



KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

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Ueland Tree Farms Mineral Resource Project - Staff Response to SEPA Appeal of Final Environmental Impact Statement (EIS) Adequacy

Date: November 2, 2009

Hearing Date: November 9, 2009

Project Name: Ueland Tree Farms Mineral Resource Project

Type of Action: Appeal to Adequacy of Final EIS (Type II SEPA Appeal)

File No: 07 44975 (CUP) / 09 83708 (SEPA Appeal)

Project Location: West of Kitsap Lake, off Lebers Lane in unincorporated central Kitsap County.

Appellants:

Concerned Citizens of Chico Creek Water Basin

Contact: Linda Lane, Designated Contact Representative

4766 NW David Road

Bremerton, WA 98312

Applicant:

Ueland Tree Farm, LLC (UTF)

Contact: Craig Ueland

16419 Maplewild Avenue SE

Seattle, WA 98166

Summary:

UTF has applied for a Kitsap County Conditional Use Permit to allow development of commercial sand, gravel and basalt mineral surface mines on a portion of a 1,716 acre commercial forest land site owned by UTF.

A Determination of Significance (DS) and request for comments on the EIS scope was issued on June 23, 2008 (exhibit 42). A Draft EIS (DEIS) was issued on February 27, 2009 (exhibit 34). Section 1.4 of DEIS includes a summary of public comments received on the scope of the EIS, both in writing and during a public scoping meeting. 30 agency, citizen and tribal comment letters were received in response to the DEIS. A Final EIS (FEIS) was issued on August 25, 2009 (exhibit 36). Responses to letters are included in the FEIS, and the EIS addendum issued October 6, 2009 (exhibit 71).

Concerned Citizens of Chico Creek Water Basin filed a timely appeal to the adequacy of the Final EIS on September 8, 2009.

While the appeal includes broad discussion of concerns relative to the proposal, staff has attempted to identify and summarize specific issues raised relative to EIS adequacy. Appeal issues can generally be summarized under the headings of Transportation impacts (including analysis of a southerly access route and a rail line spur), Land Use and Noise impacts, and Surface water and Critical area impacts. Findings with regard to specific appeal issues follow.

Summary of issues raised by appellants, relevant County or State code, and the department’s response are summarized in the following table:

Issues raised by appellants:	Relevant Code:	Department Response:
A. Transportation Impacts		

<p>1. The southbound stop controlled leg of Northlake Way has site distance issues relative to truck traffic.</p>	<p>NA</p>	<p>The existing southbound stop controlled leg of Northlake Way intersects Seabeck Highway where it starts to curve uphill to the west, thus raising the stated concern with regard to site distance. While Kitsap County did not determine that proposed traffic volumes are sufficient to warrant actual intersection improvements, Kitsap County is requesting shoulder improvements through the intersection area to improve pedestrian and bicycle safety.</p>
<p>2. A south access option via Warner road should have been further considered.</p>	<p>WAC 197-11-440(5) <i>Alternatives including the proposed action.</i></p>	<p>The southerly access route did not meet the definition of a “reasonable alternative” under SEPA for several reasons: a. The referenced Kitsap County sub-area plan study from the 1990s did not include a detailed environmental investigation of the southerly access routes. The primary focus was on existing traffic and roadway information. In addition, the prior study was related to a larger mixed-use plan for the area west of Kitsap Lake, with a substantially higher traffic count than the 186 average daily trips proposed under</p>

		<p>the Ueland CUP.</p> <p>b. One of two potential southerly access routes would cross through City of Bremerton watershed property. As discussed in the response to item 4, below, the City has stated that they will not permit access through city watershed property (exhibit 54, letter from City Public Works Director Phil Williams).</p> <p>c. For the subject application, Kitsap County Natural Resource Planners visited the potential southerly access area, reviewed current resource maps, and reviewed the updated study titled “Ueland Tree Farm Mineral Resource Development Access Feasibility Analysis” (FEIS, Appendix B). The south access options would require extensive grading in critical areas, including steep slopes, and cross a large habitat corridor connecting the south end of Kitsap Lake with public watershed lands to the south (exhibit 106, Wildlife Corridor Elevation Map with attachments).</p> <p>d. South access Options 1 and 2 would</p>
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		<p>require construction of 5,500 feet and 7,500 feet respectively of roadway through undeveloped forest land on properties that are not owned by the applicant.</p> <p>e. WAC 197-11-440(5)(b) states that <i>“Reasonable alternatives shall include actions that could feasibly attain or approximate a proposal’s objectives, but at a lower environmental cost or decreased level of environmental degradation”</i>. Kitsap County Environmental Programs Division, with direct input from the Natural Resource Planner with expertise in the Chico watershed, determined that the southerly access alternatives do not meet this provision due to the reasons stated above.</p> <p>It is acknowledged that the preferred alternative results in localized traffic impacts to the Northlake Way vicinity that would be transferred to Warner Road if the south access had been determined</p>
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		<p>feasible. Based on county review of the traffic study, EIS and local road conditions, the staff report (exhibit 78) include proposed mitigation measures for transportation impacts along the proposed Northlake Way route.</p>
<p>3. The EIS needs to describe the full range of impacts associated with rail use.</p>	<p><i>WAC 197-11-440(5) Alternatives, Including the Proposed Action</i></p>	<p>The “proposed development alternative” (DEIS and FEIS section 1.5.2) includes discussion of a potential rail spur off of the existing US Navy operated rail line that passes through the easterly project area at Lebers Lane. The EIS includes some discussion of rail line impacts, including air quality and noise. However, without a specific facility design or more detailed proposal at this time, the County concurs that the EIS does not fully cover impacts related to construction and operation of the rail spur facility.</p> <p>In response to this issue, the applicant has proposed removal of the rail spur from the “proposed development alternative” for the Ueland CUP. Should a more formal rail plan occur in the future,</p>

