Wetland Resources, Inc.

Delineation / Mitigation / Restoration / Habitat Creation / Permit Assistance

9505 19th Avenue S.E.
Suite 106
Everett, Washington 98208
(425) 337-3174
Fax (425) 337-3045

July 1, 2019

Four Season Homes, LLC
Attn: Paul Maksimchuk
32814 38th Avenue South
Federal Way, WA 98001

RE: 6.12.19 City Email Comments Response for Barcelo Homes SFR - 4634 E Mercer Way SFR (CAO17-007, SEP18-021)

Introduction

The applicant, Paul Maksimchuk, recently received a request for additional information from Mercer Island planning staff (Robin Proebsting, Senior Planner) related to the aforementioned SFR project. The request came in response to public comments about bald eagle presence in the vicinity of the site, and a minor modification made to the stormwater plan as approved in the Critical Areas Determination (CAO17-007) and SEPA Determination (SEP18-021). This letter is intended as a formal response to the City's request for additional information. The following is excerpted from the City's 6.12.19 email (subject line: Following up: CAO17-007 conditions of approval) for context:

> *1. Bald eagles: Please see the FAQ attached. Bald eagle management guidelines found here:https://www.fws.gov/pacific/eagle/documents/NationalBaldEagleManagementGuidelines.pdf. See in particular Temporary Impacts, starting on p. 11, which provides guidelines for specific types of activities. Determine which category your proposed scope of work falls under, and describe how you will meet the applicable guideline (e.g. by remaining the prescribed number of feet away from eagle nests, avoiding breeding season etc.) Your project biologist can likely help with this item.*
>
> *2. Consistency with CAO17-007: Condition of Approval 1 for the Critical Areas Determination (CAO17-007) requires that the building permit (1507-166REV) plan set be in substantial conformance with the development plan set submitted and approved as part of CAO17-007. I understand from you that the drainage design for the proposed house is changing. If this is the case, please help me understand—in the form of a written narrative prepared by your project biologist submitted with the building permit resubmittal—how the plans are still in substantial conformance with the plans that were approved as part of the Critical Areas Determination. The narrative should describe how the expected impacts to the watercourse will be the same as those reviewed and approved under CAO17-007 and the associated SEPA review. Depending on the degree of change from the plan set approved as part of CAO17-007, this may require peer review by our contract biologist.*

Regulatory Setting - Bald Eagles

Areas used by bald eagles for nesting, breeding, feeding and survival are designated by the City of Mercer Island as wildlife habitat conservation areas. No specific buffers are required by the City

to protect bald eagles. Mercer Island City Code (MICC) section 19.10.130 requires applicants to comply with all applicable federal and state laws, rules and regulations protecting bald eagles, including (but not limited to) the Endangered Species Act (ESA), Bald and Golden Eagle Protection Act (BGEPA), and the Migratory Bird Treaty Act (MBTA).

Bald eagles are protected by federal law against "take" under the BGEPA and the MBTA, and have no ESA protection since their removal from the federal list of threatened and endangered species in 2007. "Take" is a legal standard that includes the following actions: to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb. Disturbance is defined as "actions that cause or are likely to cause injury to an eagle, a decrease in productivity, substantial interference with normal breeding, feeding, or sheltering behavior, or nest abandonment."

The BGEPA and MBTA primarily grant permit/enforcement authority to the US Fish and Wildlife Service over activities conducted in the vicinity of an eagle's nest and/or roost. For building and home construction, a project may benefit from a federal permit if a nest is located in close proximity (660 feet) or within line-of-sight. Residential construction is very unlikely to result in "take" where suitable habitat exists but nests are not present in close proximity. Permit criteria is described on the USFWS website, Pacific Region, under *Eagles in the Pacific Northwest.*

<u>Bald Eagle Use Assessment - Publicly Available Information</u>

Publicly available information is limited to the City of Mercer Island GIS Portal, in part because the Washington State Department of Fish and Wildlife (WDFW) does not disclose eagle nest site locations to the public. Based on the City's GIS Portal, the closest mapped bald eagle nest is approximately 1,500 feet from the subject property. See Figure 1 below.

