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Via First Class Mail  
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Mr. Evan Maxim  
Planning Manager  
City of Mercer Island, Development Services  
9611 SE 36<sup>th</sup> St.  
Mercer Island, WA 98040-3732

July 11, 2017

Re: **SEPA Comment:** CA-15-001 and SEP15-001 - MI Treehouse RUE and SEPA  
Determination

Dear Mr. Maxim:

We represent Dr. John Stivelman who owns and resides at 5645 E. Mercer Way, Mercer Island, Washington, which is located directly south of the above-mentioned proposed project. Dr. Stivelman and I participated in the public hearing on the applicant's proposed Reasonable Use Exception ("RUE") on February 13, 2017.

This letter is submitted on behalf of Dr. Stivelman to provide comments in regards to the applicant's SEPA checklist and environment analysis pertaining to the City's consideration of a SEPA threshold determination in regards to the applicant's proposed RUE.

**Hearing Examiner Decision (March 8, 2017) – Remand for SEPA Determination**

Finding of Fact 10 of the Hearing Examiner Decision states, in part:

... testimony at the hearing indicated that geotechnical analysis performed for the project to date has only included an analysis of potential adverse impact of the project relative to steep slopes and landslide hazard areas up to the property line for the subject property, and did not include an analysis of potential adverse impact on adjacent properties.

Accordingly, the Hearing Examiner Decision, Conclusion 5 stated that the "geotechnical report is not sufficient to determine if the project meets the reasonable use exception criteria to the degree it fails to provide an analysis of 'potential adverse impacts to adjacent and down-current properties'. MICC 19.07.060 and MICC 19.16.010."

In this respect, no such environmental impact analysis has been submitted by the applicant to date. Rather, the applicant submitted a letter, dated May 3, 2017, by its geotechnical engineer (Geo Northwest, Inc.) purporting to satisfy this condition. However, this letter contains nothing more than a description and historical background of the site and the location of the proposed development, none of which includes the required impact analysis

required by the Hearing Examiner. Rather, the letter merely concludes without supporting analysis that “all of these measures will improve the stability of the proposed development and have no adverse impacts on adjacent properties.”

This is clearly insufficient with SEPA requirements and non-compliant with the Hearing Examiner Decision in the following respects:

- According to Geo Northwest’s prior report, the site is mapped as a landslide area with geologic hazard areas mapped as present at the site, including erosion, steep slope, potential slide, and seismic hazards with soils that are commonly susceptible to instability such as landslides or earthflows. But, the soil boring analysis has been confined to the middle portion of the site, not in the areas of steep slopes on the site or an adjacent property. This is of particular concern to Dr. Stivelman since his house sits atop a steep slope that is directly adjacent to the proposed development.
- This also raises concern regarding other residences located on top of other steep slopes adjacent to the site. The lack of geotechnical analysis precludes a reasonable assessment of impacts as require by SEPA.
- The applicant’s revised plan reflects the removal of 5 significant trees within the steep slope below Dr. Stivelman’s house. As testified at the RUE hearing by Tina Cohen, certified arborist, the removal of these trees will have an adverse detrimental impact to the integrity of the slope. The applicant’s geotechnical analysis fails to address this in any respect. Nor does it appear any mitigation is required in regards to replacement trees or other vegetation, which will continue the natural sound and visual buffer that currently exists. The applicant’s revised plan further removes the retaining wall at the bottom of the steep slope below Dr. Stivelman’s house, which would have supported the slope. As such, the applicant has removed the structure which could have helped in stabilizing the slope with no geotechnical explanation.

#### **Tree Removal Information/Impact**

The applicant’s SEPA checklist states that a “small amount” of “insignificant native vegetation” will be cleared. This is inaccurate. The applicant’s site plan reflects 13 significant trees will be removed and only shows 11 of the 13 that will be removed. The applicant should identify the other 2 trees (identifying the height and diameter) sought to be removed and what measure will be taken to avoid erosion and protect the stability of the area of removal for all 13 trees.

#### **Environmental Health – Noise/Environmental Elements**

In response to the query relating to what kinds of noise would be created by or associated with the project on a short-term or long-term basis, the applicant’s SEPA checklist states: “Normal noises associated with single-family construction.” However, repetitive pile-driving will be required to install the structural pile piles to support the house. This is

considerably more noise impact than typical single family home construction and should be adequately addressed and mitigated by the applicant.

