



Development Services Department
425-489-2754 • 17301 133rd Avenue NE • Woodinville, WA 98072
Desk Hours • Monday – Thursday 7:30am – 5:00pm • Friday 7:30am – 4:00pm

**Staff Report to Hearing Examiner
Modi Single Family Reasonable Use Permit**

Date of Report: May 12, 2016
Date of Hearing: May 19, 2016

File Number: CAE14001 / SEP14023

Project Description: Reasonable use permit to develop a 1.63-acre lot featuring critical areas with one single family residence in the R-6 zone. Critical areas on site comprise approximately 75 percent of the site and include geologically hazardous, stream and wetland areas, and associated buffers. The project is not categorically exempt from SEPA pursuant to WAC 197-11-800.

Applicant & Contact: Prakash Modi, Owner
14317 NE 186th Place
Woodinville, WA 98072
Pmodi2002@hotmail.com

Location Of Proposal: King County Parcel No.: 0622100060
Approximately 19400 136th Ave NE; Woodinville, WA

Staff Contact: Jenny Ngo, AICP, Senior Planner *JN*
425-877-2283; jennyn@ci.woodinville.wa.us

JR

PROJECT INFORMATION

Legal Description LOT(S) 5, BLOCK 2, BEARCREEK ADDITION TO DAY CITY, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE(S) 82, LYING WESTERLY OF STATE HIGHWAY 15, AS CONVEYED TO THE STATE OF WASHINGTON BY DEED

RECORDED UNDER AUDITOR'S FILE NO. 4856639.

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

Property Size: 71,103 square feet (1.63 acres)

Current Zoning: R-6 Residential (6 dwelling units/acre)

Comprehensive Plan Designation: Moderate Density Residential

Shoreline Designation: Aquatic, Conservancy and Shoreline Residential

- Site/Area Description:** The lot is generally rectangular and contains approximately 71,103 square feet (1.63 acres). The property is bordered by 136th Avenue NE on the western boundary and State Route 522 borders the eastern boundary. Little Bear Creek runs through the property and geographically divides the lot between the western two-thirds and eastern one-third. The property slopes downward from 136th Avenue NE from an elevation of 130 feet to an elevation of approximately 80 feet at Little Bear Creek.
- Available Utilities:** Water: Woodinville Water District
Sewer: Woodinville Water District
Electricity: Puget Sound Energy
Natural Gas: Puget Sound Energy
Telephone/Cable: Frontier and Comcast
- Fire Service:** Woodinville Fire and Rescue
- Surrounding Land Uses/Zoning:** The land uses surrounding the subject site are single family residential.

BACKGROUND AND PROJECT DESCRIPTION

The applicant's requested use is to construct a single-family residence, driveway, retaining wall, and associated site improvements within critical areas (landslide hazard area, fish and wildlife habitat conservation area, standard stream buffer, wetland buffer, and/or wetland). The proposed single-family residence occupies a building footprint of 2,724 square feet (Exhibit 3). The proposal includes a mitigation plan for the restoration of the wetland buffer and enhancement of a reduced stream buffer, but does not include provisions for potential wetland fill.

Over three-quarters of the 1.63-acre property is encumbered with critical areas including streams, wetlands, fish and wildlife habitat conservation area, geologically hazardous areas, flood hazard areas, and all associated buffers. An 852 square-foot area provides the only practical buildable area that does not require crossing Little Bear Creek.

Representatives from the Department of Fish and Wildlife, Department of Ecology and the City met with the applicant on-site on May 5, 2016. During the site visit, the agencies evaluated the stream conditions of Little Bear Creek, the extent of Wetland A, wetland rating, and the association with Little Bear Creek. The Department of Fish and Wildlife identified that the wetland is a water of the state and subject to a Hydraulic Project Approval for wetland fill or for stormwater discharges. The Department of Ecology identified a previously un-delineated wetland area adjacent to the steep slope area and recommended additional field work (Exhibit 34c).

NOTICE AND PUBLIC COMMENT

The application was received on October 31, 2014. The application was determined complete on November 18, 2014 pursuant to WMC 17.09.030 (Exhibit 17).

Public noticing was completed for the reasonable use permit and SEPA applications. A Notice of Application was issued on November 24, 2014 consistent with WMC 17.11.010 (Exhibit 18).

The Notice of Application was mailed to property owners within 500 feet pursuant to WMC 17.11.040(4), published in *The Woodinville Weekly* newspaper, and posted on the site and other public notices locations (City Hall, Post Office, and City of Woodinville website). Pursuant to WMC 17.11.010(1)(c) a 15-day public comment period was utilized, ending on December 9, 2014.

A request for additional information was sent on January 6, 2015 (Exhibit 21). Application revisions were submitted on March 9, 2015.

A Critical Areas Determination was issued on June 1, 2015 and the appeal period ended June 15, 2015 (Exhibit 16). No appeals were received and the determination stands as issued.

The applicant submitted a revised proposal for one single family residence on September 25, 2015. A Revised Notice of Application was issued on October 5, 2015 consistent with WMC 17.11.010 (Exhibit 19). The Notice of Application was mailed to property owners within 500 feet pursuant to WMC 17.11.040(4), published in *The Woodinville Weekly* newspaper, and posted on the site and other public notices locations (City Hall, Post Office, and City of Woodinville website). Pursuant to WMC 17.11.010(1)(c) a 15-day public comment period was utilized, ending on October 20, 2015. A request for additional information was sent on October 29, 2015 (Exhibit 26) and revisions were submitted on February 12, 2016 and February 26, 2016.

A Notice of Public Hearing was issued on May 2, 2016, more than 15 days before the scheduled public hearing pursuant to WMC 17.11.030(3)(a) (Exhibit 20). The notice was mailed to property owners pursuant to WMC 17.11.040(4), interested parties, published in *The Woodinville Weekly*, posted on-site and other official public notice locations.

Below is a summary of agency and public comments received during the application process.

<p>Muckleshoot Indian Tribe</p>	<p><i>December 9, 2014 (Exhibit 33a)</i> The email identifies additional information required to assess project impacts which include impacts to shade and wood recruitment from removed trees, deficiencies in the SEPA checklist, and additional details and revisions to the mitigation plan.</p> <p><i>October 19, 2015 (Exhibit 33c)</i> Requests an updated SEPA checklist to reflect project proposal</p> <p><i>April 18, 2016 (Exhibit 33e)</i> Questions regarding SEPA issuance to agencies, wetland delineation, mitigation measures, buffer reduction, and monitoring period.</p>
<p>Muckleshoot Indian Tribe Department of Ecology Department of Fish and Wildlife</p>	<p><i>April 28, 2016 (Exhibits 34a and 34b)</i> The Muckleshoot Tribe indicates missing assessment for drainages flowing to Wetland A and Little Bear Creek, an incomplete wetland delineation for Wetland A, lack of mapping of the floodplain, a revised site plan identifying features and impacts, and detailed mitigation and monitoring plan.</p>

