOWING PLANT INSTALLATION	<ul style="list-style-type: none"> 100% SURVIVAL OF INSTALLED PLANT STOCK AFTER THE FIRST GROWING SEASON (YEAR 1). THIS STANDARD CAN BE MET BY APPLYING BARK MULCH TO MAINTAIN A 2" MINIMUM DEPTH 100% SURVIVAL OF INSTALLED PLANT STOCK AFTER THE FIFTH GROWING SEASON (YEAR 5)

GENERAL NOTES:

- WORK SHALL CONFORM TO ANY AND ALL APPLICABLE PERMITS AND/OR APPROVED CONSTRUCTION DRAWINGS
- WORK SHALL BE COMPLETED BY PERSONS EXPERIENCED IN THE ENVIRONMENTAL WORK SHOWN ON THESE DRAWINGS
- BEFORE THE START OF CONSTRUCTION, A RAIN CONSTRUCTION PLAN SHALL BE SUBMITTED TO THE PLAN DESIGNER
- A COPY OF THIS APPROVED DRAWING MUST BE ON THE JOB SITE WHENEVER CONSTRUCTION IS IN PROGRESS
- SET CONSTRUCTION LIMITS AND MARKERS ON EARTHWORK AND/OR THE OF YEAR. THE CONSTRUCTION CONTRACTOR SHALL BE RESPONSIBLE FOR SETTING AND MAINTAINING THESE LIMITS AND MARKERS WHICH COVERED THE WORK SHOWN ON THESE DRAWINGS

PLANT INSTALLATION DETAIL

PLANT TOP OF POSTHOLE 1" ABOVE THE LEVEL OF NATIVE SOIL BEFORE SHOULD BE VISIBLE

MULCH IN BASE OF PLANT 1" MINIMUM THICKNESS

CUT CONCRAVE ROADS "LITTERED" REVEAL NATIVE SOIL

BACKFILL WITH NATIVE SOIL COMPACT BY HAND

MIN. 1.5" THICK STRIP (WITHIN THE FOOTPRINT)

Know what's below. Call before you dig.

UNDERGROUND UTILITY LOCATIONS SHOWN ARE APPROXIMATE. UTILITY LOCATIONS AND CHARACTERISTICS SHOWN ON THIS DRAWING, IF ANY ARE BASED ON THE FIELD LOCATION OF THE APPLICANT'S SURFACE CONDUIT OR BASED UTILITY HAS NOT BEEN VERIFIED OR COMMANDED. LOCAL UTILITY SERVICES AND AGENCY SHALL BE CONTACTED TO FIELD VERIFY UTILITY LOCATIONS AND CHARACTERISTICS BEFORE THE START OF WORK.

CRITICAL AREA ENHANCEMENT PLAN
- MI TREEHOUSE LLC -

5637 EAST MERCER WAY
MERCER ISLAND, WASHINGTON

27641 Covington Way SW #2, Covington, WA 98042 253-859-0515 Fax 253-852-4712

Sewall Wetland Consulting, Inc.

Planting Plan, Notes, Details, & Monitoring Plan

SHEET 2 OF 2

NO.	DATE	NOTES
1	09/08/2015	ADDED STREAM
2	10/21/2015	REVISED PER CITY COMMENTS
3	12/04/2018	REVISED PER NEW SITE PLAN
4	12/17/2018	ADDED IMPACT SITE PLAN
5	01/24/2019	REVISED PLANTING PLAN

DATE: 02/02/2019
DRAWN BY: JAC
CHECK BY: ES

EXHIBIT “D”

Response to: Item 1,c

**VERSATILE
DRILLING**
CONTRACTORS, INC

To: **Mr. William C. Summers**
1840 Wilbur Avenue
Vero Beach, FL 32960

Date: 01/21/19

Re: **Proposed Residence – Pipe Piling**
5637 E. Mercer Way
Mercer Island, WA

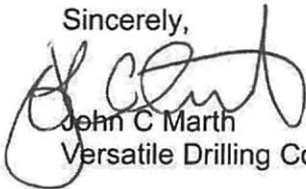
Dear Bill,

We understand that your engineer is planning on having approx. 20 – 25 each 4" dia. pipe piles for the construction of your single-family residence at the above address on Mercer Island. These piles will penetrate 15'-20' deep through the loose and unstable soil on this steep sloped site located on the West side of E Mercer Way. Versatile Drilling has over 35 years of experience in drilling and driving piling in the metropolitan Seattle area, including many project on Mercer Island.

