Good Evening Mr. Hearing Examiner, my name is Evan Maxim. I am the Planning Manager for the City of Mercer Island. I am joined by Ann Marie Soto, the City Attorney.

I am here to present the City’s recommendation on an application for a reasonable use exception for the proposed MI Treehouse project.

This application was received by the City in early 2015 and a letter of completion was issued on March 31, 2015. The project review was initially assigned to Travis Saunders, and was transferred to me for review in June of 2016.

The proposed reasonable use exception is intended to allow for the applicant to propose improvements on the subject site that are not in compliance with standards in 19.07.070 and 19.07.080 related to the protection of watercourses and wetlands. The applicant is also not proposing to comply with City requirements for wetland mitigation (19.07.080).

A notice of application was issued by the City on April 13, 2015; a public comment period extended through April 27, 2015. A second notice of application was issued by the City on May 4, 2015, with the public comment period ending on May 18, 2015. (Exhibits 4 and 5).

18 public comments were received during the public comment periods. The public comments are summarized in Exhibit 6 – most of the public comments opposed the project. One of the public comments was from the Department of Ecology. The Department of Ecology also provided an emailed comment to me in advance of the hearing tonight – **handout.**

The City has not issued a SEPA determination for this project because the City is recommending that the Hearing Examiner deny the proposed reasonable use exception, for reasons I will get into in a moment. If the Hearing Examiner concludes that the City erred in its recommendation a SEPA determination will be required prior to final action.

A reasonable use exception shall be approved by the Hearing Examiner if the applicant meets all of the criteria enumerated in MICC 19.07.030(B)(3). Following review, staff has concluded that the file does not contain evidence demonstrating compliance with criteria “A” through “D”.

*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 purchased the property for $32,094. The applicant is a builder in the industry and was familiar with the case history for the project, including the previously withdrawn application. The applicant’s business expectations are reflected in the sale price.

Previous economic value has been garnered from the property to some extent through sale of easements.

No documentation regarding lost economic value to the property has been provided, other than the assertion that it has been lost.

*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;*

Applicant identified a number of alternative uses for the site, and then concluded that these uses were more impactful, or not feasible. The basis for these assertions were not provided by the applicant. A number of uses appear to be less impactful and feasible on the site (e.g. private recreational area, public park).

Applicant compares the proposed development to the conceptual “highest and best use” for the subject site – conceptually comparing the proposed development to a possible short plat and 40% GFA and 35% lot coverage. In this case, the test is Reasonable Use

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

Minimum necessary is evaluated through two lenses – reduced footprint and better location. The applicant has provided no evaluation of either. Review of the proposed site plans results in the identification of other, possible designs that would minimize impacts both in terms of location and in terms of footprint.

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

Mitigation appears appropriate, but applicant has failed to address complying with mitigation requirements entirely on the subject site (code requirement).