	<p>Department of Ecology indicates concerns regarding the wetland boundary and rating and requests a site visit.</p> <p>Department of Fish and Wildlife states that a hydraulic project approval will be required if state watercourses are impacted and reiterates concerns regarding mitigation sequencing.</p>
Richard Reed	<p><i>November 26, 2014 (Exhibit 35a)</i> Request to become a party of record.</p> <p><i>October 7, 2015 (Exhibit 35b)</i> No comments regarding the proposal. Mr. Reed identifies construction concerns regarding damage to roads resulting from traffic, equipment staging, work notice to neighbors, construction parking, and utility locates.</p>
Ryan Watson	<p><i>December 3, 2014 (Exhibit 36)</i> Request for public records.</p>
Jeff and Betty Pierce	<p><i>January 14, 2015 (Exhibit 37)</i> The letter states that impacts to this habitat have been significant due to State Route 522 and pollution. Mr. and Mrs. Pierce urge the City to protect the natural habitat on this property and responsible stewardship of natural resources.</p>
Chad and Liliana Bruckner Tek-Min and Jen Gan Henry Kieneker Christa McNatt Chet and Anna Moritz Jeff and Betty Pierce Jan West	<p><i>January 13, 2015 (Exhibit 38)</i> The letter states that mitigation is insufficient to reduce environmental harms associated with reduced buffers, including loss of vegetation and diversity of animal species, increased runoff and erosion resulting from construction, and reduced areas available for habitat. The letter states concern regarding the density resulting from the short platting of this lot.</p>
Anna and Chet Moritz Henry and Felisa Kieneker Jeffrey and Betty Pierce Christa McNatt Jen Gan	<p><i>October 26, 2015 (Exhibit 39)</i> The letter states that the parcel is an important ecological area as it features Little Bear Creek, which is a Type 1 stream, shoreline of the state, and fish and wildlife habitat conservation area, as well as geologically hazardous areas and wetlands. The letter notes concern with placing the single-family house within the wetland buffers, as a buildable area outside of all buffers is present to the southwestern portion of the site. The letter also identifies deficiencies in the SEPA checklist, impacts to existing vegetation from required road improvements, and requests increased buffers.</p>
Sno-King Watershed Council	<p><i>February 4, 2015 (Exhibit 40a)</i> The letter states that Wetland A is incorrectly rated as a Class 3 wetland and must be rated as a Class 1 under the City's rating system. Proposed dispersion must be revised to meet the King County Surface Water Design Manual and impacts to salmonid species must be given special consideration.</p> <p><i>October 16, 2015 (Exhibit 40d)</i> The letter states that the development is inconsistent with the City's Comprehensive Plan, Municipal Code, Shoreline Master</p>

	Program, and applicable State and Federal regulations. A reasonable use permit is not appropriate as it is for emergencies, for nonconforming buildings, or public agencies or utilities.
Anna (Mickey) Moritz	<i>April 12, 2016 (Exhibit 41)</i> Comments regarding street widening and improvements, loss of existing mature vegetation, oversight on critical area protection, and tree protection to ensure no additional loss of vegetation.

COMPREHENSIVE PLAN

The Comprehensive Plan encourages northwest woodland character design, promotes pedestrian friendliness and traffic linkages, requires protection and preservation of critical areas, and requires adequate infrastructure for development within the City limits. The following Comprehensive Plan goals and policies apply to this project:

Goal LU-3: To attain a wide range of residential patterns, densities, and site designs consistent with Woodinville's identified needs and preferences.

Policy LU-3.1: Encourage development that complements the existing residential development patterns in Woodinville's neighborhoods.

Policy LU-3.2: Preserve the existing natural environment of Woodinville's neighborhoods.

Policy LU-3.6: Encourage moderate (5-8 d.u.) and medium (9-18 d.u.) density housing throughout the community where sufficient public facilities and services are available, where the land is capable of supporting such uses, and where compatible with adjacent land uses.

Goal ENV-3: To preserve and enhance aquatic and wildlife habitat.

Policy ENV-3.1: Identify and ensure protection of sensitive habitat areas, including wetlands, streams and shorelines.

Policy ENV-3.3: Maintain a standard of no net loss in the functions and values of sensitive habitat features, including wetlands, streams, lakes and shoreline areas.

Policy ENV-3.4: Maintain connectivity between sensitive areas, including the Sammamish River and related streams, to provide safe travel routes for wildlife and fish and improve the biological integrity of sensitive areas.

Policy ENV-3.11: Encourage the restoration of ecological functions and the natural environment in environmentally damaged areas.

Goal ENV-4: To protect the public from floods, landslides, erosion and other natural hazards resulting from disturbance of the environment.

Policy ENV-4.1: Protect public safety in potential seismic, flood hazard and slide hazard areas.

Policy ENV-4.2: Minimize the adverse effects of development on topographic, geologic and hydrologic features, and native vegetation.

Policy ENV-4.3: Control the quantity and velocity of surface water runoff.

Goal ENV-5: To protect and improve water quality.

Policy ENV-5.2: Include enhancement of shorelines and waterways with adjacent development activities.

Policy ENV-5.4: Minimize impacts of recreational uses on water quality.

Policy ENV-5.5: Protect the quality and quantity of water in waterways, wetlands, floodplains and watersheds from degradation.

SHORELINE MASTER PROGRAM

The Shoreline Master Program (SMP) encourages shoreline protection and restoration, compatible uses, public access, economic development, and recreational opportunities. The goals and policies for development along Woodinville's shoreline are set forth in Chapter 3 of the SMP. Figure 5-2 of the SMP designates this property as within the Aquatic, Conservancy, and Shoreline Residential Environments. The following SMP goals and policies apply to this project:

Goal SU-1: To provide a management system which will plan for and foster all reasonable and appropriate uses [RCW 90.58.020] and provide guidance to property owners for appropriate uses and their locations.

Policy SU-1.5: Ensure that all uses on the shoreline will protect and improve water quality by proper design of drainage, sewer connections, and other measures made necessary by particular uses and locations.

Goal SU-2: To plan for and encourage the location of similar or compatible uses in suitable areas already dedicated to such use.

Policy SU-2.1: Encourage maintenance and expansion of existing concentrations of compatible uses through establishment of criteria of suitable for shoreline locations within the City's development regulations and this Master Program.

Goal FHM-1: To manage flood water along Sammamish River and Little Bear Creek in a manner which reflects and balances City goals and policies for water quality, fish and wildlife habitat, flood hazard management, recreation, aesthetics, and other beneficial uses of the waterways and their shorelines.

Policy FHM-1.3: Control stormwater runoff in a manner which utilizes natural detention, retention, and recharge techniques to the maximum extent possible.

Policy FHM-1.4: Prohibit any development within the floodplain that would individually or cumulatively increase the base flood elevation and pursue the discontinuation of such uses which now exist in the flood plain as these uses lose their economic life.

Goal CON-1: To preserve nonrenewable resources and enhance and/or restore natural resources that make Woodinville shorelines uniquely attractive and valuable to a large ecosystem.

Policy CON-1.1: Protect, preserve, rehabilitate, and, where possible, enhance water and habitat quality in the Sammamish River and Little Bear Creek.

Policy CON-1.3: Restore the vegetative cover most appropriate to the Woodinville shoreline for its aesthetic and biological value, selecting plant

material that provides feed and cover for birds, fish, and other wildlife as well as an attractive setting for human leisure enjoyment.

Policy CON-I.4: The City should ensure that development of private upland property maintains sufficient volumes of surface and subsurface drainage into the biological wetland areas associated with the shorelines, to sustain existing vegetation and wildlife habitat. The content and velocity of this drainage should be controlled by design, as required by engineering standards adopted and administered by the City's Department of Public Services, so that stream habitat and properties along the shoreline below will not be adversely affected.

Policy CON-I.5: Protect features along the shoreline that provide ecological or recreational benefits.

Policy CON-1.6: Uses or activities that substantially degrade natural resources should not be allowed.

Policy CON-I.7: Assess the environmental impacts and mitigation of any new development prior to issuance of permits.

Goal RES-1: Restore shoreline habitats that support listed endangered and threatened species, as well as other anadromous fisheries.

Policy CON-1.1: Protect, preserve, rehabilitate, and, where possible, enhance water and habitat quality in the Sammamish River and Little Bear Creek.

