



WASHINGTON FOREST LAW CENTER

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Via electronic mail to bruce.mcdonald@dnr.wa.gov and southpuget.region@dnr.wa.gov

Mr. Bruce McDonald
Forest Practice District Manager
South Puget Sound Region
Washington State Department of Natural Resources
950 Farman Avenue N
Enumclaw, WA 98022-9282

Re: Forest Practices Application No. 2416040

Dear Mr. McDonald,

I submit the following comments in regards to forest practices application number 2416040 on behalf of the citizens' groups Issaquah Alps Trails Club ("IATC") and Save Squak. Thank you for the opportunity to comment on the recent forest practices applications ("FPAs") submitted by Erickson Logging, Inc. We commend DNR for carefully reviewing our last set of comments and closely evaluating Mr. Erickson's previous FPA. In submitting the new FPA, DNR and Mr. Erickson addressed many of the issues we identified. The new application omits the large areas of murrelet habitat, reassesses water typing, and requires cable logging on steep slopes. All of these measures will greatly reduce the environmental impact of the proposed FPA and push the FPA much closer to compliance with the Forest Practices Act and accompanying regulations.

Despite the significant improvements, IATC and Save Squak remain concerned with several aspects of the FPA, and incorporate the previous comments on FPA 2415960 by reference herein. We continue to oppose the proposed logging because of the impacts to public resources. If approved, logging under the FPA will adversely impact surrounding State and County parks, wildlife habitat, May Creek and its tributaries, and public roads. We highlight several of these issues in separate sections below.

The commenters request that DNR continue to be vigilant in corroborating the facts in the FPA and enforcing the Forest Practices Act, regulations, and Board Manual. Such scrutiny is especially justified given Mr. Erickson's and Erickson Logging's well-documented history of repeatedly violating forestry regulations. *See, e.g., Kurt Erickson dba Erickson Logging v. DNR*, FPAB 99-008 (1999) (settling a civil fine imposed for logging without a permit); *Kurt Erickson*

dba Erickson Logging v. DNR, FPAB 98-029 (1999) (settling a civil fine imposed for logging without a permit); *Kreger Lake Homeowners v. DNR & Erickson Logging*, FPAB 95-20 (1995) (see dissent detailing facts and concluding that “The actions of the respondents are reprehensible and should be condemned in the strongest terms.”).

The FPA Should be Classified “Class IV General” Due to the Likelihood of Development

In the previous comments, we detailed the environmental impacts that supported classification of the FPA as a “Class IV Special” under DNR’s classification of forest practices. RCW 76.09.050(1); WAC 222-16-050(2). It appears that DNR and Mr. Erickson have resolved many of those issues by omitting marbled murrelet habitat and by studying the landforms of steep slope areas. With these concerns largely addressed, the FPA should properly be classified as a “Class IV General” because there is a current sub-division application pending for the property. The commenters request that DNR transfer authority for consideration of the FPA to King County, or at the very least involve King County in the decision-making process, and conduct SEPA review on the FPA.

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). “Conversion to a use other than commercial timber operation” means a bona fide conversion to an active use which is incompatible with timber growing. WAC 222-16-010. On August 10, 1999, DNR transferred the administration and enforcement of Class IV General forest practices conducted within unincorporated King County to King County. This transfer recognized that forestry on the edges of developing urban areas is fundamentally different from forestry practiced in industrial commercial forestlands. Elsewhere in the Forest Practices Regulations, DNR further recognizes that forestry on lands with a likelihood of conversion in the next ten years require special process and public consideration. WAC 222-16-060.