We expect to use a hydraulic hammer mounted on a mini-excavator to complete this work. Driving small diameter piling does not produce any significant amount of vibration. There will, of course, be some noise generated by the pipe pile driving. This work should be completed in 1-3 days, but noise levels will not exceed 85 decibels – the maximum allowed by the City of Seattle standards.

Please advise me if we can be of further assistance.

Sincerely,



John C Marth
Versatile Drilling Contractors, Inc

EXHIBIT “E”

Response to: Item 2,a & b

Item 2,a & b

There are good reasons for our frequently expressed belief that when the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking. *Goat Hill Homeowners Association, Inc. v. King County*, 686 F. Supp. 2d 1130, 1132 (2010).

The Applicant acquired the property in September 2014 for the nominal cash payment of \$32,094 to Joseph L. Brotherton, a 25-year partner and close personal friend of the Applicant's principal. This purchase was a private transaction, the purchase price having been determined based on factors other than market value considerations. As clearly stated by Mr. Brotherton in a sworn Declaration dated February 10, 2017: "The sale of the Property to Mr. Summers was clearly not consummated in an arms-length transaction, and the funds received by me upon sale did not reflect the property's fair market value . . . Rather, the consideration for the property included recognition of our twenty years of personal friendship and partnership activities between me and Mr. Summers." *Declaration*, ¶6-7. Thus, the nominal amount paid for the property is irrelevant to the consideration of this Application.

The property was acquired based exclusively on its development potential as a parcel zoned to support the construction of two single-family residences. This potential was specifically confirmed by the Applicant at the time through the review of extensive plans, studies and reports completed by the previous owner over a number of years, together with various discussions with the City's planning staff at the time, project architects and Bruce J. Dodds, a civil engineer with 30 years of experience. Although additional studies were anticipated to be required in order to develop the property, no impediments to its productive use as a single-family residence were detected, which included a comprehensive review of the City's files and discussions with staff. These efforts have continued unabated during the past four years, during the course of which no reason has been uncovered which would make the property unreasonably difficult or prohibitively expensive to develop as a single-family residence.

Supporting and confirming the property's inherent value – ***assuming it can be reasonably used to its potential*** – the King County Assessor valued the property in 2014 at \$417,000. Mr. Brotherton, an experienced real estate investor, estimated that its worth would be "approaching \$1,000,000 as long as the restrictions imposed on the Property's development are not unreasonable." *Declaration*, ¶8. If the City refuses to allow the property to be reasonably used, its value would not merely be adversely impacted; it would be completely eliminated, resulting in a 100% loss to the property owner. If the property cannot be reasonably developed, it would certainly remain "economically idle" forever.

The property, as it now exists, has been altered to a minor extent through the construction of a section of a concrete driveway (serving the adjacent property - 5645 E. Mercer Way), together with a private sewer line, as well as a pedestrian trail granted to Mercer Island through a Permanent Stormwater/Utility and Pedestrian Trail Easement dated March 16, 2007. The property potentially benefits from approximately 30 feet of the driveway, as this will provide access to the residence contemplated by the Application, but only if the residence is approved by the City through the issuance of a building permit. If the residence can't be built on the property, the driveway provides no benefit to it whatsoever; on the contrary, it would constitute a continuing burden on the property because it must be maintained and serviced.

The public trail, which was previously "granted" to the City for no compensation also provides no use or benefit to the property. Its existence, providing public access directly through the property, only creates a negative impact on it as a result of the public's intrusion as well as an exposure to additional liability associated with the public's access. The Applicant is unaware of the circumstances surrounding the granting of the easement for the trail, but it presumably was not conveyed voluntarily; rather, it was provided to facilitate the property's future development. Again, no development, no economic benefit to the property owner.

