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*Via electronic mail and facsimile*

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**Re: Forest Practices Application 2415960**

Dear DNR Officials,

This letter concerns Forest Practices Application 2415960, which DNR put out for public comment on Friday, March 1, 2013. I write on behalf of the Issaquah Alps Trails Club (“IATC”), a non-profit organization that advocates for the environmental protection of the mountains, valleys, rivers, and streams in the Issaquah Alps region. I also write on behalf of Save Squak, a group of local citizens specifically concerned with the impacts of the logging suggested in FPA 2415960. Our initial comments raise questions and concerns that we hope DNR will address in review of the FPA. The regional forester, Mr. Bruce McDonald, has informed us that DNR will consider comments submitted on or before March 21, 2013. We plan to elaborate on the issues below with additional substantive comments before that time.

IATC and Save Squak support forestry as an important part of the economic, social, and cultural landscape in Washington State. However, due to the unique location of the property proposed to be logged, the organizations ask that DNR give the FPA particularly close scrutiny to ensure that any logging adequately protects public resources. The Erickson Logging, Inc. properties are in the narrow corridor between Cougar Mountain and Squak Mountain, two of the most heavily used recreational areas in the State. The properties and surrounding areas support habitat suitable for extensive wildlife, including rare marbled murrelets and coho salmon. Close proximity to residential development means both that logging will have public safety impacts and that conversion to non-forestry use is a near certainty.

The location of the Erickson Logging properties is unsuitable for a nearly two hundred acre industrial clearcut. IATC and Save Squak suggest that DNR either deny the FPA or require substantial changes, as detailed below. Because of the potential for broad and severe impacts on public resources, a revised FPA should undergo analysis under the State Environmental Policy Act (“SEPA”) in order to carefully take into account environmental impacts before logging and conversion occur.

As you know, FPAs are grouped into classes according to their likely impact on the environment. Classes I, II, and III are exempt from SEPA review, while Class IV Special and General applications require SEPA review. In the sections below, I highlight aspects of the application that appear not to comply with the Forest Practices Act and regulations, explain why the application should be classified as a “Class IV Special” requiring SEPA review, and suggest that DNR conduct joint review of the FPA with King County.

### **Compliance with the Forest Practices Act and Regulations**

It appears from the FPA that the landowner made several incorrect or incomplete determinations. The commenters request that DNR please corroborate the following aspects of the FPA.

#### Acreage of Contiguous Clearcut

Due to the severe environmental impacts of clearcutting, also known as “even-aged harvest,” Forest Practices regulations requires close review of FPAs proposing to clearcut large contiguous areas. WAC 222-30-025 provides that:

Timber harvest which would result in an area larger than one hundred twenty acres and smaller than or equal to two hundred forty acres harvested by even-aged harvest methods on land owned or controlled by one landowner shall be reviewed by an interdisciplinary team, if the department determines that review is necessary.

An “interdisciplinary team” (“ID Team”) is “a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practices activity.” WAC 222-16-010. While the regulation neither specifies nor limits participation in the ID Team, it is typical for the team to include scientists from Washington Department of Fish and Wildlife and the Washington Department of Ecology, foresters, consulting biologists, and tribal representatives.

The FPA on its face makes clear that the proposed harvest is 195 acres and that there will be greater than 120 acres of even-aged harvest. FPA at 1. The proposed logging triggers consideration of an ID Team, and convening an ID Team review is necessary due to the setting of the logging. While clearcutting an area this size may be relatively common in an industrial forest region, it is highly unusual in the residential community of Issaquah, where 195 acres of clearcut dramatically alters the character of the landscape. These are logging practices that could not have occurred under the general King County jurisdiction and regulations. *See* Exh. A, “RE: Serenity Estates” (explaining how King County would have required enhanced protections and mitigation for logging on the subject property).

It is our understanding that DNR has agreed to convene an ID Team to conduct on-site review, and commend that decision. The commenters request that the ID Team respond to all of the technical questions raised in these comments, including determining: (1) the presence of suitable marbled murrelet habitat; (2) the proper typing and initiation points of all streams on the property; (3) the presence of steep and unstable slopes with rule-identified landforms requiring buffers; (4) the percentage grade of the proposed roads; (5) perennial seeps on the southern edge

of the proposed harvest unit; and (6) the buffers provided to adjacent properties and public spaces.