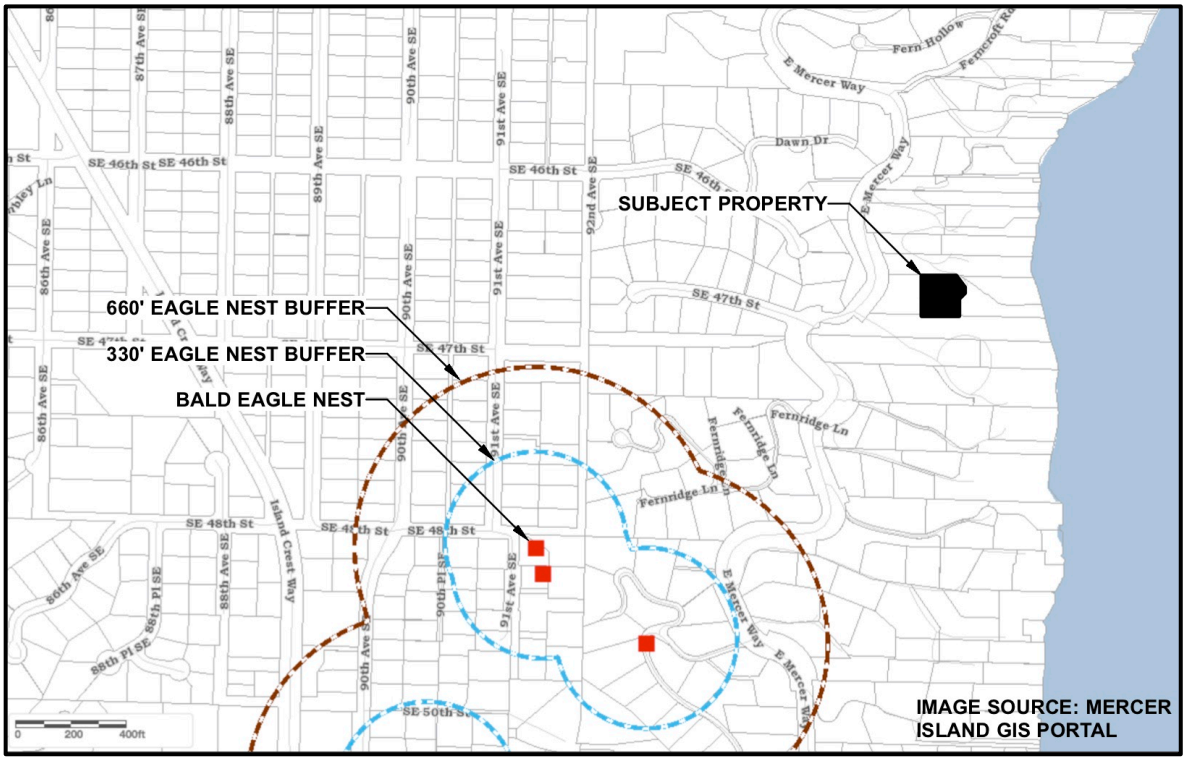

Figure 1: Known Bald Eagle Nest Locations

Due to limited publicly available information, the applicant contracted Wetland Resources, Inc. to conduct a site inspection for the purpose of documenting potential eagle use of the site and surrounding area. WRI staff conducted a site investigation for 45 minutes on 6.19.19.

Bald Eagle Use Assessment - 6.19.19 Site Observations

The subject property and surrounding area consists of mixed coniferous/deciduous forest with typical native understory species. Dominant species in the canopy include Douglas fir and big-leaf maple. Dominant sub-canopy, shrub, and groundcover species include beaked hazelnut, red alder, salmonberry, salal, Oregon grape, and English ivy. Several large trees with overhanging branches and an unobstructed view of the water were observed in the vicinity of the property, but not within the property. No bald eagle nests were observed within the subject property, in line-of-sight of the subject property, or within several hundred feet. No bald eagles were observed during the 45-minute site investigation.

Bald Eagle Use Assessment - Conclusions

Bald eagles are territorial birds that regularly return to previously constructed nests. Four known nest sites are located approximately 1,500 feet from the subject property, based on City mapping. In consideration of known eagle nest locations, and the absence of observed nests during the 6.19.19 site investigation, it is unlikely that bald eagle nesting occurs with 660 feet of the subject property.

Large trees with an unobstructed view of the water that provide suitable perch habitat for bald eagles were observed in the vicinity of the property. Nearshore and open water areas of Lake Washington that provide foraging habitat for bald eagles are located in close proximity to the subject property. It is possible that residential construction could temporarily alter eagle foraging behavior through increased noise. However, the site is located in an area characterized by long-standing anthropogenic disturbance regimes (i.e. powerboat use near the lake shoreline, dense residential use along the shoreline of Lake Washington and surrounding areas).

Due to the developed condition of the surrounding area, it is expected that bald eagles electing to forage in the vicinity of the subject property are accustomed to noise disturbance associated with residential and recreational uses. It is the view of WRI staff that proposed residential construction is very unlikely to "substantially interfere" with feeding and result in "take."

Recommended Bald Eagle Management Guidelines

Due to the absence of active or alternate nests in proximity to the subject property, no timing or other restrictions are proposed related to the nesting, egg laying, hatching, or rearing period for bald eagles. Due to the improbability that proposed residential development in the vicinity of suitable habitat would result in "take," no timing or other restrictions are proposed.

