



May 1, 2018

Department of Natural Resources – SPS Region
Attention: Forest Practices
950 Farman Ave N
Enumclaw, WA 98022

RE: City of Newcastle's Comments/Objections to FPA/N #2420111

Dear Mr. Dasso,

Introduction & Objection

The City of Newcastle (Newcastle) has been made aware of the Forest Practices Application/Notification #2420111 (FPA) for real property owned by a Dalpay Properties LLC. Pursuant to RCW 76.09.050(6), Newcastle believes the FPA is inconsistent with Chapter 76.09 RCW, the forest practices rules and regulations, and Newcastle's regulations.

Accordingly, Newcastle objects to the FPA and requests that the Department of Natural Resources (DNR) disapprove it. In the alternative, if the FPA is considered, then the FPA must be correctly classified as a Type IV forest practice and reviewed under the State Environmental Policy Act (SEPA).

Critical Information Missing from the FPA – Increased Flooding in May Creek

The FPA seeks approval to clear cut a total of 28 acres on two parcels of real property. The first parcel (approximately 35 acres) is located within Newcastle and its Urban Growth Area (UGA), and is identified as King County Tax Parcel No (TPN) 352405-9010 (Unit 1). The FPA proposes to clear cut 26 acres of trees from Unit 1. The second parcel (approximately 2.4 acres) is located within King County, and is identified as TPN 022305-9022 (Unit 2). The FPA proposes to clear cut 2 acres of trees from Unit 2.

The FPA fails to note that both Units 1 and 2 are in close proximity to May Creek, and located in the May Creek Basin. Newcastle's 2035 Comprehensive Plan classifies May Creek as a Class 1 salmonid stream that "floods routinely" and is "complex and fragile".¹ The plan explains that May Creek has been affected by logging, forest removal and development, and that these actions have led to denuded slopes, channelized streams, encroachments on floodplains, decreased water quality, erosion, sedimentation of stream channels, flooding of homes and destruction of fish and wildlife habitat.²

¹ Newcastle 2035 Comprehensive Plan at LU-10. Links to all reference studies/plans are provided herein.

² *Id.* at LU-11.

While the FPA is silent about May Creek, its long history of flooding has been studied and documented for decades. The following plans and studies are just a few of the resources that discuss May Creek and its historical flooding:

- *May Creek Basin Action Plan* (King County 2001)
<https://your.kingcounty.gov/dnrp/library/2001/kcr726.pdf>
- *May Creek Drainage and Restoration Plan* (GeoEngineers Inc. 2008)
<https://your.kingcounty.gov/dnrp/library/water-and-land/watersheds/cedar-river-lake-wa/may-creek/may-creek-drainage-restoration-plan.pdf>
- *May Creek Baseline Stream Conditions* (King County 2010)
<https://your.kingcounty.gov/dnrp/library/water-and-land/watersheds/cedar-river-lake-wa/may-creek/may-creek-baseline-conditions-report.pdf>
- *Impact Analysis and Mitigation Plan May Creek Drainage Improvement Project* (King County 2011) <https://your.kingcounty.gov/dnrp/library/water-and-land/watersheds/cedar-river-lake-wa/may-creek/final-stream-wetland-impact-mitigation-plan.pdf>
- *May Creek Drainage Improvement Project Biological Evaluation Report* (King County 2011)
<https://your.kingcounty.gov/dnrp/library/water-and-land/watersheds/cedar-river-lake-wa/may-creek/may-creek-biological-evaluation.pdf>
- *May Creek Erosion Stabilization Draft Report, May Creek Sediment Transport Study Phase 3* (Anchor QEA, LLC 2010) <https://your.kingcounty.gov/dnrp/library/water-and-land/watersheds/cedar-river-lake-wa/may-creek/may-creek-erosion-stabilization-report.pdf>
- *Hydraulic and Hydrologic Analyses of the May Creek Channel Restoration Project* (King County 2010) <https://your.kingcounty.gov/dnrp/library/water-and-land/watersheds/cedar-river-lake-wa/may-creek/may-creek-hydraulic-hydrologic-analyses.pdf>
- *May Creek Sediment Transport Study Report* (Anchor QEA, LLC 2009)
<https://your.kingcounty.gov/dnrp/library/water-and-land/watersheds/cedar-river-lake-wa/may-creek/may-creek-sediment-transport-study.pdf>
- *City of Newcastle 2035 Comprehensive Plan* (Newcastle 2017)
<https://newcastle.civicweb.net/filepro/documents/4260?preview=19604>

These documents demonstrate that runoff and deposition of sediment from future development, such as the FPA, are expected to increase flood volumes, resulting in longer durations and greater frequency of flooding in May Creek.³

³ *May Creek Basin Action Plan* at 2-8.

