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APRIL 22, 2015

CITY OF MERCER ISLAND
ENVIRONMENTAL SERVICES

April 22, 2015

City of Mercer Island

9611 SE 36th St

Mercer Island, WA 98040-3732

Re: Reasonable Use Exception Application, 5637 E Mercer Way, tax parcel

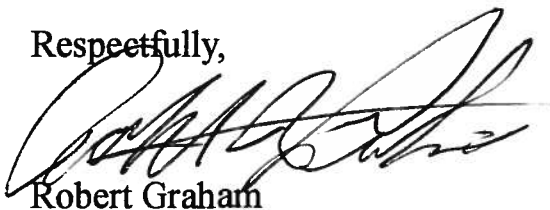
#1924059312

To City of Mercer island:

We are homeowners downstream in the direct watercourse of the above-mentioned property. As such, we have been severely adversely affected by increases in water flow and significant erosion caused by this. These increases are due to various building that the city has allowed as well as projects completed by the city. A settlement agreement between the city and the O'Sullivan's required the city to prevent any additional flow, as well as to properly maintain the watercourse in such a way as to prevent damage to our property and to Lake Washington, its ecology and fisheries. (See attached settlement agreement.) For the past two years, we have been requesting that the city address the additional damage and engineering, and to properly maintain this per their legal responsibility. The city has done nothing to mitigate this damage. (Letter to Bill Salburry attached)

This application for an exception proposes to build in an area in such a way as to disrupt springs and other aspects of the natural wetlands and watercourse. In addition would be the usual reduction in percolation and other natural water management. All of this would add water to the existing watercourse, which is expressly forbidden per the agreement between the previous owner O'Sullivan and City of Mercer Island in the early 1980's. We are one of at least three parties who now hold claim to this settlement. We have previously put the city of Mercer Island on notice that we fully intent to hold them legally responsible for all existing damage to our property as well as all future damage. We request that you deny this current building application and refrain from allowing any action that would add to this already overwhelmed watercourse.

Respectfully,



Robert Graham

206 786-1296

City of Mercer Island,
May 2014

Attached is a copy of the O'Sullivan/City of Mercer Island grant of easement and parts of the lawsuit settlement agreement. There are terms the city agreed to in the easement which I believe have already been consistently breached by the City. The terms are:

1. The waters which may be passed into the watercourse in existence on the Grantors' property shall be limited to water flows which result from conditions, diversions or improvements existing as of the date of the settlement agreement dated May 31, 1984, including any all siltation combined in said water flows in an amount not to exceed 50 cubic yards of siltation per calendar year.
2. The Drainage easement granted herein shall continue to exist so long as needed by Grantee and so long as Grantee does not divert water from any other drainage basin into the drainage course on Grantors' property other than water that was flowing into the the watercourse as of May 32, 1984.

It seems pretty obvious to me that the city has not followed the terms of this agreement and I would guess that the amount of siltation exceeds fifty cubic yards per quarter let alone per year. I don't feel the city has maintained the silt pond on London's property and doubt it ever functioned as designed. Because of the recent work done to London's pond it may not be performing as a silt pond at all at this point. I also feel it's likely the city has added additional water sources, east Mercer drainage tight lining as a result of the bike lane is one example. I would ask that the city (at the cities cost) add or significantly increase siltation ponds and find remedy to the increased water flow. I would also ask that the city perform according to the terms of the settlement agreement moving forward.

As You saw in the pictures I sent in an earlier email, since the cities modification to the silt pond, the flow of water has now reached a point where it has breached the sides of the pond, gone over the walkway and two inches onto the siding of my house. If something is not done to correct this problem I am concerned my house could flood.

Thank you.

Return Address:

PO BOX 1078
MARACAL ISLAND
WA, 98040

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet (RCW 67.04)**

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)

- 1. *Lease*
- 2.
- 3.
- 4.

Reference Number(s) of Documents assigned or released:

Additional reference #'s on page _____ of document

Grantor(s) (Last name first, then first name and initials)

- 1. *O'Sullivan, James*
- 2. *O'Sullivan, Dorothy*
- 3.
- 4.

Additional names on page _____ of document

Grantee(s) (Last name first, then first name and initials)

- 1. *Maracal Island Co*
- 2.
- 3.
- 4.

Additional names on page _____ of document

Legal description (abbreviated; i.e. lot, block, plat or section, township, range)

Maracal Island WA 98-0600

Additional legal description on page _____ of document

Assessor's Property Tax Parcel/Account Number

192905-7220

Assessor Tax # not yet assigned

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein

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12.00

TCO

88060-143 08/26/00 PW KING COUNTY RECORDS 005 TCO

DRAINAGE EASEMENT

COMES NOW, JAMES O'SULLIVAN AND DOROTHY O'SULLIVAN, hereinafter "Grantors", and grant to the City of Mercer Island, hereinafter "Grantee", a drainage easement over, across, along and under the following described real property, situated in King County, State of Washington, to wit:

"That portion of government lot 3, in Section 19, Township 44 north, Range 5 East, W.M. lying between lines parallel with and 2,220 and 2,350 feet north of the southerly line of said section, and lying easterly of East Mercer Way, TOGETHER WITH 2nd Class Shorelines adjoining, in King County, Washington, and commonly known as: 5636 East Mercer Way, City of Mercer Island."

