



**CITY OF MERCER ISLAND
REASONABLE USE EXCEPTION
STAFF REPORT & RECOMMENDATION**

**Agenda Item: 1
February 13, 2017**

Project Number:	CAO15-001
Description:	The applicant is proposing to locate a single family residence in a Category III wetland and its associated buffer, and in a Type 2 watercourse buffer. The subject lot is significantly encumbered by critical areas and their associated buffers. The proposed residence will result in approximately 5,332 square feet of impervious surface, resulting in a lot coverage of approximately 14.2%. The total disturbance proposed to critical areas is approximately 6,318 square feet.
Applicant:	Bill Summers for MI Treehouse, LLC
Address:	5637 East Mercer Way, Mercer Island WA 98040; Identified by King County Assessor tax parcel number 1924059312
Zoning District:	R-15, Single Family Residential (minimum lot area of 15,000 square feet)
Staff Contact:	Evan Maxim, Planning Manager
Hearing Date:	February 13, 2017
Staff Recommendation:	Denial of the proposed reasonable use exception
Decision Authority:	Hearing Examiner
Exhibits:	<ol style="list-style-type: none">1. Staff Report2. Development Application, received on January 16, 20153. Plan Set<ol style="list-style-type: none">a. Boundary / Topographic Survey by CHS, dated January 14, 2014b. Site Plan by Healey-Jorgensen Architects, received on October 18, 2016c. Foundation Plan by Healey-Jorgensen Architects, received on October 18, 2016d. Main Floor Plan by Healey-Jorgensen Architects, received on October 18, 2016e. Upper Floor Plan by Healey-Jorgensen Architects, received on October 18, 20164. Public Notice of Application dated April 13, 20155. Public Re-Notice of Application dated May 4, 20156. Public comment:<ol style="list-style-type: none">a. Ahalt, dated April 27, 2015b. Anderson, dated April 27, 2015c. Bell, dated May 15, 2015d. Brotherton, dated April 27, 2015e. Brown, dated April 27, 2015f. Department of Ecology, dated May 18, 2015g. Duchaine, dated April 27, 2015h. Graham, dated April 22, 2015i. Jack, dated April 22, 2015

- j. Kohen, dated April 20, 2015
 - k. London, dated April 19, 2015
 - l. Neighborhood Comment (multi-signature), dated April 27, 2015
 - m. Panelli, dated April 28, 2015
 - n. Samms email, dated April 24, 015
 - o. Samms letter, dated April 27, 2015
 - p. Stivelman, dated May 5, 2015
 - q. Weber, dated April 27, 2015
 - r. Weber, dated May 18, 2015
7. Notice of Public Hearing dated January 30, 2017
 8. Original Criteria Analysis document, undated
 9. Revised Criteria Analysis document, received October 18, 2016
 10. Geotechnical Report by GeoGroup Northwest
 - a. March 16, 2015
 - b. July 30, 2015
 - c. October 28, 2015
 - d. February 4, 2016
 - e. April 27, 2016 (attached to June 10, 2016 letter)
 11. Perrone Consulting, Geotechnical Peer Review
 - a. June 12, 2015
 - b. September 3, 2015
 - c. November 18, 2015
 - d. March 4, 2016
 - e. May 3, 2016
 12. Sewall Wetland Consulting
 - a. March 5, 2015
 - b. October 21, 2015
 - c. December 11, 2015
 13. ESA, Wetland Peer Review
 - a. July 29, 2015
 - b. January 11, 2016
 14. 1998 Drainage Easement and Settlement Agreement
 15. Statutory Warranty Deed, dated September 29, 2014
 16. Email from Bill Summers to Evan Maxim, dated July 8, 2016
 17. Permanent Stormwater/Utility and Pedestrian Trail Easement, dated April 25, 2007
 18. Excerpted Land Use Materials – VAR04-008 and CAO07-002
 - a. Development Application, dated May 13, 2004
 - b. Project Description, dated May 13, 2004
 - c. Site Plan, revised March 31, 2004
 - d. Withdrawal letter, dated June 8, 2010

I. SUMMARY & FINDINGS OF FACT

A. Description of Property

The subject property is located at 5637 East Mercer Way; King County Assessor's Parcel Number 1924059312 and is zoned R-15 (Single Family Residential with a minimum lot size of 15,000 square feet). The front yard is on the

east property line and requires a 20 foot depth. The rear yard is along the west property line and requires a 25 foot depth. Required side yard setbacks from the north and south property lines are 5 feet minimum with a total of 15 feet.