The IATC and Save Squak request to be notified regarding when the ID Team will visit the property and what the scope of that review will be. We also request the opportunity to provide an independent consultant to join this team. The team should further include members of the King County Planning Department, King County Parks, Washington Department of Fish and Wildlife, and the Muckleshoot Tribe, to respond to their respective interests.

The commenters are also concerned with the proximity of the proposed clearcut to residences on the southern border of the Erickson property. The commenters request that the logger buffer the southern border of the FPA in order to protect nearby neighborhoods from logging impacts.

### Marbled Murrelet Habitat

On the Marbled Murrelet Form attached to the FPA, Mr. Erickson checked “yes” on question six, indicating that the area to be logged includes mixed stands of Douglas Fir, Western Hemlock, Red Cedar, and Red Alder. According to his comments, those stands contain trees from 32” dbh up to 40” dbh.

According to the 2003 Pacific Seabird Protocol, which DNR relies upon as the authoritative guide to murrelet surveys:

Marbled Murrelet nests have been found primarily in mature and old-growth habitat and, in a few cases in Oregon, in younger (60-80 years) forests that have trees with dwarf mistletoe or other deformations or structures that provide a nest platform (Nelson 1997, Nelson and Wilson 2001). Douglas-fir, coast redwood, western hemlock, western red cedar, yellow cedar, mountain hemlock, and Sitka spruce predominate nest stands found to date (Hamer and Nelson 1995a, but see Bradley and Cooke 2001 for a tree nest in a large deciduous red alder and nests on cliffs). Therefore, potential habitat that should be surveyed for murrelets is defined as (1) mature (with or without an old-growth component) and old-growth coniferous forests; and (2) younger coniferous forests that have platforms.

PSG Protocol at 2-3.<sup>1</sup>

The “Instructions for Marbled Murrelet Form” published by DNR requires that if a landowner checks “yes” on question six, that landowner must “Provide brief description of current stand conditions that demonstrates the proposed area **is not** marbled murrelet habitat.” Instructions at 4 (emphasis in original). Under DNR regulations, suitable murrelet habitat must consist of seven contiguous acres of trees containing at least two platforms capable of supporting nesting per acre. WAC 222-16-010. A platform is any “horizontal tree structure such as a limb, an area

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<sup>1</sup> The PSG Protocol is available online at [http://www.pacificseabirdgroup.org/publications/PSG\\_TechPub2\\_MAMU\\_ISP.pdf](http://www.pacificseabirdgroup.org/publications/PSG_TechPub2_MAMU_ISP.pdf).

where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.” WAC 222-16-010.

In the Marbled Murrelet Form attached to the FPA, Mr. Erickson failed to sufficiently explain why the forests on his property are not marbled murrelet habitat. IATC and Save Squak request that DNR and the members of the ID team survey the habitat for the number of platforms in order to determine whether suitable murrelet habitat is present.

While it is unclear whether anyone has done a habitat survey on the property, review of the mapping strongly suggests that suitable marbled murrelet habitat exists. Gradient Nearest Neighbor Models<sup>2</sup> show that the property contains stands with trees of at least ninety years of age (darkest green pixels). Exh. B, Stand Age Map. Indeed, DNR regulations indicate that trees larger than thirty-two inch dbh, such as those on the property, are generally over ninety years of age. WAC 222-16-010. Larger areas of trees at least sixty to eighty years of age (second darkest green pixels) are distributed throughout the property and could also contain nesting platforms. *Id.* These large, old, coniferous trees are clearly visible in the aerial orthophotos of the property. Exh. C, Orthophoto Map (older trees appear larger and darker). These maps demonstrate that trees of both the right species and age to have nesting platforms exist in large blocks on the property. Most telling, however, is the “Marbled Murrelet Nesting Habitat Suitability” map which was derived from a model of vegetation and physiographic attributes of actual nest sites.<sup>3</sup> That map shows at least four blocks of habitat on the property rated as “moderately high” (light green pixels) or “highest” (dark green pixels) for murrelet habitat suitability. Exh. D, Marbled Murrelet Nesting Habitat Suitability.

The maps create a strong presumption that murrelet nesting habitat exists on the subject property. The commenters request that DNR carry out habitat surveys of the entire proposed harvest area with WDFW and the ID Team prior to approving the application.

