



CITY OF MERCER ISLAND

9611 SE 36th Street • Mercer Island, WA 98040-3732

(206) 275-7605 • FAX (206) 275-7726

www.mercergov.org

November 16, 2018

MI Treehouse, LLC
Attn: Bill Summers
PO Box 261
Medina, WA 98039

RE: CAO15-001 and SEP15-001 – MI Treehouse Reasonable Use Exception and SEPA Determination

Dear Bill Summers,

The following chronology is intended to summarize the review undertaken between March 8, 2017 and the date of this letter.

March 8, 2017 to November 16, 2018 chronology:

- A. On March 8, 2017, the Hearing Examiner issued a decision on the proposed Reasonable Use Exception; a Notice of Decision was issued on March 13, 2017. In summary, the Hearing Examiner remanded the Reasonable Use Exception to the City for further review of environmentally critical areas and for issuance of a SEPA Determination (Conclusion 7, HE Decision).
- B. On March 20, 2017, the City requested additional information related to both the SEPA review and the geotechnical review.
- C. A response to the City's March 20, 2017 request was received from the Applicant on May 9, 2017.
- D. Following review of the revised information, the City issued a SEPA Determination of Significance on July 7, 2017.
- E. Between September 13, 2017 and May 8, 2018, the City and Applicant discussed a revised design that would allow for withdrawal of the SEPA DS and issuance of a SEPA DNS or MDNS.
- F. On May 8, 2018, the Applicant revised the proposed design and applied for a zoning variance to reduce required setbacks from a shared access easement (driveway). A Notice of Application was issued on June 4, 2018, with a 30-day public comment period.
- G. Following an initial preliminary review and feedback by the City, the Applicant further revised the May 8, 2018 design drawings.
- H. Revised materials (plans, technical documents, and an explanation document) were completed and submitted to the City on August 31, 2018 for review.

Following review of the revised materials received between March 23, 2018 and August 31, 2018 (listed at the end of this letter), the City has identified the following items that should be addressed. For ease of reference, these items are identified in two groups: review comments related to the SEPA review and

review comments related to the proposed zoning variance and reasonable use exception.

1. **SEPA Review.** The City identified three areas for discussion in the July 17, 2017 SEPA Determination of Significance: A) "Earth", B) "Water", and C) "Environmental Health."

- a. **Earth**

- i. (Item 1.a. of the DS) – Potential impacts to adjacent properties. The City has received a May 3, 2017 Geotechnical Report Addendum from GEO Group Northwest that discusses potential impacts to adjacent properties. The letter concludes that:

"... these measures will improve the stability of the proposed development and have no impacts on adjacent properties. The drainage improvements may have a small but beneficial impact on the surrounding properties."

Please revise this report to address the modified design proposed by the Applicant and confirm that the proposed site may be developed safely, without adversely impacting adjacent property. The City anticipates that the updated report will be subject to either review by the City's on-call reviewer or peer review (or both).

- ii. (Item 1.b. of the DS) – Erosion and sedimentation in the downstream corridor. The City has received a Technical Memorandum from Core Design, dated March 23, 2018, which recommends mitigation measures during construction to control on-site erosion and sedimentation. The technical memorandum also concludes: *"The proposed project is unlikely to impact siltation or flooding in the watercourse in the permanent condition."* No further analysis appears to be necessary currently.

- b. **Water**

- i. (Item 2.a. of the DS) – None of the material provided appears to address the potential cumulative impacts resulting from the failure to fully mitigate anticipated wetland impacts within the same drainage sub-basin, or on Mercer Island. **Please revise** the study to describe and identify mitigation for any potential cumulative impacts resulting from wetland loss on Mercer Island and within the subject drainage sub-basin. Please specifically evaluate the possible cumulative impacts to hydrology and habitat by establishing a precedent (please note, the proposed off-site mitigation is part of the RUE, as the MICC does not allow for off-island mitigation) for not mitigating impacts on-island.
 - ii. (Items 2.b. and 2.c. of the DS) – The City has had ESA conduct a peer review of the information provided by the applicant. ESA has identified several items that should be addressed. **Please revise** the application material to address the comments provided by ESA (attached).

- c. **Environmental Health**

(Item 3.a. of the DS) – Noise and vibration resulting from pile driving during construction. The City has received a memorandum by GEO Group Northwest, dated January 5, 2018, which briefly discusses the noise associated with installation of the pipe piles on site. The memorandum indicates that the pile driving installation will be as loud as a 1100-pound pneumatic hammer over 5 to 10 working days. The memorandum does not provide a decibel rating for the pneumatic hammer or address vibration. The American Speech Language Hearing Association (www.asha.org) indicates that a jackhammer generates 130 dBA. The memorandum does not discuss any proposed mitigation for noise or vibration, yet notes that the nuisance code limits the hours of

audible construction activity. **Please revise** or otherwise supplement this document to:
A) identify the anticipated noise level and duration during construction; B) identify the anticipated presence, or lack thereof, of vibration on and off-site; and C) evaluate options for mitigating impacts related to noise and/or vibration.