The lot size is approximately 37,554 square feet and is currently improved with driveway access serving an adjacent property to the south, a public trail along the north side of the property, and a private sewer.

The entire subject property is constrained by wetland area, watercourses, geohazard areas, and buffers associated with the wetland and watercourses.

The property is sloped from the west property line descending to the east property line, forming a depression that drains to two existing streams and a wetland area. Slopes on the site range from 30% to 70%, with the steepest slope areas in the southeast corner of the property. The proposed area of site disturbance, including the proposed access and house, will affect the slopes on the south side of the subject property. The entire site is located within mapped landslide, seismic, and erosion hazard areas; the southeastern corner of the property and the central northern edge of the property is constrained by steep slopes in excess of 40% gradient.

There are two Type 2 watercourses on the subject site flowing from west to east. The northern watercourse extends upstream from the subject site into the Parkwood Ridge Open Space area. The southern watercourse is fed from an onsite wetland area. Both watercourses flow into each other at the east end of the property and continue under East Mercer Way.

Approximately half of the subject site is constrained by a Category III wetland area. The wetland extends from the west property line to the east property line and constrains all but the steepest slopes on the south side of the property, and the area north of the existing public trail.

The entire site is covered by trees, and is vegetated with a mix of evergreen and deciduous trees, with an understory of shrubs and groundcovers, including ferns, ivy, and some blackberries.

The subject property is bounded by existing single family homes to the south, southeast, and west. The east property line fronts East Mercer Way. Lots to the east of East Mercer Way are also developed with existing single family homes. Adjoining lots developed with single family homes range in area from approximately 19,000 square feet to 88,000 square feet. The subject property is bounded on the north by the Parkwood Ridge Open Space (approximately 155,000 square feet in area).

B. Description of Proposed Development

The applicant has proposed to construct a new single family home with a building footprint of approximately 1,631 square feet. The proposed single family home will be accessed via a new driveway, covering approximately 1,463 square feet. The proposed driveway includes two uncovered parking stalls on the south side of the driveway.

The proposed house is located approximately 95 feet west of the east property line and approximately 140 feet west of the west edge of the street improvement (asphalt) within the public right-of-way for East Mercer Way. The proposed house is located approximately 65 feet of the westernmost edge of the existing driveway that provides access to the adjoining lot to the south. The proposed house is approximately 45 feet north of the south property line of the subject site.

Construction of the proposed driveway will require the installation of a retaining wall along the north side of the driveway with a maximum height of 5 feet. Construction of the proposed house and driveway requires additional staging area, generally 5-10 feet from the perimeter of improvements.

The proposed single family home, walkway, and associated driveway improvements will result in the permanent fill of approximately 2,000 square feet. Review of the wetland report (Exhibit 12b., page 3) provided by the applicant, indicates that approximately 6,200 square feet of wetland and wetland buffer area will be disturbed. An additional approximately 3,800 square feet wetland and stream buffer will be disturbed during construction.

The applicant's application (Exhibit 8) describes the basis for the requested reasonable use exception to authorize the proposed single family home and associated improvements. Following review with the City and resulting modifications to the proposed design and site layout, the applicant completed a revised criterion compliance document (Exhibit 9).

C. Procedural History of Application

On January 16, 2015, the applicant submitted a reasonable use exception application, which was processed pursuant to MICC 19.15.020. Following the submittal of additional information by the applicant, and pursuant to MICC 19.15.020(C), the application was deemed complete on March 30, 2015.