### Stream Typing and Riparian Management Zones

The commenters request that DNR please confirm the change from fish-bearing to non-fish bearing on a segment of Stream C as identified in the map accompanying the FPA. It is not clear from the map if there is a physical barrier at that point or otherwise why it switches to non-fish bearing further north than the break is indicated on DNR hydro maps. A 140-foot buffer is required along the entire segment that fits the definition of Type F water.

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<sup>2</sup> Landscape Ecology Modeling, Mapping, and Analysis (LEMMA). 2009. Gradient Nearest Neighbor Models for the Northwest Forest Plan Effectiveness Monitoring. Available at: <http://www.fsl.orst.edu/lemma/main.php?project=nwfp&id=mapProducts>

<sup>3</sup> Raphael, M. G.; Falxa, G. A.; Dugger, K. M.; Galleher, B. M.; Lynch, D.; Miller, S. L.; Nelson, S. K.; Young, R. D. 2011. Northwest Forest Plan—the first 15 years (1994–2008): status and trend of nesting habitat for the marbled murrelet. Gen. Tech. Rep. PNW-GTR-848. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 52 p.

The FPA indicates that a number of streams on the property do not exist by crossing them out, but no justification or observation is provided for this determination. According to a LiDAR digital elevation model (DEM) with a two meter resolution (Exh. E), several of these streams appear as if they may indeed exist. We suspect some of them are at least Type Ns and require at least a thirty foot equipment limitation zone during harvest. Others may be Type Np and require fifty foot buffers. The ID Team ought to determine the existence and correct water type of all streams shown on the FPA and the DNR hydro layer (shown on Exh. E).

The commenters are further concerned that there is a perennially saturated seep on the southern edge of the property bordering on SE 109th Street, that is not identified on the FPA. Exh. F, Perennial Seep. Local residents state that this hillside seeps water year-round, which collects in drainage ditches and eventually runs into May Creek. This seep should receive a fifty foot no-cut buffer. WAC 222-30-021(b)(ii)-(iii). The entire proposed harvest unit plus a fifty foot buffer should be surveyed for the existence of additional perennially saturated seeps to ensure they are adequately protected.

### **Classification of Forest Practices Application**

FPAs covering logging that have substantial impacts to the environment (Class IV Special) and FPAs covering logging that precedes likely conversion to non-forestry use (Class IV General) require SEPA review. RCW 76.09.050(1). Where an application qualifies as both Class IV Special and General, DNR has jurisdiction to consider it as a Class IV Special. WAC 222-16-050(2). DNR oversees Class IV Special FPAs, while the relevant County oversees Class IV General FPAs. Because this FPA proposes both severe environmental impacts and precedes likely conversion, the appropriate jurisdiction is with DNR, while allowing for significant input from King County.

#### Class IV Special

##### *Marbled Murrelets*

Where there are seven contiguous acres of unsurveyed forest containing seven or more platforms per acre, that forest is considered marbled murrelet State critical habitat. Instructions for Marbled Murrelet Form at 4; *see also* WAC 222-16-080(1)(h)(iii). An FPA that proposes timber harvest in such habitat is correctly classified Class IV Special and requires SEPA analysis. WAC 222-16-050(2). As explained in the preceding section on compliance with the Forest Practices Rules, the subject property includes large swaths of habitat that appear from mapping to contain suitable murrelet habitat that likely contains sufficient nesting platforms to trigger SEPA review. The commenters request that the ID Team perform a habitat survey to make this determination and make public the results of the survey.

##### *Steep and Unstable Slopes*

Under WAC 222-16-050(1)(d), a timber harvest plan must be classified as Class IV Special if it contains steep and unstable slopes. That determination requires analysis both of the gradient and

presence of unstable landforms, *see* WAC 222-16-050(1)(d)(i), but generally speaking slopes of seventy percent and greater trigger SEPA analysis.

The map attached as Exhibit G (a calculation of slope based on a 2 meter LiDAR DEM) shows slopes of greater than seventy percent in red. The western half of the property contains areas an especially high concentration of steep slopes. The commenters are concerned that these slopes already present a risk of landslides, and that logging will only exacerbate that risk. It also appears that the FPA will allow construction of roads on greater than seventy percent gradient, which further raises concerns of risk of landslides. Indeed, there was recently a large slide that nearly engulfed individuals on Mr. Erickson's property, in the area used as an R.V. camping club. This problem has been known for a long time—a 1975 study by the United States Department of Agriculture determined that the soils in the area are prone to slippage. A 2007 landslide near the property (on 198th Avenue SE) and an accompanying geologic report further suggest that the slopes on the Erickson property present a risk to public health and the environment.

