

**MI TREEHOUSE, LLC**  
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May 5, 2017

Mr. Evan Maxim  
City of Mercer Island Development Services  
9611 SE 36<sup>th</sup> Street  
Mercer Island, WA 98040

**RE: REASONABLE USE EXCEPTION APPLICATION  
CAO15-001 AND SEPA 15-001**

Dear Evan:

We are submitting for your consideration the additional information and documentation requested in your letter dated March 20, 2017, in connection with MI Treehouse, LLC's Reasonable Use Exception Application.

*In addition*, we are taking this opportunity to respond to certain issues or questions raised in the staff report dated February 13, 2017, which was thereafter submitted to the Hearing Examiner. We remain optimistic that this information, together with the testimony and documents otherwise submitted at the hearing, will provide the basis for the staff to recommend the approval of the Application. Alternatively, we hope it will reduce the staff's areas of objection to the Application and request the staff report to be updated and modified accordingly.

**SEPA Checklist**

As requested, attached is a revised SEPA Checklist dated as of May 5, 2017. Please advise when we can pick up the notification sign which presumably must again be posted on the property.

**Geotechnical**

As you indicated, our proposal does *not* contemplate any modifications or deviations from Chapter 19.07's standards applicable to geologic hazardous areas.

We believe that the reports previously submitted by GEO Group Northwest implicitly consider the proposal's potential impact on adjacent and down-stream properties. However, attached is a letter dated May 3, 2017, from GEO Group which

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specifically responds to Conclusion 5 of the Hearing Examiner's decision relating to the lack of any off-site impacts.

### **Steep Slopes Critical Area Determination**

As we've consistently indicated, the house has been carefully and strategically located on the property's most level area, and as far removed as possible from the property's watercourses (and associated buffers). Accordingly, we believed that none of the area proposed to be altered by the construction qualifies as a "steep slope", as defined under MICC 19.16.010. We further confirmed this fact with the project's surveyor, CHS Engineers, LLC, which actually updated its field measurements for this portion of the property. (Attached is a site plan prepared by Ron Healey based on CHS' survey). Accordingly, no additional critical areas determination is required.

### **Reasonable Use Exception Criteria Analysis**

The following supplements the Reasonable Use Exception Criteria Analysis we submitted on October 18, 2016:

**1. Wetland Drainage Subbasin.** Your staff report indicated that our wetland studies were deficient because they failed to explain why mitigation was not being considered in the same drainage sub-basin as the wetland is located. As explained to the Hearing Examiner, our wetland consultant, Sewall Wetland Consulting, had determined that same-basin mitigation was simply not feasible. A copy of Sewall's letter dated February 12, 2017, is attached for your convenient reference relative to this issue.

**2. Non-residential Uses.** Your staff report also suggested that the applicant failed to consider less impactful uses for the property than single-family, specifically referencing a public park or private recreational areas as potential alternatives. Although we carefully considered *all* uses for the property other than single-family – which, of course, is the only use of any of the properties in the vicinity – we frankly never considered either a public park or private recreational area because we believed that they were clearly infeasible and realistically merited no consideration. Assuming that you really think they deserve some attention, consider the following responses:

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A "**public park**" connotes a property reasonably available for the accommodation of the public which has features of interest for their use and enjoyment. The majority of the property involved in this application is clearly steep – i.e. much in excess of 40% and some approaching 70% - except for the small portion on which the house is proposed to be located. The property's topography seriously limits the public's interest in utilizing the property for any purpose; realistically, it would be inherently dangerous for public access to be allowed or encouraged. Further, because of the wetlands and watercourses located on the property, its environmental sensitivity would obviously be compromised by allowing (or encouraging) people to traipse through it as a public park. Finally, the property has no facilities commonly required for a park open to the public, such as parking, restrooms and functioning open spaces. Although the public may enjoy a stroll through the property, such limited access is already provided through the existing Parkland trail system which crosses over the property.

A "**private recreational area**" is even less fathomable for the property. In addition to suffering from all the limitations applicable to a public park, it is inconceivable that any of the four adjacent property owners would have an interest in converting the property to a bucolic area for the active recreation of his/her family, including the addition of improvements like a tennis court, swimming pool, playground or golf course; it's also hard to visualize what the governmental application process would be like to permit such use.

**3. Location/Size of Proposed House.** You apparently believe that, regardless of lot size or relative impact on the environment, the Reasonable Use Exception criteria requires us to build the smallest home possible in order to be approved. We disagree with this restrictive approach because reasonable use does **not** mean the smallest house which can physically be built on the property.

Regardless of the house's size, I believe that Ron Healey, the project architect, explained to you the careful balancing process he completed in locating the proposed house on the property – which also is in the same general location where the prior owner (MacDonald) also planned to build a much larger house. Considering the relative importance of the watercourse on the property, the steep slopes we're determined to avoid and the topography of the property, we remain confident that this general location, regardless of how big or small the house happens to be, represents the most ideal and less impactful place for the house.

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Contrary to the comment in your staff report, we considered but rejected moving the house's footprint to the east and/or south. An adjustment to the south was quickly dismissed because it would require further cutting into the bank of the slope, which we were attempting to minimize as much as possible. More problematically, any movement to the south would result in the alteration of a "steep slope" – i.e. in excess of 40% - which would have required an additional critical areas determination, as to which we are committed to avoiding the additional environmental impact.

We also seriously evaluated the feasibility of moving the house further to the east, primarily in order to shorten the length of the driveway. This cost-saving modification was dismissed for the following reasons: (i) it had the effect of moving the house closer to the stream, resulting in a further reduction of the watercourse buffer; (ii) it would significantly increase the cut into the hillside required to set the grade for the garage floor; and (iii) it would have resulted in the elimination of the small "turn around" outside the garage which we believed was essential for vehicular movement and safety. As a result, we easily concluded that these design considerations clearly outweighed any reduction in the impacted area, which would have been insignificant in any event.

### **Requested Corrections in Staff Report's Calculations**

In reviewing the staff report, we uncovered a number of erroneous calculations, which have been verified with the project's architect and wetland consultant. The following summarizes the discrepancies:

	<b><u>Applicant</u></b>	<b><u>Staff</u></b>	<b><u>Difference</u></b>
Site Disturbance	6,100	6,318	218
Impervious Surfaces	4,550	5,332	782
Lot Coverage	12.1%	14.2%	2.1%
Wetland & Buffer Disturbance	6,100	6,200	100

In addition, your report (p.3) erroneously indicates that ***an additional*** 3,800 sq. ft. of wetland and buffer will be temporarily disturbed during construction. The above calculations for "site disturbance" represents the total extent of work on the property; nothing further will be impacted during construction. Finally, we request you to clarify that as to the disturbance affecting the wetland (6,100 sq. ft.) only 2,000 sq. ft. is in the wetland itself and the remainder is in the less significant buffer area.

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We believe that the above satisfactorily responds to all outstanding issues.  
Please advise us as soon as possible, of course, if anything is missing or needs to be  
addressed further.

Sincerely yours,



William C. Summers

cc: Ron Healey  
Rich Hill