FINDINGS OF FACT

GENERAL:

1. Prakash Modi and Sweta Khetan (applicant) are the taxpayers of record for the property identified as Parcel No. 0622100060 according to King County Assessor's records and located on the 19400 block of 136th Avenue NE. The applicant is requesting a reasonable use permit to construct a single-family house and garage with a 2,724 square-foot footprint, driveway, retaining wall, and associated site work on a property in the R-6 zone. The proposal is within a landslide hazard area, fish and wildlife habitat conservation area, standard stream buffers, wetland buffers, and/or wetlands. A wetland boundary verification was completed in January 2016, which preliminarily extended the boundary of Wetland A to the west and increased the wetland to 2,600 square feet.
2. The property is approximately 71,103 square feet (1.63 acres) and is currently undeveloped with forested vegetation. The lot is generally rectangular in shape, and is between 342 feet and 360 feet in depth and 203 feet in width. The property is bordered by 136th Avenue NE on the western boundary, State Route 522 on the eastern boundary, and single-family residential lots to the north and south.
3. Little Bear Creek runs through the property and geographically divides the lot between the western two-thirds and eastern one-third. Little Bear Creek is identified as a Type 1 stream and a fish and wildlife habitat conservation area pursuant to Chapter 21.24 WMC. The eastern half of the property is identified as being in the 100-year and 500-year floodplain (also known as the 1 percent annual flood and 0.2 percent annual flood) of Little Bear Creek according to FEMA Flood Insurance Rate Maps (Exhibit 14). Wetland A, located towards the north central portion of the property, is approximately 2,600 square feet. An undelineated wetland area appears to be located at the northwest corner of the property (Exhibit 34c).

4. The property slopes downward from west to east starting at an elevation of 130 feet from 136th Avenue NE to an elevation of approximately 80 feet at Little Bear Creek. A 6,825 square foot landslide hazard area is located on the western property line. Slopes in this area are greater than 40 percent over 25 feet of vertical relief. The property is located within a seismic hazard area due to soils with a high potential for liquefaction and amplification of ground movement.
5. There are two separate buildable areas (unconstrained by critical areas) on the site. The buildable area identified on the site plan (Exhibit 3) is an isolated area of approximately 852 square feet surrounded by landslide hazard area to the west, stream buffer to the east, wetland buffer to the north, and the side property line to the south. A second area located to the east across Little Bear Creek may contain buildable area but is not considered a feasible alternative in this application due to a required crossing of Little Bear Creek. Pursuant to Chapter 21.24 WMC, construction of a single-family home and associated structures within a geologically hazardous area, stream, wetland, or fish and wildlife habitat conservation area and associated buffers is prohibited. WMC 21.24.080 allows for a reasonable use permit when the application of Chapter 21.24 WMC denies all reasonable use of the property.
6. The project is located within 200 feet of the ordinary high water mark of Little Bear Creek. Pursuant to RCW 90.58.030(2)(d) and (e) and SMP Section 1.2, this area is defined as the shoreline jurisdiction and is subject to the Woodinville Shoreline Master Program (SMP). The proposed residence is located in the Shoreline Residential Environment and the proposal is subject to Chapter 173-27 WAC and the Woodinville Shoreline Master Program.
7. Pursuant to SMP Section 6.2.2(3), reasonable use permits (also known as reasonable use exceptions), must be processed using the shoreline variance permitting process, including Department of Ecology approval. This permit is processed as a Type III application pursuant to WMC 17.07.030. If the reasonable use permit is approved by the Hearing Examiner, the approved permit shall be submitted to the Department of Ecology for a final decision pursuant to WAC 173-27-200.
8. On October 31, 2014, the applicant submitted a reasonable use permit, critical areas alteration, and SEPA review application to the City of Woodinville to short plat a property into three lots. The application was determined complete on November 18, 2014. A Notice of Application for the proposal was published, mailed, and posted on November 24, 2014, within 14 days of the determination of completeness (Exhibit 17 and 18). During the course of the review, it was determined that the on-site wetland, rated as a Class 3 wetland in the critical areas report (Exhibit 5), met the criteria as a Class 1 wetland due to its proximity and influence by Little Bear Creek. A Critical Areas Determination was issued establishing the wetland as a Class 1 with standard buffers of 150 feet or a reduced buffer of 115 feet or 100 feet (Exhibit 15; discussed in Finding 30). Establishment of the Class 1 wetland increases the wetland buffer on the property and the proposal was revised to one single-family residence and associated site improvements, and resubmitted on September 29, 2015. A second notice of application was issued to reflect the changed scope of work on October 5, 2015 (Exhibit 19).

CRITICAL AREAS:

9. The proposal is subject to the Critical Areas Ordinance adopted under Ordinance 375 in 2004. Recent amendments to the Critical Areas Ordinance are not applicable to this application. Although the City adopted updated critical areas regulations (Ordinance No. 605 effective on March 28, 2016), properties in the shoreline jurisdiction are subject to regulations in the Shoreline Master Program, including Ordinance No. 375.
10. The applicant submitted a Stream and Wetland Assessment Report and Buffer Reduction Plan prepared by Acera (Exhibit 5) dated January 2015, Wetland Delineation Report prepared by Cook Scientific (Exhibit 9) dated February 24, 2016, and a Geotechnical Engineering Report prepared by Robinson Noble (Exhibit 10). The reports identify geologically hazardous areas on the western portion of the site adjacent to 136th Avenue NE, the entire property as being located in a seismic hazard area, a 2,600 square foot wetland identified as Wetland A in the center of the property, and Little Bear Creek qualifying as a stream and fish and wildlife habitat area, and flood hazard areas associated with Little Bear Creek.

Geologically Hazardous Areas

11. Pursuant to WMC 21.24.290, geologically hazardous areas include those areas susceptible to erosion, sliding, earthquake or other geological events. Geologically hazardous areas include erosion hazard, landslide hazard, and seismic hazard areas. The site features a 6,825 square foot landslide hazard on the western portion and is located within a seismic hazard area.
12. Pursuant to WMC 21.24.290(2)(a), erosion hazard areas are those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service or identified by a critical area special study as having a severe to very severe erosion potential. On-site soils were classified as Everett gravelly sandy loam and Norma sandy loam, which has the geologic units of glacial outwash and alluvium soils (Exhibit 10, page 5). These soils are listed as being slight to moderate erosion potential and do not qualify as an erosion hazard.
13. Landslide hazard areas are those potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. Slopes greater than 40 percent over more than 10 feet of vertical relief are designated as landslide hazard areas pursuant to WMC 21.24.290(2)(b)(vi). The westernmost 50 to 75 feet the property features steep slopes greater than 40 percent measuring approximately 25 feet in height. This area totals 6,825 square feet and qualifies as a landslide hazard area.
14. Pursuant to WMC 21.24.290(2)(c), seismic hazard areas are areas subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, surface rupture, or soil liquefaction. Underlying loose to medium dense alluvial soils present on the site are considered to have a moderate to high potential for liquefaction and amplification of ground movement (Exhibit 10, page 8). The site meets the definition of a seismic hazard area.
15. A geotechnical report for the three-lot short plat was prepared by Robinson Noble (Exhibit 10). The report notes that the site has a potential for surficial soils on the steeper sections of the slope to slough over time. The installation of retaining walls, adequate drainage, and vegetation may reduce slough events (Exhibit 10, page 4). The report states that the site is suitable for the previously proposed three-lot short plat from a geotechnical standpoint, provided engineering recommendations in the geotechnical report were followed.