Given the extremely steep slopes and history of landslides in the area, the commenters request that the ID Team include a qualified expert geologist who inspects the landforms to determine whether they require further analysis or mitigation. The forester and ID Team should also confirm whether the landowner's contention that the steepest slope on the property is exactly seventy percent, as that claim contradicts the mapping. *See* FPA at 3 and Exh. G. Alternatively, the FPA should exclude harvest from steep areas. Where harvest is allowed, the commenters request that DNR require cable yarding rather than logger and skidder logging described in the FPA. *See* FPA at 3. Cable yarding will help to reduce soil disturbance and the potential for mass earth movement.

#### *Flooding, Roads, and Salmon Passage*

The Forest Practices Act, RCW 76.09.050(1), requires SEPA review generally for applications that "have a potential for a substantial impact on the environment." RCW 76.09.050(1)(Class IV)(d). The regulations make a narrow exception for impacts to aquatic resources if the landowner follows the forestry prescriptions of the Forest Practices Habitat Conservation Plan. WAC 222-16-051. Environmental impacts considered under State law include impacts to housing, flooding, traffic, maintenance, soils, and stormwater. WAC 197-11-444.

The large clearcut of mature trees proposed in the Erickson FPA will alter the hillslope hydrology for decades to come. This in turn will further exacerbate flooding downstream and put at risk a \$100,000 investment in a new culvert. *See* Exh. H, Culvert Construction Downstream of Proposed Logging. For the first time in recent memory, Coho salmon have returned to the creek and may pass through the culvert. The proposed logging will increase sedimentation and water flow, threatening to damage the culvert and the ecological benefit it provides. These risks demonstrate "potential for a substantial impact on the environment" other than impacts to aquatic resources and necessitate environmental review.

Flooding is a noted problem in May Creek, which regularly inundates property in close proximity to the Erickson property. *See* Exh. I, Flooding Downstream of Proposed Logging. May Creek and its headwaters also flood SR-900, impacting traffic and maintenance on that road.<sup>4</sup> Exh. J; Flooding from on SR-900 Downstream of Proposed Logging. Even if riparian buffers may at least partially mitigate impacts to salmon, those buffers will provide less absorption of rainwater than the current forested landscape. Logging the headwaters of May Creek will increase the speed at which runoff enters the headwaters and increase peak flows in May Creek. At a minimum, DNR should allow full review of these impacts and require mitigation to lessen the risk to public safety, infrastructure, and private property. The commenters also request that DNR consult with the State Department of Transportation to assess potential drainage and landslide impacts to SR-900.

### *Public Parks*

Logging on the Erickson property will impact public resources by fragmenting the forests of Squak Mountain and reducing the corridor between Cougar Mountain and Squak Mountain. *See* WAC 197-11-444 (definition of environmental impacts includes impacts to parks, recreation, and aesthetics). Logging will further remove the possibility of a forested trailhead connecting SR-900 to Squak Mountain. Cougar Mountain Regional Wildland Park is “the gem of King County’s 25,000 acre park system,” and according to King County Parks, “provides an excellent example of our region’s unique historical, cultural and natural heritage.”<sup>5</sup> Wildlife including black bear and bobcats reside in the parks and surrounding forest lands, likely including the Erickson property.

IATC is dedicated to preserving and promoting the enjoyment of the special area known as the Issaquah Alps. Logging the corridor between Cougar and Squak Mountains will reduce the buffer between residential communities and the park areas, rendering the park less of a refuge for wildlife and less of a refuge from urban living. Save Squak is dedicated to preserving the unique opportunity Squak Mountain provides for residents of King County to experience wilderness close to the city.<sup>6</sup> The commenters request that DNR conduct SEPA review of this FPA in order to carefully consider the impacts of logging to wildlife, wild spaces, and public enjoyment of two of the region’s most popular parks.