Consistency with CAO17-007

The City has requested an analysis of recent changes made to the applicant's drainage design, to determine if the project is in "substantial conformance" with the plan that was previously approved under CAO17-007 and the associated SEPA review (SEP18-021). The applicant asserts that (minor) design changes were made based on input from WDFW as part of the Hydraulic Project Approval (HPA) process, and that the project remains in substantial conformance with the

approved Critical Areas Determination (CAD) and SEPA determination. The approved HPA is included as an enclosure to this letter.

The originally approved drainage plan conveyed stormwater generated from the proposed residence directly to Lake Washington. The proposal specified an ABS pipe to be laid at grade within the subject property and an existing drainage easement on the neighboring property (4640 E Mercer Way). The pipe would outlet to an existing rocky area behind an existing hard-armor bulkhead, and would drain freely through the bulkhead and into Lake Washington. The proposal would be constructed by hand and without impacting native vegetation, because the existing condition of the work area is either maintained lawn or bare ground.

The project required a CAD and SEPA determination because it occurred in the vicinity of a regulated watercourse. The watercourse flows east along a poorly-defined channel that originates in a ravine in the southern portion of the subject property (4634 E Mercer Way). That watercourse is currently intercepted by a corrugated plastic pipe within the adjacent parcel to the east (4640 E Mercer Way), approximately 100 feet east of the southeast corner of the subject property. The plastic pipe is at grade, and terminates in the same rocky area as the originally approved outfall.

Based on review comments from Larry Fisher (WDFW Area Habitat Biologist), the proposed drainage plan was modified to include replacement of the existing corrugated pipe on the property located at 4640 E Mercer Way. The intake structure was moved upslope approximately 70 feet.