Pursuant to MICC 19.15.010(D), a Public Notice of Application (Exhibit 4) was mailed to all property owners within 300 feet of the subject property, posted on the subject property, and published in the City's Weekly Permit Information Bulletin on April 13, 2015. Pursuant to MICC 19.15.020(D)(2)(g), a 14-day public comment period was provided from April 13, 2015 through 5:00 PM on April 27, 2015.

To correct a procedural error in posting the site an additional Public Re-Notice of Application (Exhibit 5) was mailed to all property owners within 300 feet of the subject property, posted on the subject property, and published in the City's Weekly Permit Information Bulletin on May 4, 2015. Pursuant to MICC 19.15.020(D)(2)(g), a 14-day public comment period was provided from May 4, 2015 through 5:00 PM on May 18, 2015.

Eighteen public comments (Exhibits 6.a. through 6.r.) were received; some of the public comments contained multiple signatures. Three public comment (Exhibit 6.d., 6.e., 6.m.) supported the proposed development. The remaining public comments generally expressed the following:

- a. A desire to review the application in light of the full site history;
- b. Concerns about the amount of time provided for public comment;
- c. The basis for approving a reasonable use exception;
- d. Possible destabilization of the steep hillside resulting from this project;
- e. Concerns about the thoroughness of the geotechnical review;
- f. Anticipated increased erosion and sedimentation in the watercourse impacting downstream property owners;
- g. The owner's reasonable expectations for development of the subject property, given the purchase price (\$32,094.00), and the applicant's prior knowledge of withdrawn zoning variance and reasonable use exception applications;
- h. Concerns over the applicant's compliance with MICC 19.07.030(B) that "balances the public interests against the regulation being unduly oppressive to the property owner";
- i. Approval of the proposed reasonable use exception would constitute a violation of a Settlement Agreement (Exhibit 14) by resulting in an increase in water entering the onsite watercourse; and,
- j. Opposition to the issuance of a Determination of Non-Significance (DNS) following SEPA review.

One agency comment (Exhibit 6.F.) was received from the Department of Ecology. The Department of Ecology notes that the filling of a regulated wetland requires an Army Corps of Engineers permit and may require approval by the Department of Ecology.

Pursuant to MICC 19.15.020(E)(2), a Public Notice of Open Record Hearing (Exhibit 7) was mailed to all parties of record and to property owners within 300 feet of the subject property, posted on the subject property, and published in the City's Weekly Permit Information Bulletin on January 30, 2017.

D. SEPA Review

The reasonable use exception, if approved, is the first action in a series of actions that, if approved, would result in construction on lands partly covered by water (ref. Washington Administrative Code (WAC) 197-11-305). Consequently the proposed project action resulting from an approval of the reasonable use exception would not be exempt from review under the State Environmental Policy Act (SEPA) according to WAC 197-11-800(6)(a)(i).

The city has not issued a SEPA determination for the proposed reasonable use exception because the City has recommended that the Hearing Examiner deny the proposed reasonable use exception. If the Hearing Examiner determines that the reasonable use exception should be denied consistent with the City's recommendation, this decision would not constitute an "action" pursuant to WAC 197-11-704.

If the Hearing Examiner determines that the city erred in its recommendation, the City recommends that the Hearing Examiner remand the review back to the City (as noted below) with direction to complete the SEPA review along with any other directions relative to the reasonable use exception.

E. Past Permit Activity

Several of the public comments and the applicant's comments refer to past land use reviews on the subject site. While these land use applications are not before the Hearing Examiner in the current land use action, they do provide a context for evaluating the applicant's business expectations in acquiring the subject site.

In particular, the prior property owner applied for a zoning variance in May 2004 to construct a new single family home on the subject site (Exhibits 18.a. and 18.b.). At the time of application, the City had not updated its critical area regulations and created a reasonable use exception process. Following the adoption of critical area regulations, the then-applicant revised the application to apply for a reasonable use exception. The then-proposed house and improvements were larger in area than the current proposal (Exhibit 18.c.). It also appears that the critical area information regarding the site reflected a smaller wetland area and a single stream.