### Class IV General

For all of the reasons stated above, the FPA should correctly be classified as “Class IV Special.” However, DNR should also work closely with King County in review of the FPA because the logging precedes likely conversion and because King County has already carefully considered

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<sup>4</sup> Please reference the video of flooding on SR-900, available at [http://www.youtube.com/watch?v=E2RdyxP\\_m9M&feature=youtube\\_gdata\\_player](http://www.youtube.com/watch?v=E2RdyxP_m9M&feature=youtube_gdata_player)

<sup>5</sup> <http://www.kingcounty.gov/recreation/parks/inventory/cougar.aspx>

<sup>6</sup> The County Parks Department notes that Squak Mountain provides a wilderness experience within fifteen minutes’ drive of Seattle. <http://www.parks.wa.gov/parks/?selectedpark=Squak%20Mountain&subject=all>

impacts of logging this property as part of the ongoing “Serenity Estates” sub-division application. Exh. A, “RE: Serenity Estates.”

Where an FPA precedes likely conversion to non-forestry uses, it is properly classified as a “Class IV General.” Class IV-General forest practices are forest practices that satisfy at least one of the following relevant conditions: (a) lands platted after January 1, 1960; (b) lands that have or are being converted to another use; or (c) forest practices which would otherwise be Class III but which are taking place on lands which are not to be reforested because of likelihood of future conversion to urban development. RCW 76.09.050(1)(Class IV)(a)-(d); WAC 222-16-050(2)(a)-(c). Class IV General permit applications require SEPA review in the same manner as a Class IV Special. WAC 222-16-050(2).

On August 10, 1999, DNR transferred the administration and enforcement of Class IV-General forest practices conducted within unincorporated King County to King County. DNR retained jurisdiction over Class I and II forest practices outside of the Urban Growth Area and over Class III and IV-Special forest practices. While Class-IV General forest practices are often coupled with a development permit application, the County’s Department of Development and Environmental Services also considers independent forestry applications.<sup>7</sup>

The subject properties are in unincorporated King County, outside of the Issaquah Urban Growth Area. Exh. K, King County Zoning Map. When Mr. Erickson purchased the property described in the FPA, there was already an ongoing application for a sub-division named Serenity Estates. That preliminary platting commenced well after 1960, and Mr. Erickson gains the benefit of the open application. Unlike in many areas subject to commercial forestry operations, the land is already designated as RA-5, which allows development of residences. *Id.* Mr. Erickson himself has made plain his intention to either develop the property after logging or sell it to a developer. *See* Exh. L, Seattle Times Article. The plans for development after logging are ongoing, and as a result any reforestation that will occur will likely have little effect.

DNR should do joint review with King County because the subject property was recently considered for subdivision and there is an open, ongoing application for residential development. Logging and associated activities will impact County management of stormwater, bridges, roads, and surrounding residential uses, and likely increase the cost and difficulty of future maintenance. It is for that reason that King County has already considered impacts to the County “critical areas” and developed recommended forestry and road-building prescriptions for the creation of forested tracts in critical areas. Exh. A, RE: Serenity Estates. For instance, the County recommended that the applicant should “evaluate potential impacts to wetlands and aquatic areas from specific forest practices, and possible mitigation measures including limiting the types of forest practices within certain critical areas.” *Id.* at 2. It would not make sense to require protective measures to reduce the impact of logging in one instance, and then not require them a year later merely because the FPA was not submitted with a development permit.

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<sup>7</sup> For information on King County forestry regulatory practices, see <http://www.kingcounty.gov/property/permits/info/SiteSpecific/forest.aspx>

Logging in a residential area such as Issaquah creates impacts to local roads, aesthetics, and communities that are outside DNR's area of expertise and must be considered by the County.

## **Conclusion**

Forest Practices Application 2415960 is not a run-of-the-mill logging operation on working forest lands. Rather, it is a highly unusual 195-acre clearcut that will impact marbled murrelets, salmon, landslides, roads, private residences, and public parks. The logging would forever remove one of the few private forests left in Issaquah by facilitating near-certain conversion to residential use. The Issaquah Alps Trail Club and Save Squak respectfully request that DNR fully enforce the Forest Practices Act and regulations, work closely with King County, and provide environmental review.

If you have any questions regarding the contents of this letter, please contact me at [wgolding@wflc.org](mailto:wgolding@wflc.org) or 206-223-4080 extension 7. Thank you for your careful consideration.

WASHINGTON FOREST LAW CENTER

A handwritten signature in black ink that reads "Wyatt Golding". The signature is written in a cursive, slightly slanted style.

Wyatt Golding

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On behalf of the Issaquah Alps Trail Club and Save Squak