Recommendations include specific design for lateral loads, building foundations, maximum slopes, and site preparation. The revised proposal, which identifies a layout for the house, driveway, and associated structures was not reviewed by Robinson Noble for construction suitability (Exhibit 11).

Streams

16. Little Bear Creek runs north-south on the eastern third of the property. Little Bear Creek is designated as a Type 1 stream and a Shoreline of the State pursuant to WMC 21.24.370(1) and SMP Section 5.3.1.
17. Type 1 streams have a standard buffer of 150 feet pursuant to WMC 21.24.380. These buffers may be increased where the buffer or adjacent uplands have a slope greater than 30 percent or where other critical areas are associated pursuant to WMC 21.24.380(1)(d). Site characteristics qualify the buffer area to include the wetland, wetland buffer, and landslide hazard area. These areas are identified on the site plan (Exhibit 3) as buffers and therefore non-developable areas.
18. As part of the reasonable use permit and as a result of buffer constraints, the applicant proposes to reduce the buffer to 100 feet with enhancement (Exhibit 5, page 14-18). The standard stream buffer for Type 1 streams may be reduced to 115 feet if enhancement and mitigation measures provide a net improvement in overall stream and buffer function and value. Furthermore, this buffer may be reduced to 100 feet when a special study determines that functions achieved in 100 feet are equal to those achieved in 115 feet for the site in question.
19. Migration and enhancement measures must be evaluated in accordance with WMC 21.24.400. A 2002 report prepared for the City of Woodinville identifies that the stream is not functioning in many areas including pool frequency, pool quality, riffle habitat, large woody debris, sediment indicator, off-channel habitat, stream bank condition, floodplain connectivity.¹ The Acera critical areas report indicates that the stream has been disturbed by previous State Route 522 construction (Exhibit 5, page 15). Various baseline functions of the stream are low, minimal, or moderate due to levels of degradation from invasive species, lack of native vegetation, and previous roadway construction (Exhibit 5, pages 14-15). These functions include flood control and stormwater attenuation, ground water recharge, water quality, water temperature control, erosion control, and wildlife habitat.
20. Pursuant to WMC 21.24.400(1)(a), restoration and mitigation must be located on a stream section that is degraded, cannot further worsen degradation of the stream, demonstrably improve water quality and fish and wildlife habitat of the stream, have no lasting significant adverse impact on the stream, and will assist in stabilizing the stream channel. Proposed mitigation of the stream includes removal and maintenance of invasive species, buffer restoration of 27,500 square feet with trees planted 10 feet on-center and shrubs planted at four feet on-center (Exhibits 5 and 16). A five-year maintenance and monitoring plan is prescribed. The stated function level after enhancement are moderate to high (Exhibit 5, page 56-57) and "will significantly improve current onsite buffer functions and will not further degrade the stream" (Exhibit 5, page 15).

¹ David Evans and Associates, Inc., Little Bear Creek Corridor Habitat Assessment, prepared for the City of Woodinville (July 2002).

21. Karen Walter of the Muckleshoot Tribe provided comments questioning the justification for the buffer reduction. She states “there is no detailed functional analysis about the reduced stream buffer that includes, but is not limited to, the loss of potential shade trees and future wood recruitment from the permanent removal of these trees. These are important issues as Little Bear Creek has problems with temperature, dissolved oxygen and a lack of wood to create habitat for salmon” (Exhibit 33a).

Wetland Delineation

22. Wetland A is categorized as a slope wetland, which occur on hill slopes where groundwater daylight and runs along the surface or immediately below the soil surface. Wetland A also has some features of a riverine wetland, including being located in an active floodplain of a river and having hydrologic links to the water dynamics of the stream. Based on the classification system, it appears that riverine qualities of the wetland does not cover a large enough area to qualify Wetland A as riverine.² The wetland is classified as a slope wetland (Exhibits 5, 6, and 34c).
23. The delineation conducted by Acera, LLC indicates that the wetland is approximately 1,800 square feet (0.04 acres) (Exhibit 5, page 12). The report indicates that the wetland was delineated using standard practices prescribed by the US Army Corps of Engineers, which requires identification of hydrology, hydric soils, and hydrophytic vegetation (Exhibit 5, pages 7-9).
24. The City’s Wetland and Stream Consultant conducted a third-party review of the Acera report (Exhibit 6). During the review, the Consultant identified additional areas beyond the delineation flags to the west that feature wetland characteristics. “The western boundary of Wetland A extends beyond that of ACERA’s delineation in January 2014. Evidence of wetland hydrology, soils, and obligate hydrophytic vegetation extends approximately 25-foot upslope from the delineated wetland edge” (Exhibit 6).
25. A second verification of the wetland boundary was completed by Sarah Spear Cooke of Cooke Scientific in January 2016 (Exhibit 9). The memorandum states that the verification was completed using two of the three indicators (hydric soils and hydrology), but not the third indicator (hydrophytic vegetation). The report establishes Wetland A at the time of the delineation (January 2016) as approximately 2,600 square feet and extending further to the west. The report qualifies the specific delineation as “problematic on this site because vegetation indicators are missing at that time of the year...my delineation can only be verified once the vegetative indicators have returned- which will likely be in March once the growing season has begun” (Exhibit 9, page 1).
26. The *Regional Supplement to the Corps of Engineers Wetland Delineation Manual* states that establishing hydrophytic vegetation “should be based on the plant community that is present during the wet portion of a growing season in a normal rainfall year.”³ Sites warrant additional consideration if hydrophytic vegetation indicators are not present during the time of sampling. In these situations the manual recommends “returning to the site during the normal wet portion of the growing season and re-examine the site for indicators of

² Hruby, Thomas, *Washington State Wetland Rating System for Western Washington Revised*, Washington State Department of Ecology Publication # 04-06-15 (2004), <https://fortress.wa.gov/ecy/publications/documents/0406025.pdf>, page 31.

³ US Army Corps of Engineers. *The Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region Version 2.0*, ERDC/EL TR-10-3 (2010). http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/reg_supp/west_mt_finalsupp.pdf, page 24.

hydrophytic vegetation.”⁴ The delineation of Wetland A (Exhibit 9) is incomplete without an evaluation of vegetation indicators. A condition was placed on the SEPA Mitigated Determination of Nonsignificance requiring delineation following the US Army Corps of Engineers Wetland Delineation Manual (Exhibit 16).