In June of 2010, the then-applicant contacted the City and withdrew all of the land use applications under review (Exhibit 18.d.).

These city's files regarding these applications and the review are voluminous (200+ pages) and publicly available through the City's website interface. As noted below, the applicant has indicated that the applicant reviewed this materials prior to acquisition of the site and applying for this reasonable use exception. One of the public comments (Exhibit 6.d.) appears to be from a prior owner of the subject site.

F. Decision Authority

Pursuant to 19.15.010(E), the decision authority for reasonable use exceptions is the Hearing Examiner. An open record public hearing has been scheduled with the Hearing Examiner for October 24, 2016 at 5:00 PM in the Mercer Island Community and Event Center, located at 8236 SE 24th Street, Mercer Island, WA.

II. CRITERIA FOR REVIEW

MICC 19.07.020 General provisions.

- A. Any alteration to a critical area or buffer shall meet the requirements of chapter 19.07 MICC, unless an allowed alteration or reasonable use exception applies pursuant to MICC 19.07.030.

MICC 19.07.030 Allowed alterations and reasonable use exception.

- B. If the application of regulations contained within chapter 19.07 MICC would deny reasonable use of a subject property, a property owner may apply to the hearing examiner for a reasonable use exception subject to the criteria contained within MICC 19.07.030(B)(3). Specifically, these criteria are:

- 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. 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;*
- c. Any alteration to critical areas is the minimum necessary to allow for reasonable use of the property;*
- d. Impacts to critical areas are mitigated to the greatest extent reasonably feasible consistent with best available science;*
- e. The proposal does not pose an unreasonable threat to the public health, safety, or welfare; and*

f. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant after the effective date of this chapter.

MICC 19.07.040 Review and construction requirements.

C. Variances are not available to reduce any numeric requirement of this chapter as set forth in MICC 19.07.040(D).

MICC 19.07.060 Geologic hazard areas.

D. An applicant may propose alterations to geologic hazard areas pursuant to the provisions of MICC 19.07.060(D)(1). Based upon a review of the application, plan set, and geotechnical reports, it does not appear that the applicant has proposed a reasonable use exception to the standards established in MICC 19.07.060.

However the City has engaged in a geotechnical review with the applicant to ensure that the proposed single family home location resulting from the proposed reasonable use exception review for watercourse and wetland impacts, will not result in a location that is structurally or geologically unsafe to construct a home. Pursuant to MICC 19.15.010 and 19.16.010, a critical areas determination related to alterations of steep slopes may be required prior to construction of the single family home as a subsequent land use review and action.

MICC 19.07.070 Watercourses.

E. Type 2 watercourses require a buffer of 50 feet. The proposed development will occur within approximately 5 feet from the southern watercourse, and approximately 45 feet from the northern watercourse. Watercourse buffers for type 2 watercourses may be averaged to a minimum of 25 feet or may be reduced to a minimum of 25 feet, subject to mitigation resulting in no net loss of watercourse and buffer functions.

The applicant has proposed a watercourse buffer of less than 25 feet, which requires the approval of a reasonable use exception.

MICC 19.07.080 Wetlands.

F. Category III wetlands require a buffer of 50 feet. The proposed development will occur up to, and within, the wetland area, eliminating the wetland buffer and directly impacting the wetland. Wetland buffers for category III wetlands may be averaged to a minimum of 25 feet or may be reduced to a minimum of 25 feet, subject to mitigation resulting in no net loss of wetland and buffer functions.

Category III wetlands of less than one acre may be altered if the applicant demonstrate that the wetland will be restored, enhanced, or replaced with a wetland area of equivalent or greater function. If an on-site solution does not exist to restore, enhance, or replace a wetland in its existing condition, the City may authorize an off-site mitigation location within the same sub-basin.