		<p>supplemental SEPA review and analysis will be required for any associated permit activity. Such analysis could result in a mitigated DNS or a supplemental EIS, based on project-specific impacts.</p>
<p>4. The City of Bremerton needs to clarify communication regarding potential for southerly access route through City watershed property.</p>	<p>NA</p>	<p>Phil Williams, Director of Public Works and Utilities for the City of Bremerton, provided a letter in September 2009 clarifying that the City would not grant access easements through city watershed property for a southerly access route (exhibit #54).</p>
<p>5. Until a traffic impact analysis is completed, the conclusion stated in Section 2.4 of the Transportation Report with regard to trip distribution is invalid.</p>	<p>NA</p>	<p>Appellants raise objections that a full traffic impact analysis (TIA) was not required for the proposal (a “Traffic Study” has been submitted; exhibit 19). A TIA was not triggered during county review due to the fact that the proposal doesn’t exceed the PM peak hour trip numbers required for a TIA in effect at the time of the vested CUP application.</p> <p>Appellants specifically object to the Traffic Study conclusion regarding trip distribution that the preferred route for</p>

		<p>trucks leaving the site would be northbound via Northlake Way and Chico Way to SR-3 “...because trucks traveling to SR-3 via Kitsap Way will have to compete with much more passenger vehicle traffic.” Assumptions regarding trip distribution are described in section 2.4 of the Traffic Study, and are based on the opinion of professional engineers with experience in transportation impacts. While competition with passenger vehicle traffic for various routes is one of the assumptions listed, the appeal does not provide specific data demonstrating that such an assumption is invalid. In any case, the Traffic Study lists several other assumptions that were also utilized in determining likely trip distribution patterns.</p>
<p>B. Land Use / Noise Impacts</p>		
<p>1. The Habitat Study, paragraph 1.3.3, Future Land Use states that “UTF expects future land uses may consist of a combination of commercial forestry, mineral extraction, residential...Under</p>	<p><i>WAC 197-11-440</i> <i>EIS Contents</i></p>	<p>Appellants are concerned that the reference to future “residential” land use opens up a new area of impact to the Chico Creek Basin not addressed by the UTF. Appellants are correct that this EIS does not specifically address future</p>

<p>current plans forestry operations are expected to occupy the largest portion of the site for decades to come.”</p>		<p>residential development. While residential development is not part of the proposal, any future application for such would require a full review under the State Environmental Policy Act.</p>
<p>2. Noise.</p>		<p>Although noise is listed as an issue of concern in the appeal, specific information is not provided relative to EIS adequacy. A noise study has been prepared for the proposal (exhibit 93). Please refer to Chapter 7 of the DEIS for discussion relative to the affected environment, regulatory setting, impacts of alternatives, and mitigation measures.</p>
<p>C. Surface Water and Critical Area Impacts</p>		
<p>1. Stream buffers and Critical Areas Ordinance: a. Dickerson Creek is considered a special flood hazard area. Storage water ponds and construction planned by UTF are not sufficient, especially during the construction phase of the development.</p>	<p><i>WAC 197-11-660(1)(e) Agencies shall consider whether local, state or federal requirements would mitigate an identified</i></p>	<p>a. The applicant is not proposing development within designated flood hazard areas. However, it is acknowledged that improper stormwater controls could negatively affect Dickerson Creek from both a flood control and habitat standpoint. The Preliminary Drainage Plan (exhibit...)</p>