27. On May 5, 2016, representatives from the Department of Ecology, Department of Fish and Wildlife and the City conducted a visit to the site. During this site visit, areas adjacent to the western slope were identified to have heavily saturated soils with several identified plant species commonly occurring in wetlands (Exhibit 34c, page 3). This area is consistent with western areas identified by the City's Wetland and Stream Consultant as needing additional delineation (Exhibit 6, page 2). The boundary and extent of the wetland appears to be much larger than the Cooke Scientific delineation (Exhibit 34c, page 4). Additional verification through a delineation and rating will be required by the Ecology (Exhibit 34c, page 4). At this time, impacts from this proposal to Wetland A cannot be reviewed and there is a possibility that wetland fill may occur as part of the proposal.
28. Wetlands must be rated using a dual system method as outlined in WMC 21.24.320, including the wetland rating system prescribed by the Department of Ecology and the wetland rating system prescribed by the City of Woodinville. The systems vary in that the Department of Ecology rating system provides a standardized scoring mechanism to rank wetlands, whereas the City of Woodinville rating system provides wetland buffer widths based on scoring resulting from specific wetland characteristics or attributes. The Department of Ecology system serves as the “best available science” for wetlands under the Growth Management Act.⁵ Although the systems share some similarities, the systems are fundamentally different in both method of rating and by distribution of categories or classes. An evaluation of wetlands under both the City and Department of Ecology rating systems is required as part of a critical area special study.
29. Using the Department of Ecology's rating system, the wetland is rated as a Category IV by the applicant's biologist and a Category III by the City's Stream and Wetland Consultant. The Acera report rates the wetland as a Category IV, the lowest category possible in the Department of Ecology's Wetland Rating System for Western Washington (Exhibit 5, page 12). The report scores the wetland as low for water quality functions (8), hydrologic function (2), and habitat function (13). The City's biological consultant rates the wetland as a Category III (Exhibit 7, page 14). Both reports concur in identifying opportunities for water quality improvements (Exhibit 5, page 57; Exhibit 7, page 3). A representative from the Department of Ecology confirmed the Category III rating by the biological consultant (Exhibit 34c). The Category III rating under the Department of Ecology system indicates that the wetland provides a moderate level of functions and has experienced environmental disturbance of some manner.⁶
30. The City's rating system designates wetlands as Class 1, Class 2 or Class 3 based on the characteristics of the wetland and association with streams pursuant to WMC 21.24.320. The City's wetland rating system is the mechanism for establishing buffer widths under WMC 21.24.330. Pursuant to WMC 21.24.320, wetlands which are “proximal to and influenced by” Little Bear Creek are designated as Class 1 under this system. After reviewing both the Acera report and City's consultant report, the City found that Wetland A

⁴ Ibid, page 100.

⁵ Hruby, Thomas.

⁶ Ibid.

is within two to three feet of Little Bear Creek qualifying it as proximal and is within the flood elevation and hydrology of the stream qualifying it as "influenced by." The Department of Ecology affirms this analysis, stating that "there is a contiguous surface water connection with the creek...and the lower portion of Wetland A is within the floodplain of Little Bear Creek" (Exhibit 34c, page 2). Therefore, Wetland A qualifies as a Class 1 wetland (Exhibit 15, page 7).

31. Standard buffers for a Class 1 wetland is 150 feet, but may be reduced to 100 feet with enhancements pursuant to WMC 21.24.330. Using the Cooke Scientific wetland boundary (Exhibit 9), both the standard buffer and reduce buffer widths encompass a majority of the western portion of the site where development could occur (Exhibit 3). Wetland areas delineated consistent with Finding 27 to the west will likely further increase the proportion of the site covered in buffer areas in addition to the potential wetland fill.
32. The Wetland A is degraded and has opportunities for functional improvement (Finding 29). The Acera critical areas report identifies opportunities for enhancement to the wetland and buffers (Exhibit 5). As proposed in that report, Wetland A and its buffer would be mitigated with native herbaceous plants to reduce erosion and improve water filtration and purification. This mitigation is based on the wetland size of 1,800 square feet and does not take into consideration a larger wetland identified by the other reviewers. An assessment of wetland impacts, minimization sequencing, and adequacy of mitigation cannot be completed without establishing the wetland boundaries. A combination of wetland enhancement, mitigation and creation may be required based on the scope of work.
33. Buffer mitigation and replacement ratios are prescribed in WMC 21.24.350(8). The wetland fill, if proposed, must be mitigated through enhancement of the subject wetland and additional wetland creation. Wetland fills are required to be mitigated through wetland replacement at a 4:1 ratio and enhancement for reductions are at a 1:1 ratio pursuant to WMC 21.24.350(8). Final approvals must be obtained by the City, state and federal agencies including information on the size, proposed mitigation plans, mitigation sequencing as required by law (avoid, minimize, rectify, reduce, and compensate), at the time of project approval. The mitigation must improve function and values of the wetland for water quality, hydrology, and habitat.

Fish and Wildlife Habitat Conservation Area

34. Little Bear Creek and its riparian area has been documented to be utilized by nine fish species, nineteen bird species, ten mammal species, and three amphibian species.⁷ Fish and wildlife habitat conservation area (FWHCA) include those areas with a documented presence of species listed by federal or state agencies as endangered or threatened, Type 1 streams, and Class 1 wetlands pursuant to WMC 21.24.410. Little Bear Creek, Wetland A and their buffers qualify as a fish and wildlife habitat conservation area.
35. Pursuant to WMC 21.24.420(1), a habitat management plan is required whenever the presence of areas with which species listed as threatened under federal law have a primary association. The Chinook salmon (*Oncorhynchus tshawytscha*) found in Little Bear Creek, is listed federally as a threatened species. The requirements for a habitat management plan in WMC 21.24.430(3) are consolidated with the critical areas report (Exhibit 5).

⁷ David Evans and Associates, Inc.

36. Habitat management plans must include an analysis of how the proposed development activities will affect the FWHCA and listed species, and include provisions to reduce or eliminate the impact of proposed development activities pursuant to WMC 21.24.430(3)(c). The proposal must consider prohibition or limitation of development activities in the FWHCA, retention of vegetation, limitation on site access, seasonal restrictions, clustering of development, and preservation or creation of habitat for listed species. The proposed development is limited to one single-family residence and no construction or grading is proposed within 100 feet of the ordinary high water mark of the stream. Access to the site is limited as the property serves a single-family residence and is not publicly accessible. The stream buffer, wetland, and wetland buffer will be subject to limited vegetation removal, enhanced and restored through a mitigation plan pending approval, protected through a native growth protection easement, and as a part of this proposal (Exhibit 5; Finding 20).
37. Pursuant to WMC 21.24.440(4), all activities, uses and alterations affecting waterbodies used by anadromous fish must adhere to specific standards regarding work windows, stream alignments, avoiding degradation of functions or values, and mitigation in accordance with an approved plan. No work is proposed within the ordinary high water mark of the stream. Buffer restoration and enhancement are proposed as part of the application to improve functions and values.

SHORELINE MASTER PROGRAM:

38. Little Bear Creek runs through the property and is designated as a shoreline of the state. Pursuant to RCW 90.58.030(2)(d) and (e), this area is defined as shoreline jurisdiction and is subject to the Woodinville Shoreline Master Program (SMP). The proposed development is within the Shoreline Residential zone. Single-family residential development is a permitted use in the Shoreline Residential Zone (SMP Table 6-1 Shoreline Use Matrix). SMP Section 6.14 regulates residential developments in the shoreline jurisdiction.
39. Pursuant to RCW 90.58.140(2), substantial development shall not be undertaken within the shoreline jurisdiction without first obtaining a substantial development permit. WAC 173-27-040 identifies what development is exempt from obtaining a substantial development permit. Construction of a single-family residence is general exempt from obtaining a substantial development permit under WAC 173-27-040(2)(g); however, placement of fill in a wetland is not an exempt activity. Without an additional evaluation of the wetland boundary, it cannot be determined whether the proposal is exempt from the requirements of a substantial development permit. Should it be determined that wetland fill occurs as part of the proposal, a substantial development permit shall be required.
40. SMP Section 6.14.3 requires that new residential developments shall be sited, designed, and configured in a manner that avoids the need for new shoreline stabilization or flood hazard reduction measures. The proposed residence will be sited at least 100 feet from the ordinary high water mark of Little Bear Creek and above the base flood elevation (Exhibit 3).
41. SMP Section 6.14.4 requires that adequate disposal facilities must be provided in accordance with appropriate state and local health regulations, and separated from storm drainage facilities. Sewer connection shall be made to the sewer line on 136th Ave NE. A sewer availability certificate from Woodinville Water District identifies an available connection within 100 feet of the site (Exhibit 2, page 19).

