

Timothy B. Fitzgerald
4817 E. Mercer Way
Mercer Island, WA 98040
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April 23, 2018

Via Electronic Mail and Regular Mail

Sang Hou
7022 East Mercer Way
Mercer Island, WA 98040
shoumkle@gmail.com

Conrad Jacobsen
Jacobsen Photography
conradjacobsenphoto@gmail.com

Jennifer Marriott, PWS
Talasaea Consultants, Inc.
15020 Bear Creek Road Northeast
Woodinville, WA 98077
jmarriott@talasaea.com

Re: 4825 E Mercer Way, Mercer Island, WA 98040;
King County Tax Parcel # 216200-0070

Dear Mr. Hou:

I am a resident of the East Mercer Highlands neighborhood, and my neighbors have asked me to serve as a point of contact regarding the above-referenced property. It recently came to our attention that, in connection with your efforts to develop that property, you commissioned a drone to fly within a documented eagle habitat during nesting season. That conduct was, among other things, a violation of federal law. On behalf of the East Mercer Highlands Homeowners Association (“EMHHA”), I am writing to express our concern regarding this conduct, and to insist that you immediately cease and desist from any further violations.

As you know, there is a pending application to develop the above-referenced property, half of which is a designated wetland and contains a protected Eagle Tree. As part of the public commentary portion of the application process, EMHHA submitted the enclosed correspondence to the City of Mercer Island on November 20, 2017. **Ex. A.** That letter and the attachments thereto, copies of which were provided to the parties at the time they were submitted, are part of the public record. The November 20, 2017 letter enclosed seven sworn declarations by people who live in the immediate vicinity of the above-referenced property, including myself, each of whom testified under oath as to the ongoing presence of eagles in the Eagle Tree.

You subsequently commissioned Mr. Jacobsen to fly a drone at and around the Eagle Tree, apparently for the purpose of demonstrating that eagles no longer make use of the Eagle Tree. It appears that Mr. Jacobsen carried out that instruction during January of 2018, during nesting season in the State of Washington. The drone footage has been submitted to the City of

Mercer Island and is referenced in Ms. Marriott's report dated March 9, 2018, both of which are now part of the public record.

It is a violation of federal law to agitate or bother an eagle. Such violations are particularly serious when they occur during nesting season, as doing so only heightens the risk of interference with breeding, feeding, and sheltering, and also heightens the risk of nest abandonment. 50 CFR 22.3. According to guidance provided by the U.S. Fish and Wildlife Service, mere installation of a camera in the vicinity of an eagle habitat "should not be undertaken during the nesting season because of the increased probability that the eagles would be disturbed, in violation of the Eagle Act." It goes without saying that flying a drone within a known eagle habitat is all the more disruptive to eagles in the vicinity.

You elected to fly a drone at and around the Eagle Tree during nesting season, after having received substantial evidence regarding the continuing presence of eagles. That conduct was all but certain to agitate and bother any eagles in the vicinity, and also seriously threatens continued habitation of the Eagle Tree going forward. While we certainly want to give you every benefit of the doubt, it is difficult not to conclude that this activity was undertaken with reckless disregard for the potentially serious impact it could have had upon eagles in the vicinity. Your conduct simply cannot be reconciled with applicable law, and must cease immediately. Additionally, because drone activity obviously will scare away wildlife, the drone footage you obtained, and upon which Ms. Marriott relied in concluding that eagles are no longer present in the Eagle Tree, is of little to no value.

Fortunately, the foregoing conduct has not permanently driven eagles away from the Eagle Tree. As was true at the time you commissioned the drone, eagles are continuing to use the Eagle Tree during this breeding and nesting season. That continuing habitation is documented in the photographs and video files appended to the supplemental declarations recently submitted to the City by numerous members of EMHHA. For your reference, copies of those supplemental declarations and attachments are enclosed with this letter. **Ex. B.**

In her report, Ms. Marriott stated that "[t]he last verified [eagle] activity in this tree was in 2005." That simply is not correct. Had Ms. Marriott consulted me or anyone who lives in East Mercer Highlands, we would have been happy to expound upon the seven sworn declarations already in the public file relating to your pending application. Hopefully, this letter and attachments will eliminate any confusion you, Ms. Marriott, and/or Mr. Jacobsen might have regarding the continuing presence of eagles in the Eagle Tree. We respectfully request that all of you observe the law and acknowledge the pertinent facts going forward.

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Sang Hou et al.
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Should you have questions regarding any of the above, certainly feel free to contact me.

Sincerely,



Timothy B. Fitzgerald

Enclosures

cc: Nicole Gaudette, City of Mercer Island (Nicole.gaudette@mercergov.org)
U.S. Fish and Wildlife Service
Washington Department of Fish and Wildlife
George and Judy Janiewicz