The applicant has proposed to fill approximately 2,000 square feet of wetland area and approximately 3,800 square of wetland buffer area. The applicant has not demonstrated that proposed on-site mitigation will result in no net loss of on-site wetland and buffer functions. The proposed alterations to the wetland and wetland buffer, and the failure to comply with wetland mitigation requirements require the approval of a reasonable use exception.

MICC 19.16.010 Reasonable Use.

G. In evaluating reasonable use, the decision maker must balance the public's interests against the owners interests by considering the nature of the harm the regulation is intended to prevent, the availability of alternative measures, and the reasonable use of the property remaining and the economic loss borne by the property owner.

III. CONCLUSIONS OF LAW

Based on the above Findings of Fact and Criteria for Review the following Conclusions of Law have been made:

- A. The project file does not specify the proposed scope of the reasonable use exception review. Establishing a scope is necessary to develop analysis and conclusion in preparing a recommendation to the Hearing Examiner. Consequently, based upon the forgoing review of the applicable critical area standards, the City concludes that the scope of the review of the proposed reasonable use exception is related to:
 - 1. Watercourse impacts that are not in compliance with MICC 19.07.070;
 - 2. Wetland impacts that are not in compliance with MICC 19.07.080; and,
 - 3. Proposed mitigation that is not in compliance with MICC 19.07.080.
- B. The applicant has correctly applied for a reasonable use exception to: allow for otherwise prohibited impacts to a wetland area, wetland buffer, and watercourse buffer areas; and authorize the use of mitigation techniques not otherwise authorized by chapter 19.07 MICC.
- C. The proposed reasonable use exception was processed pursuant to the hearing procedures and public notice requirements set forth in MICC 19.15.020.
- D. Pursuant to MICC 19.15.010(E), the Hearing Examiner is the decision authority for reasonable use exceptions.
- E. MICC 19.07.030(B)(3) contains the applicable criteria for a reasonable use exception. The hearing examiner will approve the application if it satisfies all of the criteria.
 - 1. *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;*

The applicant asserts (Exhibits 8 & 9) that the property may not be developed without impacting the Type 2 watercourses and category III wetland.

The applicant also asserts that the property has lost virtually all of its economic value because none of it can be developed even though it's zoned for two legal lots.

Finally, the applicant asserts that construction costs for this property further negatively affect the economic value of this property.

Staff Review:

The City concurs that development of the subject site with a proposed single family home and associated improvements may not occur without impacting the type 2 watercourse and category III wetland.

The applicant has failed to demonstrate that the property owner has lost economic value as a result of the application of critical area regulations. The subject property was acquired for a sale price of \$32,094 in September 2014 (Exhibit 15). The applicant is aware of past efforts to build a single family home on the subject site (Exhibit 16). Public comment (Exhibit 6.a.) indicates that the applicant met with adjacent neighbors and indicated that a home could be built while addressing neighbor's concerns. Consequently the City concludes that the sale price of the property reflects the property owner's awareness of past permit efforts on the subject site and property owner's reasonable business expectations in acquiring the property.

Economic value from the property may have been obtained through the granting of easements and past activity. For example, in 2007 the City acquired an easement (Exhibit 17) from the previous property owner, for "...valuable consideration, the receipt of which is hereby acknowledged,...". A side sewer easement was also granted in April of 1978 (recording number 7804100820).

Finally, the applicant asserts that the construction costs associated with development of the subject site affect the economic value of the site. No documentation or additional information related to this assertion has been provided to support this assertion.

The City concludes that the applicant has failed to demonstrate lost economic value to the property owner resulting from the application of wetland and watercourse regulations.

2. *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 asserts (Exhibit 8 & 9) that the property is zoned R-15, which allows for two residences. The applicant then provides a list of allowed uses in the R-15 zoning designation and asserts that the above uses are either infeasible or more impactful.

Staff Review:

The term “no other reasonable use” in this criterion should be evaluated in light of the definition provided in MICC 19.16.010 and the context of other alternative uses that would provide for use of the subject property and would result in less impact to the critical areas subject to the reasonable use exception review. In this case, the applicant has erred in comparing the proposed use to the “highest and best use” that might be conceived on the subject site (i.e. the ability to subdivide the property and build two single family homes with a maximum allowed lot coverage). Consequently the applicant’s analysis of alternative reasonable uses in addressing this criteria is flawed and incomplete.