42. SMP Section 6.14.6 requires water supplies and facilities must be available so that groundwater quantity or quality will not be endangered by over-pumping. Water service will be provided by Woodinville Water District. A water availability certificate identifies an eight-inch water main accessible within 52 feet of the site. No well water or ground pumping is proposed as part of this proposal.
43. SMP Section 6.14.7 states that structures or other developments accessory to residential uses require a Shoreline Substantial Development Permit and shall be designed and located to blend into the site as much as possible. Accessory uses and structures shall be located landward of the principal use. The proposed driveway, retaining wall, and stairs are characterized as appurtenant structures of a single-family residence. Additional accessory uses may require a substantial development permit if they do not qualify as an appurtenant use under WAC 173-27-040. The driveway, retaining wall and stairs are below the grade of the street and located closely with the proposed residence.
44. SMP Section 6.14.11 limits buildings or structures to 35 feet above average grade level and shall not block the stream views of 10 or more existing residential units. The existing average grade as calculated under WAC 173-27-030 is 115.21 feet, limiting the building height to 150.21 feet. The height of the building is estimated at 151.67 feet, which is above the height limit. The proposed height of the building and calculated average grade shall be verified once the building permit is submitted with a finalized building footprint. This is included as a recommended condition of this permit.
45. SMP Section 6.14.14 requires colors and materials to be of an earthen tones, avoiding glossy or metallic structures which could detract from the natural settings. No elevations or color samples are provided for the exterior. This is included as a recommended condition of this permit.
46. SMP Section 6.14.16 states removal of existing vegetation within the required buffer area from the ordinary high-water mark of the channel is allowed only when it improves existing shoreline ecological functions, habitat, appearance, and stability, or as required for stream or buffer rehabilitation. Removal of existing vegetation within the buffer is limited to invasive species as identified in the mitigation plan (Exhibit 5). Trees are not proposed for removal in the stream buffer (Exhibit 13).

ZONING:

47. The property is located in the R-6 zone (moderate density residential) according to the City's official zoning map, with a minimum lot size of 6,000 square feet. The property is 71,103 square feet and meets the minimum lot size requirement.
48. Table A of WMC 21.12.030 and WMC 21.12.030(B)(8) establishes density and dimensional requirements for properties in the R-6 zoning district:
 - a. The minimum street setback is 10 feet. The proposed residence is 20 feet from the property line at the street. The proposal complies with this requirement.
 - b. The minimum interior setback is five feet. The proposed residence is situated outside of setbacks, located 73 feet from the north property line, 46 feet from the south property line, and 285 feet from the east property line.
 - c. The base height is 45 feet, which is measured from average finished grade measured six feet from the smallest rectangle enclosing the building. Building height will be verified during building permits when the building footprint and bulk are finalized.

- d. The maximum building coverage is 50 percent. Proposed building coverage total 3,249 square feet or 4.6 percent. The proposal complies with the maximum building coverage.
 - e. The maximum impervious surface coverage is 70 percent. Proposed impervious surfaces total 4,524 square feet or 6.4 percent. The proposal qualifies with the impervious surface requirements.
49. The proposal will be evaluated for compliance with the City's tree retention requirements. An arborist report was submitted as part of the reasonable use permit application. A Type I tree plan, including a planting pIPan, will be required to be submitted and the tree retention requirements will be evaluated for compliance with the City's requirement as part of the building permit process.
50. City issued a SEPA Mitigated Determination of Nonsignificance on April 18, 2016 requiring mitigation to avoid adverse impacts to Wetland A and geologically hazardous areas, subject to five conditions and mitigation measures. The determination stands as issued.
- a. Wetland A shall be delineated in accordance with the US Army Corps of Engineers Wetland Delineation Manual.
 - b. Mitigation actions shall comply with WMC 21.24.350. Altered wetlands shall be replaced at a rate of four square feet to one square feet and buffer impacts shall be enhanced and replaced at a rate of one square feet to one square feet beyond the buffer reduction enhancement.
 - c. Mitigation plantings shall include trees planted no further than 10 feet on center and shrubs no further than 4 feet on center. Conifers shall be a minimum of six feet tall and broadleaf trees shall be a minimum of 2.5 inch caliper.
 - d. A maintenance and monitoring standards shall ensure that no more than five percent of the site is covered with invasive species and survival rate of plants shall be greater than 90 percent at the end of the monitoring period.
 - e. In order to reduce the chances of shallow slough or slide events, special construction recommendations identified in the geotechnical report prepared by Robinson Noble, dated January 23, 2015 shall be followed for site preparation and grading, structural fill, foundations, lateral loads, and drainage.

OTHER:

51. The applicant submitted a preliminary drainage report identifying drainage for three residences (Exhibit 12). An updated drainage report and grading and drainage plans will be required to be submitted consistent with the current King County Stormwater Design Manual. Erosion control plans preventing sediment and runoff from entering the buffers will be required. Drainage analysis and improvement requirements will be evaluated for compliance with the City's requirements as part of the building permit process.
52. Pursuant to WMC 15.04.060, frontage improvements are required along the length of the property on 136th Avenue NE, including curb, gutter and sidewalks following Transportation Infrastructure Standard No. 104A. The property is a block south of Woodinville High School and is identified as an area requiring safe walking paths for students (Exhibit 2, page 26). Preliminary road plans will be evaluated for compliance with the City's requirements as part of the building permit process.

CONCLUSIONS

1. The proposal is required to undergo the reasonable use permit process as the project includes development within critical areas and their buffers. The permit must follow the processing procedures of a shoreline variance pursuant to SMP Section 6.2.2.
2. Pursuant to WMC 17.07.030, this permit is a Type III decision and the Hearing Examiner has the authority to decide the permit after conducting a public hearing. The City shall transmit the decision to the Department of Ecology, who shall review the permit decision and issue its final decision pursuant to WAC 173-27-200 and SMP Section 7.5.4.2.
3. Proper notice for the public hearing has been provided pursuant to WMC 17.11.030. Notice was posted on the property, mailed to property owners within 500 feet and parties of record, and published in the *Woodinville Weekly* newspaper more than 15 days prior to the date of the hearing.
4. Pursuant to WMC 21.24.080(2), the applicant may apply for a reasonable use permit if the application of Chapter 21.24 WMC would deny all reasonable use of the property. WMC 21.24.080(2)(b), sets forth the criteria for approving a reasonable use permit:

- a. The application of this chapter would deny all reasonable use of the property

APPLICANT RESPONSE: My parcel #0622100060 is 1.63 acre (71,101 SF) zoned R6. Per Woodinville Municipal Code 21.12.030 minimum lot area for one single family home is 6000 sq.ft and minimum building footprint is 50% which is equal to 3000 sqft with impervious surface allowed within this minimum lot size is 4200 sq.ft (70%). My parcel has Little Bear creek going at one end, a wetland of approx 1800 sq.ft which City chose to classify it as Class 1 and Landslide hazardous area which primarily leaves approx 850 sq.ft of possible buildable area (See Exhibit 1) and that too with 100' reduced buffer which essentially makes my parcel unusable.

Hence my ask is to grant a Reasonable Use Permit to build ONE single family home with approx 2508 sq.ft of building footprint in the entire 1.63 acre R6 zoned lot. Without the reasonable use permit, my entire parcel of 1.63 acre becomes non usable.

STAFF COMMENT: The physical features of this property greatly limit the buildable areas allowed by development standards in Title 21 WMC. Critical areas and their buffers comprise at least three-quarters of the property, resulting in one realistic building pad of approximately 850 square feet. This buildable area is isolated by critical areas on three sides and the property line to the south. Access to this buildable area is not feasible from 136th Avenue NE without crossing a critical area, such as the wetland buffer or steep slope terrain. Strict application of this code precludes the siting of a single-family residence and adequate access to the site.