The *May Creek Basin Action Plan* (King County 2001), which was developed by King County in conjunction with Newcastle and the City of Renton, explains that:

May Valley is a natural floodplain and historically has experienced periodic and sometimes extensive flooding. Through the years, this problem worsened as channelizing of streams and development in upland areas increased stormflows to the valley, and as natural deposition of sediment in May Valley continued to reduce the conveyance capacity of May Creek channel.⁴

The FPA would substantially exacerbate flooding issues by increasing storm runoff and the deposit of sediment to May Creek by way of “Stream A”. While the FPA identifies that a “Stream A” flows on Unit 1, the actual name of the stream is Long Marsh Creek (WRIA 08.0289), which is a tributary of May Creek.⁵

Long Marsh Creek has been described as “primarily a forested basin with steep gradients”.⁶ Studies have shown that Long Marsh Creek deposits large gravels into May Creek, and that May Creek is not capable of redistributing these gravels. This accumulation ultimately increases frequency of flooding.⁷ Studies have also identified that gravel transported to May Creek from Long Marsh Creek create one of the few potential spawning areas in the area.⁸ Both May Creek and Long Marsh Creek have been identified as containing essential fish habitat for Chinook and coho salmon.⁹ The FPA is silent as to its impacts to Long Marsh Creek, May Creek, fish habitat and the risk of increased flooding.

The FPA should be disapproved as it will increase sediment transport to May Creek and intensify frequency of flooding, increase storm run-off, negatively impact wildlife and harm fish and fish habitat.

The FPA Should be Classified as a Class IV Forest Practice

DNR should also disapprove the FPA because it is misclassified as a Class III forest practice. Per RCW 76.09.050(1), the FPA meets the statutory definition of Class IV forest practice, which includes actions:

(d) Which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter **43.21C** RCW.

The FPA meets the statutory definition of Class IV forest practice as it has the potential for substantial impact to the environment by increasing erosion, storm water run-off, flooding and harm to fish and fish habitat.

The FPA also meets the definition of a Class IV forest under WAC 222-16-050(1)(d)(i) because it proposes timber harvest on “potentially unstable slopes that has the potential to deliver sediment or debris to a public resource or that has the potential to threaten public safety.”

⁴ See *Final Adopted May Creek Basin Action Plan, April 2001*, at 1-1.

⁵ See *Baseline Stream Conditions May Creek Drainage Improvement CIP # 9A1205* at 4-20 –Figures 1 and 3 (aerials)

⁶ See *Impact Analysis and Mitigation Plan May Creek Drainage Improvement Project* (King County 2011), p. 9.

⁷ See *Hydraulic and Hydrologic Analyses of the May Creek Channel Restoration Project* (King County Dec. 2010) at 1.

⁸ *Baseline Stream Conditions May Creek Drainage Improvements CIP#9A1205* at 5-29.

⁹ May Creek Drainage Improvement Project Biological Evaluation Report at

Newcastle's Comprehensive Plan identifies that more than half of the northern part of Unit 1 is designated as an erosion hazard area.¹⁰ While this information is missing from the FPA, the unstable slopes (erosion hazard areas) on Unit 1 have the potential to deliver sediments and debris to May Creek (a public resource) and threaten public safety (with increased flooding).¹¹ Thus, the FPA should be disapproved as being incorrectly classified.

In the alternative, if DNR considers the FPA, it must be reclassified as a Class IV forest practice, and reviewed under SEPA. RCW 76.09.050(1); WAC 222-16-050(1)(d); WAC 197-11-305(1)(b)(i).

The FPA must also be reviewed under Newcastle's regulations, which include:

1. Chapter 13.10 NMC, Surface Water Management Code;
2. Chapter 14.05 NMC SEPA Policies;
3. Chapter 14.15 NMC, Property Grading Regulations; and
4. Chapter 18.24 NMC, Critical Areas

Newcastle has notified the property owner of these regulatory requirements in a letter dated March 14, 2018, but has not received any response. Upon reclassification of the FPA as a Class IV forest practice, Newcastle requests that any DNR decision condition compliance with all Newcastle codes/regulations.

The FPA Should Be Disapproved Because it is Inaccurate, Inconsistent and Incomplete

Newcastle also requests that DNR disapprove the FPA because it is replete with incorrect, inconsistent and incomplete information, as noted below:

- **Question 11 (p.2):** The FPA incorrectly states that no unstable slopes or landforms exist in the area of the harvest. As discussed above, Newcastle's Comprehensive Plan identifies that more than half of the northern part of Unit 1 is designated as an erosion hazard area.¹²
- **Question 12 (p. 2):** The FPA's Slope Stability Map does not indicate the degree of slope over several areas to be harvested. Newcastle Comprehensive Plan identifies that a substantial area of the northern part of Unit 1 is over 40% and the FPA identifies some slopes as 65%.¹³
- **Questions 14.a, 15 and 16 (p. 3):** The FPA incorrectly answers "no" to whether it is installing a culvert at or below Type S or F water that exceeds 5% gradient. But, Enlarged Forest Practices Activity Map appears to show that the culvert will impact "Stream A" which is Long Marsh Creek (a Type F water), a tributary to May Creek.
- **Question 17 (p.4):** The FPA does not evaluate its impact to equipment crossing Stream B, which is classified as Tributary 4.15 in Newcastle's Comprehensive Plan.¹⁴
- **Question 20 (p.4):** The FPA proposes to "harvest for road" .7 wetland acres, but fails to provide an evaluation of the impacted wetlands or provide proper buffers. The FPA fails to evaluate other critical areas on Unit 1. See Newcastle Comprehensive Plan, which identifies several

¹⁰ City of Newcastle 2035 Comprehensive Plan, Figures LU-5 and LU-7. Geological Features. Figures LU-5 and LU-7 shows that more than half of Unit 1 (the northern half) is designated as an Erosion Hazard Area.