In this regard, Dr. Stivelman's house, to a large degree, is constructed of glass, with large glass panes and articulating glass corners comprising most of the eastern-southeastern exposure of the front of the house. The repetitive pile-driving will cause significant vibration/earth tremor that could be sufficient to destabilize, disrupt, or break such structures, or result in the misalignment of their articulating glass surfaces. Further, this vibration could detrimentally impact the steep slope below Dr. Stivelman's house which abuts the proposed development. This should be adequately addressed by the applicant with appropriate mitigating conditions imposed.

### **Aesthetics**

In response to the query relating to what views in the immediate vicinity would be altered or obstructed, the applicant's SEPA checklist states: "None." However, the impact of a two story residence supported by structural piles on the view and privacy of Dr. Stivelman's property directly to its south has not been addressed. This should be adequately addressed by the applicant, including a condition regarding height limitations, with additional appropriate mitigating conditions imposed.

### **Impacts of Smaller Structure Not Addressed**

The applicant has not provided any alternative options for reconfiguration or down-sizing the proposed development that would decrease the impacts on critical area buffers, filling of wetland/buffers, or minimizing tree removal. Such analysis is critical for proper analysis and the mitigation condition that should be imposed pursuant to SEPA.

### **No Downstream Analysis**

As reflected by the comment letter of Robert and Alisa London in regards to the RUE application (Ex. 6k), which is incorporated by reference herein, there are significant adverse impacts to the downstream properties causing flooding, increased water flow, and erosion. The applicant has not provided a downstream analysis that properly addresses this in light of the proposed development. This assessment is critical prior to any SEPA threshold determination.

The proposed development will create 3,094 feet of new impervious surface. There appears to be a storm detention vault to capture storm water run-off that outfalls into the same creek, with the problems referenced above. However, no analysis has been performed in regards to the volume that will flow into the creek, how the storm detention pond will meter the outflow both in terms of velocity of volume, or other impact to the creek. Such analysis is critical to assessment of adverse impacts and should be required.

Further, an analysis is required to ensure compliance with the Drainage Easement (Ex. 14 to the RUE proceedings), which is incorporated by reference herein, that limits water that flows into the creek described above to be limited to water flows as of May 31, 1984, and limited siltation contained in said water flows to 50 cubic yards per year. This calculation

Mr. Evan Maxim  
July 11, 2017  
Page 4

must be done to ensure the water flows from the proposed development does not exceed the allowances under the easement.

The City cannot grant any approval or SEPA threshold determination without such assessment since it holds and controls the easement. As such, failure to do so would place the City in material breach of its obligations under the easement. The City is therefore precluded from granting any approvals that would effectively cause it to be in breach of the easement.

**Access to Dr. Stivelman's Property**

Dr. Stivelman's driveway access would be detrimentally impacted if the proposed development blocks this access during construction. His driveway is long and steep and it is not feasible for him to park on East Mercer Way and walk up the driveway. He is elderly, uses a cane, and lack of access would present a significant hardship for him. Accordingly, a condition should be imposed ensuring that Dr. Stivelman's access remains unimpeded during construction, if approved.

Respectfully,



Darrell S. Mitsunaga

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*01-1923-1 Ltr to Evan Maxim - SEPA comment 07.11.17F*

**DECLARATION OF SERVICE**

I, Benita K. Lamp, am a citizen of the United States, resident of the State of Washington, and declare under the penalty of perjury under the laws of the State of Washington, that on this date, I placed correspondence dated July 11, 2017 in an envelope and sent U.S. First Class Mail, postage prepaid, and email to:

Evan Maxim  
Planning Manager  
City of Mercer Island, Development Services  
Mercer Island, WA 98040-3732  
Email: [evan.maxim@mercergov.org](mailto:evan.maxim@mercergov.org)

Dated this 11<sup>th</sup> day of July, 2017, in Bellevue, Washington.

  
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BENITA K. LAMP



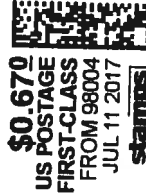
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