- b. There is no other reasonable use with less impact on the sensitive area.

APPLICANT RESPONSE: Building a commercial or mixed use is not a reasonable use of the parcel as it may have greater impact to the sensitive area. Hence building one single family residential unit is the best reasonable use of the parcel.

STAFF COMMENT: The property is zoned R-6, moderate density residential. Allowable land uses include dwelling units, cultural and institutional uses such as

schools or parks, and limited businesses within existing residential structures. Along this section of 136th Avenue NE from NE 195th Street to NE 190th PI NE is zoned R-6 and development is exclusively single-family residences with predominately one-story structures. The proposed single-family residence is consistent with the uses found in this zone. No other uses allowed in the zone would provide lesser impact in terms of human disturbance or alteration. The proposed use is reasonable for the R-6 zone.

- c. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest.

APPLICANT RESPONSE: Per Geotech report prepared by Robinson Noble and Wetland & Stream Buffer report prepared by professional wetland scientist Mike Layes with 19 years of experience (both report already submitted to City), proposed development does not pose any unreasonable threat to the public health, safety or loss of life. Proposed development also maintains healthy, functioning ecosystems by working with "Mountain to Sound Greenway Trust" to further improve Little Bear Creek that goes through the property. Location of the property which is outside the 100' feet reduced stream buffer, outside of flood area and minimum 35-45 feet outside the wetland buffer will further ensures that ground and surface water, wetland and fish and wildlife and their habitats are conserve the biodiversity of plant and animal species. In addition, proposed single family home will be built to the engineering recommendation and requirements of City of Woodinville.

STAFF COMMENT: The geotechnical report identifies that the site is generally suitable for construction from a geotechnical standpoint; however, specific project review has not been completed for the proposal. 27,500 square feet of restoration and enhancement is provided as mitigation for the new construction in the stream and wetland buffers. This mitigation is substantial in restoring this habitat and offsetting *known* impacts resulting from the project. However, potential impacts to the undelineated wetland are not contemplated or addressed in this application and *unknown* impacts remain. The application does not serve the goal of maintaining and protecting functional ecosystems nor address preventing adverse environmental impacts. Therefore the application as proposed is not consistent with the purposes of Chapter 21.24 WMC.

- d. Any alterations permitted to the sensitive area shall be the minimum necessary to allow for reasonable use of the property

APPLICANT RESPONSE: Only alternation that is being asked is to build ONE single family home on the entire 1.63 acre parcel which is well within the reasonable footprint of minimum development allowed in a R6 zoned property within City of Woodinville. Also the location of the footprint is well outside of 100ft stream buffer and least impactful to wetland and trees. Alteration of approx. 2508 sq.ft of footprint and approx. 4524 sq.ft of impervious is the smallest reasonable use on a 1.63 acre parcel zoned R6. In addition, we also plan to remove blackberry and plant new trees to further enhance the sensitive area.

STAFF COMMENT: The *size* of the proposed development pad is the minimum necessary to develop a single-family residence consistent with the residences in this area. The proposed development pad comprises 4.6 percent of the buildable area in a zone that permits up to 50 percent. The location of the house on the

western edge of the property provides the shortest access to 136th Avenue NE which reduces intrusion into the landslide hazard area and avoids significant grading. Location along this boundary also avoids the 100-foot reduced stream buffer. However, avoidance of the undelineated wetland area is unknown at this time. Without the location of all critical areas identified, alterations cannot be determined to be the minimum necessary to allow for reasonable use.

STAFF RECOMMENDATION

Staff does not have a recommendation for the reasonable use permit application. However, if the Hearing Examiner should find that the applicant has met the burden of demonstrating compliance with the reasonable use permit criteria in WMC 21.24.080(2), staff recommends the following conditions to be applied:

1. A new wetland delineation boundary shall be completed as part of this proposal in accordance with the US Army Corps of Engineers methodology. If new wetlands are identified on the property, wetland ratings shall be completed consistent with the Department of Ecology rating system.
2. All site improvements and structures shall be sited, including location and layout, in a manner that avoids wetland fill and intrusion into wetland and stream buffers to the greatest extent possible.
3. The buffer area shall be placed in a native growth protection easement in a form acceptable to the City of Woodinville.
4. The applicant shall obtain all required local, state and federal permits for the proposed project. A hydraulic project approval and Corps of Engineers approval may be required for this project.
5. If the scope of work exceeds the single-family residence exemption under WAC 173-27-040(2)(g), including wetland fill, a shoreline substantial development permit must be obtained prior to the issuance of any construction permits.
6. Buildings shall incorporate earthen tones and avoid glossy or metallic surfaces that detract from the natural settings.
7. Height shall not exceed 35 feet from existing average grade as measured in WAC 173-27-030.
8. All conditions and mitigation set forth under the Mitigated Determination of Nonsignificance (Exhibit 16) issued April 4, 2016 shall be conditions of approving this permit. The applicant shall demonstrate compliance with the mitigation plan requirements prior to permit issuance.
 - a. Wetland A shall be delineated in accordance with the US Army Corps of Engineers Wetland Delineation Manual.
 - b. Mitigation actions shall comply with WMC 21.24.350. Altered wetlands shall be replaced at a rate of four square feet to one square foot and buffer impacts shall be enhanced and replaced at a rate of one square foot to one square foot beyond the buffer reduction enhancement.
 - c. Mitigation plantings shall include trees planted no further than 10 feet on center and shrubs no further than 4 feet on center. Conifers shall be a minimum of six feet tall and broadleaf trees shall be a minimum of 2.5 inch caliper.

- d. A maintenance and monitoring standards shall ensure that no more than five percent of the site is covered with invasive species and survival rate of plants shall be greater than 90 percent at the end of the monitoring period.
 - e. In order to reduce the chances of shallow slough or slide events, special construction recommendations identified in the geotechnical report prepared by Robinson Noble, dated January 23, 2015 shall be followed for site preparation and grading, structural fill, foundations, lateral loads, and drainage.
9. All development shall proceed in accordance with the recommendations listed in the Stream and Wetland Assessment Report and Buffer Reduction Plan prepared by Acera (Exhibit 5) with the following modifications:
- a. The mitigation plan shall be revised to take into account updated wetland boundaries.
 - b. Mitigation sequencing with an evaluation of alternatives shall be completed prior to approval of the mitigation plan by the Development Services Director.
 - c. Vegetation removal shall be limited only to that which is necessary for construction of the single-family residence and for invasive species removal.
10. Any soils exposed during construction shall be appropriately re-vegetated consistent with the proposed best management practices. A final temporary erosion control and sedimentation plan shall be prepared in compliance with the 2009 King County Surface Water Design Manual prior to the start of construction work. Proper temporary erosion control best management practices must be used and inspected daily. The plan must include spill containment procedures, equipment and materials, which must be on site.
11. Construction activities shall be commenced within two years of the effective date as set forth in RCW 90.58.143. However, the City may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the shoreline conditional use permit and to the Department of Ecology.
12. The Development Services Director and/or the Public Works Director shall have the authority to direct the developer or the developer's on-site representative to immediately cease activities and redirect their attention to resolving any problem, particularly any environmental degradation, which in the Director's opinion needs immediate resolution. Failure of the developer or his representative to redirect such labor and equipment shall result in immediate project closure and resolution of the problem by the City.
13. Should archaeological materials (e.g. bones, shell, stone tools, beads, ceramics, old bottles, hearths, etc.) or human remains be observed during project activities, all work in the immediate vicinity should stop. The State Department of Archaeology and Historic Preservation (360-586-3065), the City planning office, the affected Tribe(s) and the county coroner should be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources (RCW 27.53, 27.44 and WAC 25-48) is required. Failure to comply with this requirement could constitute a Class C Felony.