¹¹ The "Inner Gorge" adjacent to "Stream A" provides evidence of unstable slopes. *DNR Guidelines for Evaluating Potentially Unstable Slopes and Landforms (2016)*, Section 16.

¹² City of Newcastle 2035 Comprehensive Plan, Figures LU-5 and LU-7. Geological Features.

¹³ *Id.* Figure LU-4, Slope Analysis.

¹⁴ *Id.* at LU-8, Hydrological Features.

critical areas, slopes & stream buffers on most of the northeastern area of Unit 1.¹⁵ The FPA also fails to evaluate its operations within 200 feet of the wetlands located on adjacent parcels: TPN 352405-9022, TPN 022305-9091, and TPN 022305-9076.

- **Question 27 (p. 6):** The FPA fails to include the correct RMZ of 140 feet. WAC 222-30-0221. The “Stream Shade Assessment” is missing.
- **Question 28 (p. 7):** The FPA is missing information regarding harvesting within 50 feet of a Type Np water. Newcastle’s Comprehensive Plan identifies “Stream B” as Tributary 4.15, which requires a 50 foot buffer.¹⁶ The plan also identifies that Stream B (Tributary 4.15) is hydraulically connected to Long Marsh Creek (“Stream A”), which outlets to May Creek.¹⁷
- **Question 29 (p. 7):** FPA fails to include Wetland Management Zone information for wetland boundaries. Newcastle Comprehensive Plan identifies a wetland just east of harvest activities which has not been evaluated.¹⁸
- **Question 31 (p. 8):** Under “Additional Information,” the FPA fails to justify the proposed 101 foot Riparian Management Zone (RMZ) for Long Marsh Creek (“Stream A”). WAC 222-30-021 requires a 140 RMZ.
- The FPA also incorrectly states that Stream B has no outlet or connectivity to typed water. Newcastle’s Comprehensive Plan identifies that “Stream B” is Tributary 4.15 which connects to Long Marsh Creek and outlets to May Creek (see discussion above).
- The FPA is confusing and states that a culvert will be installed under Stream B, however, the Enlarged Forest Practices Activity map shows that Stream A (Long Marsh Creek) may be impacted by the culvert (the map is difficult to read). Regardless, concurrent review by WDFW should occur and the determination of whether the culvert for Stream A/Stream B will 1) protect fish life; 2) achieve no-net loss of fish or habitat; 3) minimize impact to fish life; and 4) minimize unavoidable impacts to fish life and habitat. If not, the Proposed Action will lead to “direct or indirect harm to fish life” and should be disapproved. WAC 222-20-017(5)
- **Enlarged Forest Practices Activity Map:** See comments above.
- **Alternative Plan Form:** See comments above relating to: 1) inadequate RMZ; 2) failure to correctly evaluate impacts to Stream B, Stream A and wetlands; 3) missing information on Unit 1 unstable slopes (erosion hazard areas); and 4) missing evaluation of proposed culvert.

Conclusion

If the FPA is approved as proposed, it will result in decreased water quality, erosion, sedimentation of May Creek, flooding of homes and destruction of fish and wildlife habitat. As such, the FPA should be disapproved. In the alternative, the FPA must, at a minimum, be reclassified as a Class IV forest practice, with full SEPA review by Newcastle as Lead Agency. The significant adverse environmental impacts must be evaluated and mitigated, and any FPA decision should be conditioned on full compliance with all regulatory requirements of Newcastle’s adopted code.

¹⁵ *Id.* at Figure LU-3, Buildable Lands and Critical Areas (Slopes & Stream Buffers) with Land Use Designations.

¹⁶ Newcastle 2035 Comprehensive Plan, Figure LU-8, Hydrological Features.

¹⁷ *Id.* at LU-8, Hydrological Features.

¹⁸ *Id.*

Thank you for consideration of these comments.

Sincerely,



Steve Osguthorpe
Community Development Director
City of Newcastle

Cc: Members of the Newcastle City Council
Rob Wyman, City Manager
Jeff Brauns, Public Works Director
Dawn Reitan, City Attorney
Sara McMillon, City Clerk
Reagan Dunn, King County Councilmember
Kelly Heintz, King County Parks
Gregg Zimmerman, Renton Public Works