EXHIBIT “F”

Response to: Item 2,c

Item 2,c

The hearing examiner . . . approached the question of whether the proposal is minimally necessary for a reasonable use by looking at the character of the neighborhood, the zoning designation, and the type and character of the critical area at issue. *Goat Hill Homeowners Association, Inc. v. King County*, 686 F. Supp. 2d 1130, 1138 (2010)

“Reasonable Use.” A reasonable use exception set forth in MICC 19.07.030(B) balances the public interests against the regulation being unduly oppressive to the property owner. MICC 19.06.010.

During the course of the past four years the Applicant has exhaustively striven to reduce the nature and extent of its proposed development’s impact on the critical areas burdening the property, including carefully siting the house to both minimize and prioritize the necessary disturbance to critical areas. The following is a summary of steps that the Applicant has taken, acting in good faith, to “balance the public interests against the regulation being unduly oppressive”:

1. Although the property’s R-15 zoning supports the construction of two homes, only one is proposed.
2. The structural system for the house based on a series of pin piles, has been adopted in order to minimize site disturbance.
3. The square footage of the house has been reduced to 2,500 which, as previously indicated in the record, is 42% smaller than the average size new home on Mercer Island (4,360, based on a 2013-14 study of building permits).
4. In 2017, in response to the staff’s urgings, the house was completely re-designed (at considerable expense) to make it two stories instead of the preferred one story, both constructed over a garage. This re-design **reduced** the residence’s footprint from 2,228 sq. ft. to 1,631 sq. ft. – with a corresponding 27% reduction in the house’s environmental impacts. Although applicable zoning allows lot coverage of 13,439 sq. ft., only 1,631 sq. ft., (4.3%) of the allowed is proposed.
5. The Applicant recently completed a further re-design of the house – again completed at the specific urging of staff – to shift the house’s location an additional 15 feet (approximately) to the east in order to once again minimize the wetland disturbance resulting from the construction.

6. ***In addition***, based on specific directions provided by the staff, the Applicant has reluctantly even applied for a variance from the applicable setback requirements in order to squeeze an additional five feet of movement from the house's original location.

Every effort has been and will continue to be made to reduce site grading to the maximum extent possible. Any further reductions in the size of the proposed residence, especially considering the modifications already completed as summarized above, would unreasonably compromise the relative value and functional utility of the house, especially based on the character of the neighborhood of relatively spacious homes with multiple large deck areas and the property's zoning allowances. This conclusion is further reinforced, when balancing the protection of the environment against the burden placed on the property owner, when consideration is given to the fact that the wetland being protected is classified as a Category III with extremely limited environmental significance.

The plan under consideration has been modified multiple times over the years to reduce the development's negative impacts on the environment, impacts which will be fully mitigated at substantial expense to the Applicant. No further adjustments, especially after being subjected to review and comments over the last four years, are either reasonable or fair. Finally, it should be emphatically emphasized that the design changes and resulting variance application described in paragraphs 5 and 6 above were undertaken based on the Applicant's clear understanding that doing so would result in the City's support for the project as modified at its direction. This understanding was specifically confirmed in Rich Hill's December 18, 2017, letter to the staff which emphasized that the modifications will result in both the City's expeditious issuance of an MDNS as well as its approval of Applicant's RUE request.

EXHIBIT “G”

Response to: Item 2,d

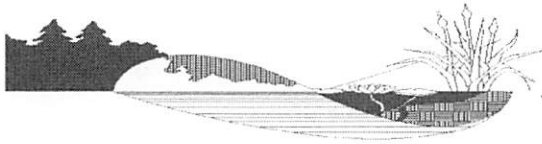
Item 2.d

Attached is a letter dated December 1, 2017, from Sewall Wetland Consulting, Inc., which once again describes the Applicant's exhaustive efforts to secure mitigation sites both offsite and outside the sub-basin. The short answer is that, after extensive research, no alternative locations have been identified as being feasible, especially after considering the Army Corp's strong preference for purchasing credits through King County's mitigation bank.