2. **Reasonable Use Exception:**

On May 9, 2017, the Applicant provided a cover letter, intended to address the criteria for a Reasonable Use Exception; this letter was supplemented by a March 8, 2018 letter. The Applicant cover letter was generated prior to any modification of the design in response to the City's SEPA review. The City has indicated that it will consider an alternative design to address the SEPA Determination of Significance, and presuming the SEPA review may be successfully resolved, has the following additional review comments on the proposed Reasonable Use Exception.

- a. **19.07.030(B)(3)(a):** *The application of these regulations deny any reasonable use of the property. The hearing examiner will consider the amount and percentage of lost economic value to the property owner.*
- b. **19.07.030(B)(3)(b):** *No other reasonable use of the property has less impact on critical areas. The hearing examiner may consider alternative reasonable uses in considering the application.*

The Applicant's May 7, 2017 letter indicates that neither a public park nor private recreational area are feasible on the subject site. The Applicant's May 7, 2017 and March 8, 2018 letters do not address whether reasonable use has been previously "acquired" through the private sewer improvements, the existing driveway, and the public trail. The project file also contains the exhibits submitted during the first public hearing, related to the value of the property and the percentage of lost economic value. **Please revise** the application material to fully address these criteria.

- c. **19.07.030(B)(3)(c):** *Any alteration to critical areas is the minimum necessary to allow for reasonable use of the property.* The Applicant's May 7, 2017 letter indicates that the Applicant is not interested in building the smallest house possible. The March 8, 2018 letter provides additional detail evaluating a mitigation sequencing approach. Neither letter articulates fully how the proposed improvements minimize impacts to multiple critical areas (i.e., the wetland, wetland buffer, and watercourse buffer). For example:
 - Could the house and/or deck footprint be reduced in area to minimize direct wetland disturbance?
 - Is site grading limited to the area immediately adjacent to the house, and if not, would doing so minimize impacts further?

Please revise the application material to address how the proposed site improvements minimize impacts to critical areas.

- d. **19.07.030(B)(3)(d):** *Impacts to critical areas are mitigated to the greatest extent reasonably feasible consistent with best available science.* The Applicant's May 7, 2017 letter refers to an earlier, February 12, 2017 letter by Ed Sewall regarding the opportunity to mitigate wetland, wetland buffer, and watercourse buffer impacts off-site but within the same sub-basin. The February 12, 2017 letter states in pertinent part:

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.

Please revise the application material to: A) evaluate the possibility of watercourse buffer mitigation in the same sub-basin; B) describe the extent of the sub-basin 45b evaluated by the Applicant, including possible mitigation in the stream corridor south of the Applicant's site; and C) describe the Applicant's efforts to secure off-site, on-Island, locations for mitigation, consistent with the requirements of the Mercer Island City Code.

Please coordinate with the City's Permit Center to submit the above-requested, supplemental information and analyses. Based upon a review of the above items, the City anticipates the following additional items will be required for a complete response to this request for information:

- A. An updated geotechnical report;
- B. A revised wetland and watercourse study;
- C. An updated narrative addressing the Reasonable Use Exception criteria in MICC 19.07.030(B)(3)(a) – (f).

Please provide the above items by January 15, 2019 (**60 days**). The City may authorize additional time for submittal of the above information based upon a written request for a deadline extension, accompanied by a schedule for resubmittal.

The City's processing of the reasonable use exception, zoning variance, and SEPA determination is on hold until additional information is received. Please do not hesitate to contact me at 206-275-7732 or via e-mail at evan.maxim@mercergov.org, if you have any questions.

Sincerely,



Evan Maxim,
Director of Community Planning & Development
City of Mercer Island

evan.maxim@mercergov.org

(206) 275-7732

Cc: Rich Hill, VIA EMAIL ONLY
Ron Healey, VIA EMAIL ONLY

Mr. Bill Summers of MI Treehouse, LLC

November 16, 2018

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Revised documents reviewed for this letter:

- I. *Downstream Drainage Analysis – Mercer Island Treehouse – Revised Level 1 Downstream Analysis* (Triad, October 5, 2015);
- II. *Geotechnical Report Addendum* (GEO Group Northwest, May 3, 2017)
- III. *MI Treehouse LLC letter re: Reasonable Use Exception Application* (MI Treehouse, LLC, May 5, 2017)
- IV. *Revised Critical Areas Report* (Sewall Wetland Consulting, Inc., March 8, 2018)
- V. *Technical Memorandum – RUE CAO 15-001 (MI Treehouse Project) Supplemental Evaluation* (Core Design, March 23, 2018);
- VI. *Pipe Pile Installation Time and Noise* (Letter from William Chang, January 5, 2018 GEO Group Northwest, Inc)
- VII. *Responses to Criteria for Approval of Zoning Request* (Exhibit D to Letter from G. Richard Hill, April 2, 2018)
- VIII. *Critical Areas Report – 5637 Mercer Way—Revised Critical Areas Report* (Sewall Wetland Consulting, March 8, 2018);
- IX. *Update Memorandum – 5637 East Mercer Way – Parcel #1924059312 City of Mercer Island, Washington and Associated Design Sheets* (Sewall Wetland Consulting, August 23, 2018); and
- X. *Updated Site Plans – MI Treehouse, LLC, 5637 East Mercer Way, Mercer Island – 2015 and 2018 Site Plan Wetland & Buffer Disturbance* (The Healey Alliance AZ, August 9, 2018).