The City does not concur that Title 19 MICC allows the construction of two single family homes on the subject site. It is possible that the subject site could be divided through a short subdivision, however the applicant has not applied for a short subdivision nor provided a basis for concluding that a short subdivision of two lots could be approved. Further, a brief review of the applicable regulations indicates that there may be little or no potential for subdivision.

The applicant has failed to articulate why other identified uses on the subject site that may be less impactful to the wetland and watercourse area are infeasible. For example, permitted uses include “private recreational areas” and “public park”, which could conceivably be designed to minimize impacts to wetland and watercourse areas.

In fact, the property is currently improved with an existing private sewer, an existing driveway to access an adjoining property, and a public trail. The public trail was acquired for “...valuable consideration, the receipt of which is hereby acknowledged...” and along with the other uses present on the site represent some reasonable use of the property.

The City concludes that the applicant has not demonstrated that no other reasonable use of the property has less impact on critical areas. Several alternative uses identified by the applicant may result in less impact on the critical areas; the applicant has failed to provide a basis for the assertion that these uses are infeasible.

3. *Any alteration to critical areas is the minimum necessary to allow for reasonable use of the property;*

The applicant asserts (Exhibit 8 & 9) that the site design is intended to minimize to the maximum extent possible the inevitable disturbance to the site. In particular, the applicant has sited the residence to minimize impacts to the northern watercourse (stream “A”), the wetland area, and the steep slope areas south of the proposed home. The applicant has also incorporated augercast piles to minimize disturbance of the slope, has placed a portion of the house on columns to avoid disturbance to the

wetland and watercourse; and will install a stormwater detention system. Finally, the applicant has proposed a residence footprint of 1,631 square feet and reduced impervious surface areas to approximately 12% of the lot area.

Staff Review:

As in the preceding section, the City notes that the applicant has addressed this criterion in part by comparing the proposed residence and associated improvements with the “highest and best use” of the site (e.g. the maximum allowed lot coverage, new construction on other lots within the City between 2013 and 2014). The reasonable use exception process is intended only to afford the applicant relief from standards that would otherwise prohibit building a single family home. The reasonable use exception process is not intended to allow for construction of a single family home with a comparable rate of return on investment in the real estate market to what a builder might expect on an unconstrained lot.

The applicant has failed to locate the house footprint to minimize the wetland and watercourse impacts that are the subject of review under this reasonable use exception. The proposed house is located approximately 20 feet west of the edge of the road and utility easement created through the short plat. By shifting the house to the east and south, intrusion into the wetland and required stream buffers would be further minimized.

The conceptual design of the proposed house reflects a living space of approximately 2,560 square feet, together with a garage area of 1,155 square feet for a total gross floor area (GFA) of 3,713 square feet. The proposed building design includes the use of approximately 650 square feet of clerestory space over the front entry and family room.

The City requires that every single family home provide two covered parking spaces (ref. 19.02.020(E)); a typical two stall garage with access to a second story would result in building footprint of approximately 800 square feet or less. By eliminating cantilevers and second story decks the total area of impact for such a house would be far less than the proposed amount of direct wetland disturbance and watercourse buffer impacts. The applicant has provided no analysis for possible site alternatives to further minimize wetland impacts.

The City concludes that the applicant has not demonstrated that the proposed site design minimizes impacts to the critical areas to the maximum extent feasible while granting reasonable use. The applicant has not provided analysis of alternative designs with a smaller code-compliant footprint nor provided analysis of alternative locations that result in a site location that would have less impact to the watercourse buffer and wetland areas.

4. *Impacts to critical areas are mitigated to the greatest extent reasonably feasible consistent with best available science;*

To mitigate for the proposed impacts to the wetland area and watercourse and wetland buffer areas, the applicant has proposed (Exhibit 12.a. through 12.c.) onsite mitigation in the form of removal invasive species, wetland enhancements through the addition of native plant species, and participation in the King County Mitigation Reserves Program (an in-lieu fee program).