<p>b. Buffer protections for stormwater management are inadequate for upper Dickerson Creek as well as wetlands on the UTF site and within the UTF proposed alternatives.</p>	<p><i>significant impact</i></p> <p><i>KCC Title 12 Stormwater</i></p> <p><i>KCC Title 19 Critical Areas</i></p>	<p>provides a design to control stormwater impacts, both on and off the site. Chapter 4 of the DEIS addresses Surface water and wetlands, including anticipated impacts and mitigation measures. Section 4.5.1 summarizes proposed mitigation, including ponds proposed as part of the permanent flow control and treatment system. All such proposals are subject to review and approval under KCC Title 12 (Stormwater). Title 12 includes specific standards for water quantity controls.</p> <p>b. KCC Title 19 (Critical Areas) was updated in 2005. The update process included a “best available science” review for stream and wetland buffers. Although various portions of the CAO have been challenged, the stream and wetland buffers have been upheld by reviewing bodies. The proposal is required to comply with KCC Title 19. Special reports have been prepared addressing stream and wetland buffers, along with proposed mitigation measures, as summarized in</p>
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		Chapter 4 of the Draft EIS (Surface Water and Wetlands).
<p>2. Wetlands:</p> <p>a. Wetland survey was insufficient. As stated in DEIS section 4.4.2, ESA Adolfson conducted a one day site visit in October 2008.</p> <p>b. Given its proximity to Dickerson Creek tributaries and the wetland’s hydrologic function, the proposed 100 foot buffer around wetland 31 is insufficient to protect the watershed.</p> <p>c. Wetland buffer widths should be part of the FEIS, to protect homeowners along and around Dickerson Creek.</p> <p>d. No site-specific modeling has been performed for the wetlands and the loss in contributing areas.</p>	<p><i>KCC 19.200</i></p> <p><i>Wetlands</i></p>	<p>a. As part of the EIS preparation process, Kitsap County requested EIS consultant EAS Adolfson to conduct a review of the Wetland Delineation and Stream Identification report (exhibit 89), including a site visit to review wetland locations. The intent was not to confirm each wetland boundary, but rather to provide corroborative review of the wetland study and planned buffers. The consultant found the wetland description and ratings within the Parametrix wetland report to be generally consistent with site conditions observed, with the exception of the ratings for wetlands 30, 31 and 32 (DEIS p. 4.2.2). Adjustments have been made in response to the peer review described above. Appellants have not indicated specific errors with the wetland delineation or rating.</p> <p>b. As summarized in section 4.4.2 and Table 4-7 of the Draft EIS, an analysis of</p>

<p>e. The EIS does not analyze loss in contribution areas to wetlands 6 and 11 during the project.</p> <p>Mitigation for these losses to contributing areas is not specifically mentioned, except that operations will be modified if changes in water levels are realized in nearby wetlands.</p> <p>f. Wetland buffer averaging, as proposed adjacent to Wetland 1, will jeopardize wetland function.</p> <p>g. Greater analysis, including onsite verification of wetlands and suggested buffer averaging/buffer delineation by an area biologist is necessary for the projection of the wetlands in the project area.</p>		<p>impact to wetland hydrology was conducted for each wetland system that has mining activities proposed within its contributing basin. The analysis suggests that there will not be any significant changes to the wetland hydroperiod as a result of the reduction in contributing area.</p> <p>However, as impacts to wetland hydrology, if they occur, would likely be very gradual, a wetland monitoring program is proposed to document wetland hydrologic conditions over time (Draft EIS Section 4.5.3). In response to this issue, Staff have recommend conditions incorporating the mitigation proposals, including wetland monitoring and adaptive management as listed in Section 4.5.3 of the DEIS.</p> <p>c. Wetland buffer widths are specifically tied to the rating system included in KCC Title 19. Wetland buffers are included in DEIS Section 4.2.2, including Table 4-3, Summary of Wetlands and Buffers.</p> <p>d. As described on page 4-20 of the</p>
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		<p>averaging where it can be demonstrated that such averaging can clearly provide as great or greater functions and values as would be provided under the standard buffer requirement.” It is typical to allow averaging in cases where the increased buffer contains more mature forest area than the area being decreased. Final determinations of allowable buffer averaging can also be adjusted at the Site Development Activity Permit stage, based on the directives at KCC 19.200.220.C(1).</p> <p>g. The wetland report by Parametrix Inc. (exhibit 89) was prepared by a qualified wetland specialist as defined at KCC 19.100.150. Kitsap County has visited many of the site wetlands, and has authority under KCC Title 19 to request clarification to the submitted wetland report if deemed necessary as a result of new information.</p>
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Conclusions:

With the modification to remove the rail spur option detailed in the response to item A.3

above, it is staff’s opinion that appellants have not demonstrated that the Ueland Tree Farm

Mineral Resource Project EIS is inadequate. The EIS conforms to the requirements for EIS preparation at KCC Title 18.04 and WAC 197-11, and provides necessary information with regard to the environmental costs and impacts of the proposal. The EIS sets forth appropriate mitigation measures for decision makers to consider during review of the proposed project.

Recommendation:

Based on the above findings and conclusions, the Department recommends that the SEPA appeal for the Ueland Mineral Resource Project FEIS be **DENIED**.

cc: Appellant Parties
Applicant
DCD Files
Hearing Examiner
Clerk of Hearing Examiner