



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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November 12, 2009



Your address
is in the
Nooksack
watershed

Nicole Oliver
City of Bellingham
210 Lottie St.
Bellingham, WA 98225

RE: **LA File# Fairhaven Highlands Draft Environmental Impact Statement**
 DOE file# 200905709
 Applicant Greenbriar Northwest Associates LLC

Dear Ms. Oliver:

Thank you for the opportunity to provide comments on the above referenced Draft Environmental Impact Statement. Based on review of the State Environmental Policy Act (SEPA) checklist associated with this Draft Environmental Impact Statement we offer the following comments:

Wetlands Comments:

General

The DEIS specifies that this project is vested under the City of Bellingham's outdated *Wetland and Stream Regulatory Chapter*, adopted in 1991. This regulatory code does not represent the current science on wetlands and their biological and chemical requirements and limitations. Although the City may allow permit approval using this outdated code, the Department of Ecology (Ecology) will be reviewing the project under Clean Water Act Section 401 and Chapter 90.48 RCW authority, using state and federal guidance, which was developed using the best available science. All of the action alternatives would fall within Ecology's authority under these two laws.

Taking best available science into consideration, all of the action alternatives would cause far greater indirect impacts to wetlands and direct impacts to their buffers than indicated in the DEIS. The mature forested wetlands and the wildlife that rely on them need much larger upland forested buffers than those proposed in order to maintain habitat integrity for these animals. Amphibians, neotropical migrant birds, and fairy shrimp are especially sensitive to

habitat fragmentation (as indicated in the DEIS). It is imperative, if we are to maintain the populations of these animals, that the project footprint not surround each wetland with high intensity land uses with a minimal buffer.

Currently all alternatives proposed are inconsistent with state and federal wetland and buffer guidance and requirements. In order to avoid future costly delays during state and federal permitting, we recommend that the project include an alternative that clusters development into one section of the site, thus avoiding Category I wetland and buffer impacts and allowing habitat connectivity with large forested upland buffers to the on- and off-site wetlands.

Specific

- The division of Wetland CC into two separate wetlands will need to be field-verified by the Corps and Ecology.
- It is unclear when and why the categorical division of Wetland JJ occurred. We could not find the rationale for splitting the rating of this wetland. If this wetland can be dual rated according to the *Washington State Wetlands Rating System for Western Washington*, an explanation for the dual rating should be included either in the DEIS or in a readily available background document.
- Water quality monitoring of Wetlands CC and KK should be required at regular time intervals both before and after development to ensure that the wetlands remain inhabitable by fairy shrimp. In addition, the buffer widths around these wetlands should be wide enough to maintain the thermal conditions of the predevelopment site. Although specific data is available for streams on this issue, there is very little applicable data on wetlands. This issue must be explored thoroughly prior to any clearing on the site to ensure that adequate buffers are established to maintain wetland water temperature and dissolved oxygen.
- As the DEIS stated on page 3-102, windthrow is a major issue in newly cleared developments. It also stated that buffers of 76-115 feet are the minimum necessary to withstand the effects of wind over the long term. If we expect some blowdown within the outer portion of that range of widths, then the buffer remaining after blowdown will be even less than that proposed, which is already inadequate to protect the functions of the Category I wetlands. Additional buffer width must be added to account for windthrow for all wetlands.

Construction Stormwater Comments:

Stormwater runoff from construction activities can have a significant impact on water quality, introducing sediment and other construction site pollutants into waters of the state. Such pollutants can impair or eliminate aquatic habitat and prevent such waters from having multiple beneficial uses (e.g., fishing, swimming, drinking, etc).

From the SEPA register, it appears that this project may be subject to Ecology's NPDES General Permit for Stormwater Discharges associated with Construction Activity.

Permit coverage is necessary if the project meets the following criteria:

- Any land disturbing activities such as clearing, grading, excavating, and/or demolition that:
 1. Disturb one or more acres of land;
 2. Are "part of a larger common plat of development or sale," that will ultimately disturb one or more acres of land; AND
 3. Discharge stormwater from the site into state surface waters or into storm drainage systems which discharge to state surface waters. (Surface waters may include wetlands, ditches, rivers, unnamed creeks, lakes, estuaries, marine waters).
- Projects that include clearing forested areas, IF THE CLEARING is preparation for construction activities (e.g., homes/buildings) and the project meets the criteria listed above.
- Phased Construction: The total land area disturbed must be considered when the project is "part of larger common plan of development or sale." This term means an area where multiple separate and distinct construction activities may be taking place on different schedules under one plan. In a larger common plan, the disturbed area of the entire plan is used to determine if a permit is required.

EXAMPLE: A two acre construction site is planned for completion in three phases and each phase disturbs less than one acre. Because the total area disturbed under this common plan is cumulatively greater than one acre, permit coverage for the site would be necessary *before any phase of the project is started*. See change in ownership below.

- Industrial facilities already covered by the Industrial Baseline General Permit for their industrial activity, and which are planning construction which will disturb one or more acres of total land area, must apply for permit coverage.
- Change in ownership: When a construction site with permit coverage is sold to a new owner or owners, modifying or transferring permit coverage to the new owner(s) is necessary. You may also transfer a portion of permit coverage of a site, via a partial transfer, to new owner(s).