The applicant also indicates (Exhibit 9) that the proposed site design will minimize impacts to on-site geologic hazard areas through the use of foundation piles and construction of a catchment wall.

Staff Review:

The City's consultant, ESA, provided a peer review (Exhibit 13.a. and 13.b.) of the critical areas study and associated mitigation plan provided by the applicant. If the reasonable use exception is approved, the City's peer review indicates that the proposed mitigation is consistent with Best Available Science, but is not consistent with the Mercer Island City Code. Consequently, the peer review recommends that the City issue a variance [sic] to allow facilitate use of the King County Mitigation Reserves Program.

Pursuant MICC 19.07.080(D), alterations to Category III wetlands should result in onsite restoration, enhancement, or replacement. In cases where the applicant demonstrates that a suitable on-site solution does not exist to enhance, restore, or replace, the City may permit the applicant "...to provide off-site replacement by a wetland with equal or better functions. The off-site location must be in the same drainage sub-basin as the original wetland. (MICC 19.07.080(D))". The City concurs with the applicant that on-site mitigation appears infeasible; however the file contains no exploration of providing for wetland mitigation in the same drainage sub-basin as the subject site.

As noted above, the City has engaged in a review of the on-site geologic hazard areas to aid in determining that the review of the proposed reasonable use exception related to wetland areas and buffers, and watercourse buffers would not result in a site location that was geologically unsafe to construct a single family home upon; the applicant's geotechnical reports, and City's peer review, are collectively contained in Exhibits 10.a. through 10.e. and 11.a. through 11.e. However, the design elements necessary to build a structurally safe residence on this site are not appropriately considered mitigation for the proposed reasonable use exception to wetland area and wetland and watercourse buffer area impacts.

The City concludes that the applicant has proposed mitigation that is consistent with best available science, based upon the City's peer review. However, the applicant has failed to first address compliance with the City's adopted regulations by evaluating off-site mitigation within the same sub-basin. Compliance with existing standards is required where feasible; insofar as the applicant has not demonstrated compliance is infeasible, the City concludes this criterion is not met.

5. *The proposal does not pose an unreasonable threat to the public health, safety, or welfare; and*

The applicant asserts (Exhibit 8 & 9) that the project's scope will not create a threat to public health or safety or welfare.

Staff Review:

The proposed reasonable use exception is related to impacts to the wetland area and the watercourse and wetland buffer areas. The city concurs that there are no foreseen threats to public health, safety, or welfare resulting from the proposed reasonable use exception.

6. *The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant after the effective date of this chapter.*

The applicant asserts (Exhibit 8 & 9) that the applicant has not taken any action to negatively impact the property's development potential.

Staff Review:

The city is not aware of any action by the applicant that would affect their ability to derive reasonable use of the subject property.

- F. Based upon the foregoing conclusions, the applicant has failed to demonstrate that all criteria in MICC 19.07.030(B)(3) have been met. Specifically, the applicant has failed to demonstrate that:
1. The application of critical area 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;
 2. 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;
 3. Any alteration to critical areas is the minimum necessary to allow for reasonable use of the property; and,
 4. Impacts to critical areas are mitigated to the greatest extent reasonably feasible consistent with best available science.

IV. RECOMMENDATION

Based on the above Findings of Fact, Criteria for Review, and Conclusions of Law, the City recommends that the Hearing Examiner deny the proposed reasonable use exception related to proposed alterations to the subject site's wetland areas, and watercourse and wetland area buffers.

If the Hearing Examiner does not concur with the City's recommendation that the Hearing Examiner deny the proposed reasonable use exception, the City recommends that the Hearing Examiner remand the reasonable use exception review back to the City with direction to complete the SEPA review and issue a SEPA determination. In the event the Hearing Examiner does remand the decision, the City will require direction regarding the review of the proposed reasonable use exception.

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