Here, the land is almost certainly going to be converted to another use, namely the “Serenity Estates” subdivision. As detailed in March 11, 2013 comment letter from the King County Department of Planning and Environmental Review, there is an open application for the subdivision. Mr. Erickson has publically described his plans to sell to a developer or develop the property himself after logging. Because the development plans are active and on-going, logging the property “constitute[s] an active use which is incompatible with timber growing.” WAC 222-16-010. Moreover, the land will likely not be reforested. Even if Mr. Erickson replants after clearcutting, replanting will not return the land to commercial forestland, and therefore will not fulfill its purpose. Because the land is being converted and won’t be reforested, the FPA should be classified as Class IV General and given SEPA review. Where an agency action allows likely future development, the agency must consider the impacts of that later development prior to taking the action. *King County v. Washington State Boundary Review Board*, 122 Wash.2d 648, 860 P.2d 1024 (1993) (annexation of area into Black Diamond City requires EIS because it will likely result in increased development and associated impacts).

Transferring authority to King County would allow the County to require the same protections it would require if Mr. Erickson directly submitted a development application. That outcome makes sense, because Mr. Erickson is undertaking the same actions: logging and building roads prior to development. The March 11, 2013 letter from the King County Department of Permitting and Environmental Review to DNR details both the existing application for the development of “Serenity Estates” and the numerous protective measures that would be required by King County for logging of the property. King County should be able to impose those same conditions here because Mr. Erickson should not be allowed to do in two steps what he could not do in one.

King County is the proper regulating agency under the law. The County is also better positioned as a matter of public policy. The County has greater familiarity with the environmental issues specific to the local area and the complexity inherent in logging in a residential area. As dozens of commenters explained, May Creek has persistent flooding and siltation problems that threaten public safety and infrastructure. These are problems distinct from normal industrial logging on rural forest lands. SR-900, a major commuting and access route with high traffic volume, has been increasingly undermined by flooding associated with runoff and those threats will only be exacerbated by a large clearcut on the slopes directly above the creek. In fact, King County already has a plan in place to combat those very issues, named the “May Creek Basin Plan.”¹

The Basin Plan is an important action plan designed to:

- Reduce the threat of flooding to citizens in the May Creek Basin;
- Make infrastructure improvements that will facilitate stormflow conveyance, stabilize stream banks, and reduce erosion;
- Protect and enhance fish and wildlife habitat and water quality in the basin; and
- Take reasonable steps to prevent existing problems from worsening in the future.

The proposed clearcut would undermine all of the stated purposes of the Basin Plan. The area downstream of the proposed logging is subject to documented water quality problems, flooding, sedimentation problems, and damage to fish habitat.² In nearby wetland areas, the Plan calls for retaining timbered steep slopes as a means of preventing problems in May Creek and surrounding wetlands from getting worse.³ There is a well understood causal connection between logging and increases in runoff, sedimentation, and flooding. These are very real concerns of safety and taxpayer investment in local infrastructure, which are best addressed by the local government.

¹ See <http://www.kingcounty.gov/environment/watersheds/cedar-river-lake-wa/may-creek/may-creek-basin-plan.aspx>

² <http://your.kingcounty.gov/dnrp/library/2001/kcr726/MayC.pdf>

³ <http://your.kingcounty.gov/dnrp/library/2001/kcr726/FINAL-May-Creek-Basin-Plan-4-16-01.pdf>

Concerns About Road Construction and Nearby Marbled Murrelets

The FPA describes the construction of 1900 feet of new road with a maximum of 66 percent side slope. This construction would be in addition to the extensive existing road network related to the old camping club. Roads create a long-lasting scar on the landscape and serve to accelerate runoff to areas below.

WAC 222-24-020(8) requires that “All new road construction on side slopes that exceed 60 percent, which have the potential to deliver sediment to any typed water or wetland must utilize full bench construction techniques, including end hauling, over hauling or other special techniques.” There are extensive wetlands and small typed streams on the property, both on and off the harvest unit, and the FPA reports slopes in excess of 60 percent. The roads connect to the lower roads, which all discharge into May Creek at the bottom of the slope. The roads also appear likely to discharge into Segment D, which while untyped as a stream serves as a wetland area requiring a 50-foot buffer. The commenters request that DNR require new roads to be carefully constructed in compliance with WAC 222-24-020(8) to minimize erosion, discharge of sediment, and damage to public resources.