For example, attached is an email exchange in November 2017 between the Applicant and Daniel Krenz of the Corps Seattle District Regulatory. Mr. Krenz specifically advised that: "The Corps has a preference for in-lieu-fee mitigation over permittee responsible mitigation. If an applicant deviates from the hierarchy, then the burden of proof is on the applicant to show that the PRM is as good as or better than what the in-lieu-fee can provide." In addition to not being able to identify any offsite mitigation alternative which may realistically be available to study, the Applicant is certain that it could never satisfy the burden of proof established by the Corps of Engineers.

The Applicant is willing to consider mitigation of the watercourse buffer, but limited to the portion of the watercourse located onsite. However, other than clearing certain debris and non-native vegetation, no meaningful area of mitigation is available which is not already included in Applicant's mitigation plan. The Applicant has no ability to complete mitigation on any property to the south because it has no ownership or control over this property, and, especially due to the expressed concerns of the affected property owners downstream, the securing of an easement would be unrealistic to even consider. Further, the Applicant would be understandably reluctant to undertake any work which may affect a watercourse which has been the subject matter of litigation and claims over the years.

After four years of study, the proposed mitigation plan, which involves both onsite and offsite efforts, represents the only feasible plan for mitigation. The City's peer reviewer, ESA, further confirms this fact. As indicated by the Corps of Engineers, the mitigation plan proposed by the Applicant is realistically the only plan which would receive its blessing. There is no alternate mitigation plan which is remotely feasible.



Sewall Wetland Consulting, Inc.

PO Box 880
Fall City, WA 98024

Phone: 253-859-0515

December 1, 2017

Evan Maxim
Planning Director
City of Mercer Island

RE: 5637 East Mercer Way – Parcel #1924059312
City of Mercer Island, Washington

Dear Evan,

This letter is in regards to the proposed use of the King County Mitigation Reserves Program to compensate for wetland impacts on the Summers single family home project.

The City Code requires review off-site mitigation possibilities within the same sub-basin as the subject parcel if mitigation cannot be conducted on-site. Our proposed mitigation package includes onsite enhancement of the existing wetland to be impacted, as well as purchase of mitigation “credits” from the King County Mitigation reserves Program. As noted by the City peer reviewer, our mitigation meets the best available science as well as the requirements put on the project by the Corps of Engineers for the 404 permit requiring use of a mitigation bank as a first choice if available.

Prior to deciding that credit purchase from King County was the best choice to make up the functional difference between our proposed enhancement and the proposed impacts, we did look to see what, if any, mitigation opportunities existed within the sub-basin of the project.

In looking within the sub-basin it was found that there was no wetland areas which could be enhanced or created if an easement were granted, or other land was owned by the applicant. At the time we also inquired if the City had any mitigation sites available for use and we were informed that there were none. Any wetland up-slope and off-site was found to be a slope type wetland not usable for wetland creation. In addition this area is already suitably vegetated with native vegetation, therefore making enhancement of little value. Downslope there is only a small stream with no associated wetland. In addition none of this area is

owned by the applicant nor was available to be purchased by the applicant. The applicant has no further land ownership within the sub-basin except the site and there is none suitably available for mitigation.

In addition, in a November 8, 2017, email from Daniel Krenz of the US Army Corps of Engineers to Bill Summers regarding using the he states;

“The Corps has a preference for in-lieu-fee mitigation over permittee responsible mitigation. If an applicant deviates from the hierarchy, then the burden of proof is on the applicant to show that the PRM is as good as or better than what the in-lieu-fee can provide.”

In conclusion, it was found that there is no area on or off-site within the sub-basin that would be physically feasible for wetland creation or enhancement and usable as a mitigation site. The Corps preference is the use of a mitigation bank such as the King County Mitigations Reserve program. Therefore we feel this is the best and preferred method of mitigating the sites wetland impacts.

If you have any questions in regards to this report or need additional information, please feel free to contact me at (253) 859-0515 or at esewall@sewallwc.com.

Sincerely,
Sewall Wetland Consulting, Inc.