Exemptions to the permit

- Construction activity for routine maintenance of an original line and grade, hydraulic capacity, or the facilities original purpose.

- Sites that retain all stormwater on site. For example, if all stormwater is discharged to the ground through infiltration basins, dry wells, drain fields, or other means of discharge to the ground.
- Construction sites on federal land or Indian Reservations.
- Forestry activities such as nurseries, reforestation, thinning, prescribed burning, or timber harvesting that is NOT part of preparation for construction activity.
- Sites covered by an existing NPDES individual permit for stormwater discharges.
- Sites covered by an erosivity waiver (see below).

Low Rainfall Erosivity Waiver

Sites *under five acres* of disturbed area may be exempt from the permit if the site meets the following Low Rainfall erosivity waiver conditions:

- The erosivity factor during the project is less than five according to a calculator found online at: <http://ei.tamu.edu/>.
- Construction disturbance **starts and finishes** within the following timeline:
West of the Cascade Crest: June 15 – September 15 of the *same year*.
East of the Cascade Crest, except the Central Basin: June 15- October 15 of the *same year*.

If the construction activity extends beyond these time periods, the owner or operator must follow public notice requirements and apply for a stormwater permit.

During this interim period, operators of 1-5 acre sites who have discharges to surface waters and want to obtain permit coverage may do so by applying for coverage under the current construction stormwater general permit.

The construction site operator must apply for a low rainfall erosivity waiver *at least one week prior* to beginning land disturbance (e.g., clearing, grading, etc.)

PLEASE NOTE: The low rainfall erosivity waiver:

1. Does not apply to non-stormwater discharges such as wastewaters and hydrostatic test waters;
2. Only applies to the requirements of this permit;
3. Does not replace the authority of other local agencies; and
4. Is not available for sites determined to be a significant contributor of pollutants or sites excluded from this permit, such as sites with post construction discharges.

Applying for the permit

The operator of the construction site must apply for permit coverage. The operator can be either the party with operational control over construction plans and specifications or the party in charge of day-to-day activities related the Stormwater Pollution Prevention Plan (SWPPP). The operator is responsible for applying and following the terms of the permit.

Y:\BFO Admin\SEPA\Stormwater\2009\200905709 Fairhaven Highlands; b/t Chuckanut Dr, Old Fairhaven Pkwy, The Interurban Trail and University Way.docx

Submittal of an application for permit coverage should be completed at least 60 days prior to the discharge of stormwater from sites conducting construction activities (e.g. clearing, grading, excavating). Additional information and application forms are available from Ecology's Web Site at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/>

NOTICE:

Operators of construction sites, and their representatives/contractors, who allow a discharge of stormwater from their site, regardless of size, into surface waters should be aware that discharging stormwater to surface waters without coverage under an Ecology Permit may be in violation of state and federal law and may bring enforcement action by Ecology or generate citizens' third party lawsuits. Ecology has the authority under Washington State Water Pollution Control Act (RCW 90.48) to issue formal enforcement actions for violations of this Act, which may include penalties of up to \$10,000 per day for each violation. Third party suits may result in even larger penalties.

Whether or not a project is subject to Ecology's NPDES General Permit for Stormwater Discharges associated with Construction Activity, it is recommended that all land disturbance projects obtain and implement a Stormwater Pollution Prevention Plan (SWPPP). A SWPPP is a temporary erosion and sediment control plan. To prevent pollution of state waters it is necessary to implement the SWPPP when soil disturbing activity commences and to conduct regular site inspections to determine if the SWPPP is adequate to prevent soil erosion and discharges of stormwater from the site to surface waters. The SWPPP needs to be updated and maintained throughout the entire life of the construction project.

A SWPPP needs to ensure the following:

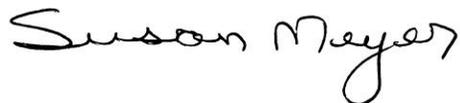
- Implementation of Best Management Practices (BMPs) (specifically structural or stabilization measures) that identify and reduce, eliminate or prevent sediment and erosion problems on site.
- Prevention of violations of surface or ground water quality and sediment management standards.
- Prevention of impacts to receiving waters from peak rates and volumes of stormwater runoff.

A full explanation of the Construction Site SWPPP criteria and guidance information for development of a SWPPP is available from Ecology's Web Site at:

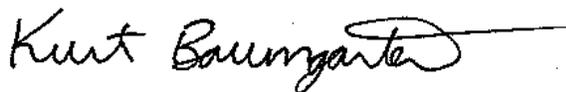
<http://www.ecy.wa.gov/programs/wq/stormwater/construction/>

Thank you for considering these comments from the Department of Ecology. If you have any questions please contact any of the employees listed below.

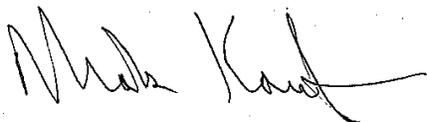
Sincerely,



Susan Meyer, Wetland Specialist, 425-649-7000



Kurt Baumgarten, Water Quality Specialist, 360-715-5210



Mark A. "Mak" Kaufman, Water Quality Specialist, 360-715-5221

cc: Greenbriar Northwest Associates LLC;
BFO SEPA File