EXHIBIT LIST:

General

1. Staff report
2. Land Use Permit Application and materials
3. Modi Site Plan (Sheet PP1) dated March 23, 2016
4. Letter regarding Modi Reasonable Use Permit criteria dated September 23, 2015

Wetlands

5. Stream and Wetland Assessment Report and Buffer Reduction Plan, prepared by Mike Layes of Acera LLC, dated January 2015
6. Response to Request for Additional Information, prepared by Mike Layes of Acera LLC, dated January 24, 2015
7. Memorandum regarding Modi Short Plat Third Party Wetland Review, prepared by Shelby Petro and Kevin O'Brien of Otak, dated April 8, 2015
8. Technical Memorandum regarding disputed wetland category prepared by Mike Layes of Acera LLC, dated April 22, 2015
9. Wetland A Western Edge Boundary Verification Memorandum, prepared by Sarah Spear Cooke of Cooke Scientific, dated February 24, 2016

Soils, Drainage, and Trees

10. Third Revision Geotechnical Engineering Report prepared by Rick Powell of Robinson Noble, dated January 23, 2015
11. Email correspondence between Prakash Modi, Barbara Gallegher and Rick Powell of Robinson Noble dated between January 26, 2015 and November 6, 2015
12. Preliminary Technical Information Report, prepared by Brandon Loucks, dated revised February 18, 2015
13. Tree Inventory prepared by Brandon Cook dated March 3, 2015
14. Flood Insurance Study Excerpt (Volume 1 – Table 6; Volume 3); Preliminary Flood Insurance Rate Map – King County and Incorporated Areas (Map No. 53033C0068H), dated February 1, 2013

Determinations

15. Critical Areas Determination (Amended) issued by the City of Woodinville, dated June 1, 2015
16. Mitigated Determination of Nonsignificance and SEPA Checklist issued April 4, 2016

Notices

17. Complete Application letter, dated November 18, 2014
18. Notice of Application issued November 24, 2014
19. Revised Notice of Application issued October 5, 2015
20. Notice of Hearing issued May 2, 2016

City Correspondence

21. City of Woodinville - Comment Letter 1 - Information Request, dated January 6, 2015
22. Email correspondence between Prakash Modi, Mike Layes, Jenny Ngo, Dave Kuhl and Agnes Kowacz, sent January 6, 2015 through May 20, 2015
23. Response to Public Works Comment #10, prepared by Brandon Loucks of Beyler Consulting, dated February 25, 2015
24. Response to Additional Information Request by Prakash Modi, dated March 9, 2015

25. Email correspondence between Prakash Modi, Jenny Ngo, Dave Kuhl and Agnes Kowacz, sent June 1, 2015 through June 10, 2015
26. City of Woodinville – Comment Letter 2 – Information Request, dated October 29, 2015
27. Letter to Ryan Miller from Prakash Modi, dated October 31, 2015
28. Email correspondence between Prakash Modi, Agnes Kowacz and Jenny Ngo regarding submittals, sent November 2, 2015 through November 10, 2015
29. Email correspondence between Prakash Modi and Agnes Kowacz regarding wetland boundary delineation, sent January 18, 2016 through February 24, 2016
30. Email correspondence between Prakash Modi, Agnes Kowacz and Jenny Ngo regarding submittals, sent February 12, 2016 through February 16, 2016
31. Email correspondence between Prakash Modi and Agnes Kowacz regarding RUP hearing scheduling, sent April 19, 2016 through April 20, 2016
32. Email correspondence between Prakash Modi, Agnes Kowacz, and Jenny Ngo regarding site visit, sent May 4, 2016 through May 6, 2016

Agency and Public Comments and Associated Correspondences

33. Muckleshoot Tribe

- a. Email from Karen Walter of Muckleshoot Tribe to Jenny Ngo, sent December 9, 2014
- *See Exhibit 6 for response to December 9, 2014 comments by Acera*
- b. Response to Muckleshoot Indian Tribes Fisheries, prepared by Brandon Loucks of Beyler Consulting, dated February 25, 2015
- c. Email from Karen Walter to Agnes Kowacz, Associate Planner, sent October 19, 2015
- d. Letter from Prakash Modi responding to Karen Walter comments, dated October 31, 2015 and received by the City of Woodinville on November 2, 2015
- e. Email from Karen Walter to Agnes Kowacz and Dave Kuhl, sent April 18, 2016

34. Muckleshoot Tribe, Washington Department of Fish and Wildlife, Washington Department of Ecology

- a. Email correspondence between Karen Walter of Muckleshoot Tribe and Paul Anderson of Washington Department of Ecology to Agnes Kowacz and Jenny Ngo, sent April 28, 2016
- b. Email correspondence between Karen Walter of Muckleshoot Tribe, Angie Peace of Washington Department of Fish and Wildlife, and Paul Anderson of Washington Department of Ecology to Agnes Kowacz and Jenny Ngo, sent April 28, 2016
- c. Letter from Paul Anderson of Washington Department of Ecology to Jenny Ngo, dated May 12, 2016
- d. Email from Paul Anderson of Washington Department of Ecology to Jenny Ngo, Angie Peace of Washington Department of Fish and Wildlife, Karen Walter of Muckleshoot Tribe, and Prakash Modi, sent May 12, 2016

35. Richard Reed

- a. Email from Richard Reed to Jenny Ngo, sent between November 26, 2014 and December 2, 2014
- b. Email from Richard Reed to Agnes Kowacz, sent October 7, 2015
- c. Letter from Prakash Modi responding to Richard Reed comments, undated and received by the City of Woodinville on February 12, 2016

36. Email correspondence Ryan Watson to Jenny Ngo, sent between December 2, 2014 and December 3, 2014
37. Letter from Jeff and Betty Pierce to Jenny Ngo, dated received January 14, 2015
38. Letter from Chad and Lilliana Brueckner, Tek-Min and Jen Gan, Henry Kieneker, Christa McNatt, Chet and Anna Mortiz, Jeff and Betty Pierce, and Jan West to Jenny Ngo dated January 13, 2015
39. Anna and Chet Moritz, Henry and Felisa Kieneker, Jeffery and Betty Pierce, Christa McNatt, and Jen Gan
 - a. Letter from Ann and Chet Moritz, Henry and Felisa Kieneker, Jeffery and Betty Pierce, Christa McNatt, and Jen Gan to Agnes Kowacz dated October 26, 2015
 - b. Letter from Prakash Modi responding to Anna and Chet Moritz comments, dated October 31, 2015 and received by the City of Woodinville on November 2, 2015
40. Sno-King Watershed Council
 - a. Letter from Bill Lider on behalf of Sno-King Watershed Council, dated February 4, 2015
 - b. Response to Sno-King Watershed Council, prepared by Mike Laves of Acera LLC, dated February 16, 2015
 - c. Response to Part II Sno-King Watershed Council, prepared by Brandon Loucks of Beyler Consulting, dated February 25, 2015
 - d. Letter from Bill Lider on behalf of Sno-King Watershed Council, dated October 16, 2015
 - e. Email exchange between Bill Lider and Jenny Ngo, Senior Planner, sent between October 16, 2015 and October 19, 2015
 - f. Letter from Prakash Modi responding to William Lider Comments, dated October 31, 2015 and received by the City of Woodinville on November 2, 2015
41. Email correspondence from Mickey Moritz to Agnes Kowacz dated April 12, 2016 to April 14, 2016