Ed Sewall
Senior Wetlands Ecologist PWS #212



Bill Summers <billsummers1841@gmail.com>

RE: [EXTERNAL] 5637 E. Mercer Way, Mercer Island, (Permit NWS-2015-0650)

11 messages

Krenz, Daniel A CIV USARMY CENWS (US) <Daniel.A.Krenz@usace.army.mil>
To: Bill Summers <bill@summersdevelopment.com>
Cc: Ed Sewall <edsewall@hotmail.com>, "Printz, Jacalen M CIV USARMY CENWS (US)" <Jacalen.M.Printz@usace.army.mil>

Wed, Nov 8, 2017 at 1:28 PM

Bill,

Your two statements in the email below concerning mitigation are correct. The Corps has a preference for in-lieu-fee mitigation over permittee responsible mitigation. If an applicant deviates from the hierarchy, then the burden of proof is on the applicant to show that the PRM is as good as or better than what the in-lieu-fee can provide.

Dan Krenz
Seattle District Regulatory
U.S. Army Corps of Engineers

-----Original Message-----

From: Bill Summers [mailto:bill@summersdevelopment.com]
Sent: Friday, October 27, 2017 3:29 PM
To: Krenz, Daniel A CIV USARMY CENWS (US) <Daniel.A.Krenz@usace.army.mil>
Cc: Ed Sewall <edsewall@hotmail.com>; Printz, Jacalen M CIV USARMY CENWS (US) <Jacalen.M.Printz@usace.army.mil>
Subject: [EXTERNAL] 5637 E. Mercer Way, Mercer Island, (Permit NWS-2015-0650)

Thanks for speaking with me yesterday regarding the above permit required in connection with the construction of a small single-family residence, having a footprint of only 1,600 square feet on the above property, which impacts approximately 2,000 sq. ft. of Category III wetlands. This permit application, which is currently inactive, had previously been assigned to Kaitlyn White.

As indicated to you, this project has been delayed due to land use issues raised by the City of Mercer Island. I believe that we finally are close to resolving these issues, which will result in the project moving forward, hopefully on an expeditious basis. Consequently, we expect to be submitting shortly to the Corps some updated information and documentation.

In the interim, we're interested in addressing some wetland-related questions raised by Mercer Island and requesting the Corps to confirm certain of our mitigation assumptions. Specifically, although both our wetland consultant (Sewall Wetland Consulting) and the "peer reviewer" engaged by the city (ESA Associates) recommended for mitigation to be accomplished through the fee-in-lie program administered by King County, Mercer Island's ordinances contemplate mitigation to preferably occur on Mercer Island in the same drainage sub-basin. Accordingly, as we discussed, we request the Corps to simply confirm that:

1. Based on the Corps' hierarchy of mitigation alternatives, the fee-in-lieu program such as offered by King County is the clearly preferred approach; and

2. If any alternative mitigation method is proposed, the applicant has the burden of proving to the Corps' satisfaction that the alternative produces results ecologically superior to the fee-in-lieu program preferred by the Corps.

Thank you for considering this request. Please advise me if you have any questions or concerns.

Bill Summers

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<http://www.avg.com>

Bill Summers <bill@summersdevelopment.com>
To: "Krenz, Daniel A CIV USARMY CENWS (US)" <Daniel.A.Krenz@usace.army.mil>

Wed, Nov 8, 2017 at 2:19 PM

Thanks, Dan, that should do it for now at least. Have you been able to determine who will be responsible for processing the permit in Kaitlyn's absence?

> On Nov 8, 2017, at 4:28 PM, Krenz, Daniel A CIV USARMY CENWS (US)
[Quoted text hidden]

Krenz, Daniel A CIV USARMY CENWS (US) <Daniel.A.Krenz@usace.army.mil>
To: Bill Summers <bill@summersdevelopment.com>

Wed, Nov 8, 2017 at 2:21 PM

This is one among many of unassigned permits. Jacalen will make the final call when necessary to assign it to someone OR process it herself in addition to her management tasks. She has 50 already in this boat. I would check back in with Jacalen when you are ready to move forward.

Dan Krenz
Seattle District Regulatory
U.S. Army Corps of Engineers