The FPA appears to indicate that there will be some road construction outside of the proposed harvest unit. Any logging that takes place to clear a pathway for that construction should be considered part of the FPA and included in the application.

Finally, it appears that the uppermost road segments (in and out of the proposed harvest unit) travel through or at least border on areas of older forest currently being assessed for marbled murrelet habitat. WDFW determined that there are sufficiently large trees with platforms in that area to support murrelets. No surveys have been conducted and it is nesting season. The commenters request that as a precautionary measure, DNR treat the potential murrelet habitat as if it is occupied. Where there is a lack of information, the presumption should be in favor of the listed species. *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 174 (1978) (concluding that, with the enactment of the Endangered Species Act, “Congress intended endangered species to be afforded the highest of priorities”). WAC 222-24-030(11)(a) requires that “Road construction and operation of heavy equipment shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season.” Please extend those requirements to the suitable murrelet habitat area, as neither Mr. Erickson nor DNR know whether that habitat is occupied. Similarly, the commenters request that DNR require a 300-ft no-harvest buffer surrounding unsurveyed stands determined to be suitable marbled murrelet habitat. WAC 222-16-080(1)(h)(v). If Mr. Erickson completes surveys and determines that no murrelets are present, he will be able to log these buffers later with no overall loss. Logging next to potentially occupied habitat, in contrast, presents a risk of irreversible damage to the species.

Concerns About Water Typing of Stream Segments B and C

The FPA “Western Water Type Classification Worksheet” describes four bodies of water named stream segments A-D. The applicant typed stream segments B and C as non-fish seasonal (“Ns”) based on a site visit in late September of 2012 and the statement of an unnamed local resident.

The commenters suggest that Mr. Erickson must provide more complete documentation in order to properly type these streams because his conclusions rely on data obtained at the end of a record-setting drought and conflict with local knowledge.

In the context of water-type change applications, the Forest Practices Board Manual requires that “[i]f drought conditions exist within the state during the fish survey season, then proponents of a water type change will be required to provide information demonstrating how stream flows and fish use determinations were unaffected by drought conditions. If such information is not provided, or not deemed adequate during the review process, then the proposed water type change will be rejected.” Board Manual, M13-2. This provision exists because stream conditions during droughts may not be representative of general conditions. The same principle applies to typing waters on an FPA. In fact, the definition of Np streams is: “flowing waters that do not go dry any time of a year **of normal rainfall** and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.” WAC 222-16-030(3) (emphasis added).

Here, the site visit referenced by Mr. Erickson occurred at the end of a record-setting drought, when many streams that typically run year-round were dry. Indeed, last summer was “the driest stretch since they started keeping records in 1891.”⁴ It was in no way “a year of normal rainfall.” WAC 222-16-030(3). Moreover, local residents and members of Save Squak, including property neighbor Helen Farrington, report that at least the portion of stream segment B directly downstream from the proposed harvest unit runs perennially. The commenters request that DNR require the applicant to demonstrate that the “Ns” determination for stream segment B is unaffected by drought conditions. If the applicant cannot so demonstrate, the stream should be classified non-fish perennial and given the required fifty-foot riparian buffers.

In conclusion, IATC and Save Squak oppose approval of FPA 2416040. The forests in the proposed harvest unit are integral to controlling erosion and runoff into May Creek, its tributaries, and SR-900. That road connects the community to work, school, and emergency services. The commenters encourage DNR to transfer authority to King County so that the County can regulate its local resources. We also request that DNR carefully evaluate the road construction and water typing in the FPA and require strict adherence to the Forest Practices regulations.

Please contact me if you have any questions or comments, by email at wgolding@wflc.org or by phone at 206-223-4088 x. 7. Thank you for your time and consideration.

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Wyatt Golding
Attorney for Issaquah Alps Trails Club and Save Squak

⁴ “Seattle set to hit record 76-day dry stretch,” KOMO News, Oct. 5, 2012 (*see* <http://www.komonews.com/news/local/Seattle-to-set-to-hit-record-76-day-dry-stretch-172872371.html>).