The intent of the Grantors in granting the Drainage Easement herein is to fulfill the requirements of Paragraph 2.4 of the settlement agreement entitled "Agreement" between Grantors and Grantee in settlement of litigation in King County Superior Court under King County Superior Court Cause No. 82-2-02540-2. A copy of the settlement agreement is attached hereto as Exhibit "A" and incorporated herein by reference.

The purpose of the Drainage Easement is to permit Grantee to pass waters from upstream of East Mercer Way, and from the south of the Grantors' property along East Mercer Way, into the watercourse in existence on the Grantors' property, in an easterly direction to the waters of Lake Washington.


The waters which may be passed into the watercourse in existence on the Grantors' property shall be limited to water flows which result from conditions, diversions or improvements existing as of the date of the settlement agreement, May 31, 1984, including any and all siltation contained in said water flows in an amount not to exceed 50 cubic yards of siltation per calendar year.


The Drainage Easement granted herein shall continue to exist so long as needed by Grantee and so long as Grantee does not divert water from any other drainage basin into the drainage course on Grantors' property other than water that was flowing into the watercourse as of May 31, 1984. Grantors agree to be responsible for the construction and installation of the stream bed improvements contemplated in Paragraphs 2.1 and 2.2 of the settlement agreement and for subsequent maintenance of the stream bed and all improvements of the stream bed on Grantors' property with the

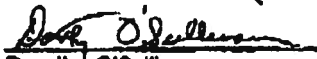
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exception of the pond constructed on the property and located west of Glenhome Road, which will be maintained by the City of Mercer Island and as part of that maintenance the City will be responsible for the removing of siltation in the siltation holding pond as necessary and assuring it remains in good and operational condition.

This Drainage Easement shall run with the land and shall be binding on the Grantors, their heirs and assigns, and shall be recorded in the Office of the King County Auditor.


James O'Sullivan
Grantor


City Attorney on behalf of
City of Mercer Island

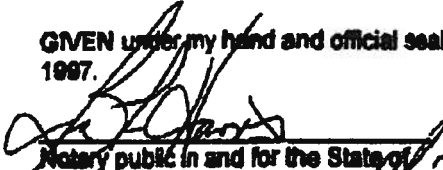

Dorothy O'Sullivan
Grantor



STATE OF WASHINGTON)
County of King)

On this day personally appeared before me James O'Sullivan and Dorothy O'Sullivan to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 17 day of October 1997.


Notary public in and for the State of
Washington, residing at King

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RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

James O'Sullivan and Dorothy O'Sullivan, being of lawful age, for the sole consideration of THIRTY-THREE THOUSAND, FOUR HUNDRED DOLLARS AND 00 CENTS (\$33,400.00), receipt whereof is hereby acknowledged, do hereby and for their heirs, executors, administrators, successors and assigns release, acquit and forever discharge THE CITY OF MERCER ISLAND and WASHINGTON CITIES INSURANCE AUTHORITY and their agents, servants, successors, heirs, executors, administrators and all other persons, firms, corporations, associations or partnerships of and from any and all claims, actions, expenses and compensation whatsoever, which the undersigned now have or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen property damage and the consequences thereof resulting or to result from the discharge of surface or drainage water on or about the property of the O'Sullivans, located at 5636 East Mercer Way for any time up until the date of signing of this release. It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released, and that said releases deny liability therefor and intend merely to avoid litigation and buy their peace. This release is the document contemplated in paragraph 1.2 of the Agreement between James and Dorothy O'Sullivan dated May 31, 1984.

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In consideration of payment of the above sum, the undersigned represents, warrants and agrees that he/she or his/her legal representative will satisfy any and all liens or claims against the above sum.

The undersigned further declares and represents that no promise, inducement or agreement not herein expressed has been made to the undersigned, and that this Release contains the entire agreement between the parties hereto, and that the terms of this Release are contractual and not a mere recital.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

Signed, sealed, and delivered this 17 day of OCTOBER, 1997.

CAUTION: READ BEFORE SIGNING BELOW

RELEASE OF ALL CLAIMS

[Signature] Tim O'Sullivan
SIGNATURE

[Signature] Dorothy O'Sullivan
SIGNATURE

STATE OF WASHINGTON)
COUNTY OF KING)

ss.



I certify that I know or have satisfactory evidence that Dorothy O'Sullivan is the person who appeared before me, and said person acknowledge that he/she signed this instrument and acknowledged it to be his/hers free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: 10/17/97, 1997

[Signature]
Notary Name: Ben P. Smith
NOTARY PUBLIC in and for the State
Washington, residing at King
Commission Expires: 12/31/2002

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RELEASE OF ALL CLAIMS