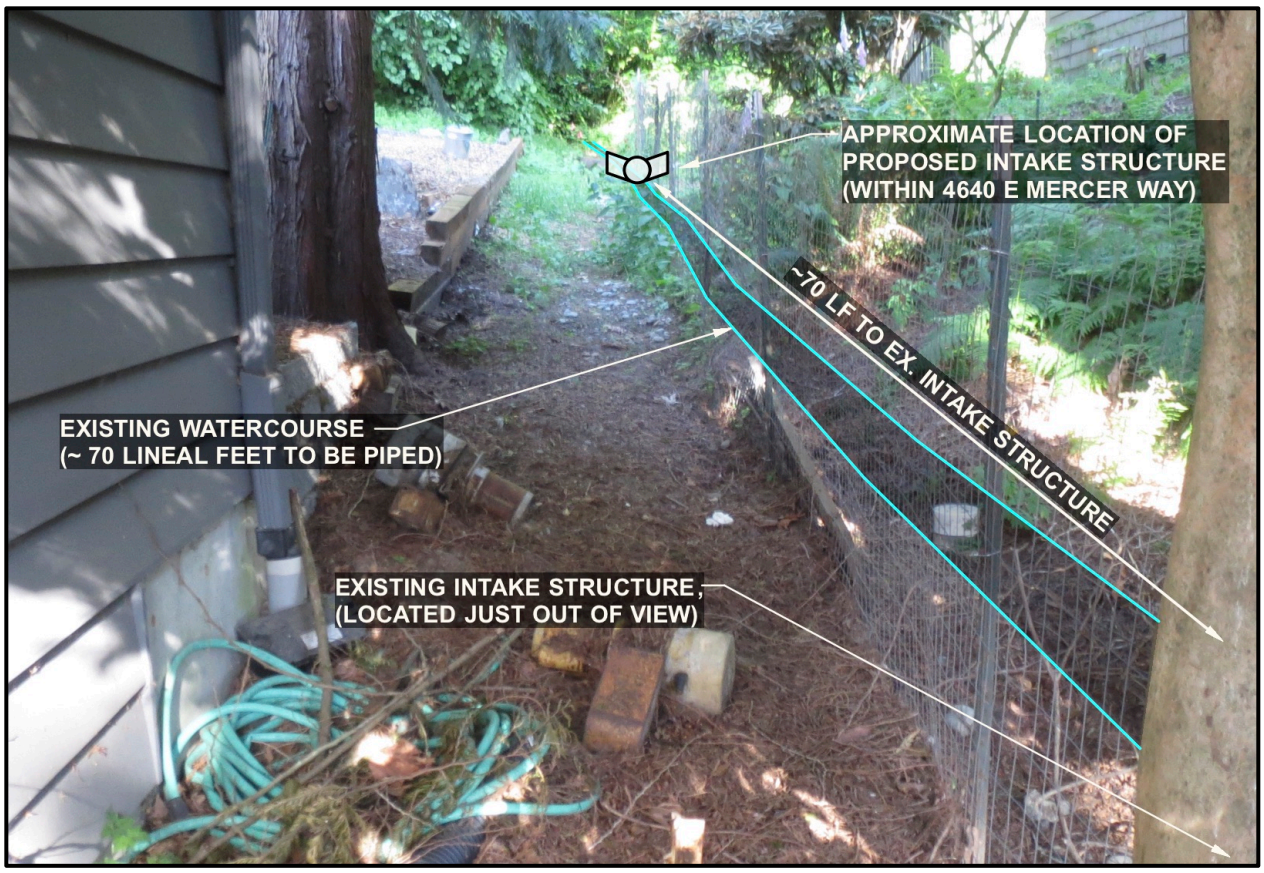

Figure 2: Existing Conditions and Proposed Drainage Design

The existing condition of the site collects the watercourse and conveys it through an at-grade pipe to Lake Washington. The originally approved drainage design conveyed stormwater to an additional at-grade pipe that outlets to Lake Washington. The modified drainage design conveys stormwater from the subject property to Lake Washington, and replaces the existing intake structure and at-grade pipe. Fundamentally, the only difference between the original proposal and the modified design is that the watercourse will be collected approximately 70 feet upslope of the existing intake structure. The condition of the watercourse in this area is either maintained lawn or bare ground adjacent to residential use. The applicant asserts that the proposed drainage design substantially conforms to the originally approved design.

Use of this Report

This comment response letter is supplied to Barcelo Homes as a means of determining habitat conditions and site plan changes as required by the City of Mercer Island. This letter is based largely on readily observable conditions and, to a lesser extent, on readily ascertainable conditions. No attempt has been made to determine hidden or concealed conditions.

The laws applicable to critical areas and protected species are subject to varying interpretations and may be changed at any time by legislative bodies. This report is intended to provide information deemed relevant in the applicant's effort to comply with the laws now in effect.

This report conforms to the standard of care employed by ecologists. No other representation or warranty is made concerning the work or this report and any implied representation or warranty is disclaimed.

Wetland Resources, Inc.

Niels Pedersen, PWS
Senior Ecologist

Enclosure: Hydraulic Project Approval (HPA) from WA Dept. of Fish and Wildlife

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HYDRAULIC PROJECT APPROVAL

Washington Department of
Fish & Wildlife
PO Box 43234
Olympia, WA 98504-3234
(360) 902-2200

Issued Date: June 19, 2019
Project End Date: June 18, 2024

Permit Number: 2019-4-361+01
FPA/Public Notice Number: N/A
Application ID: 18010

PERMITTEE	AUTHORIZED AGENT OR CONTRACTOR
Barcello Homes	Wetland Resources, Inc.
ATTENTION: Bogdan Maksimchuk	ATTENTION: Niels Pedersen
PO Box 1733	9505 19th Ave SE, Ste 106
Auburn, WA 98071	Everett, WA 98208-3841

Project Name: Barcello Homes SFR - 4634 E Mercer Way

Project Description: The applicant proposes to capture seasonal surface flows from a Type Ns watercourse in the vicinity of the common property boundary between the two parcels involved (4634 E Mercer Way and 4640 E Mercer Way). A "wing wall" intake structure will be set at grade where surface flows converge, and will convey water east through an 18" diameter HDPE pipe, which transitions to a 12" diameter HDPE pipe ~15' east of the intake structure. A long sweeping elbow or 45° bend will be installed to transition the alignment from the property located at 4634 E Mercer Way to an existing 5' utility easement (KC Rec. No. 7701060821) along the south property line of 4640 E Mercer Way. Flows will continue east through the pipe for ~280', with two wye fittings installed (to accept roof drainage from the SFR at 4640 E Mercer Way). The contractor will field align the pipe (at grade) to avoid impacts to mature or native vegetation, including tree roots. The outfall pipe will discharge at the back of an existing two-man rock bulkhead. The contractor will place additional angular rock at the point of discharge to limit erosion.

PROVISIONS

TIMING - PLANS - INVASIVE SPECIES CONTROL

1. TIMING LIMITATION: You may begin the project immediately and you must complete the project by June 18, 2024, provided work within the wetted perimeter must occur only between June 16 and September 30.

2. APPROVED PLANS: You must accomplish the work per plans and specifications submitted with the application and approved by the Washington Department of Fish and Wildlife entitled, "BARCELLO HOMES S.F.R. 4634 EAST MERCER WAY", except as modified by this Hydraulic Project Approval (HPA). You must have a copy of these plans and this HPA available on site during all phases of the project construction.

3. INVASIVE SPECIES CONTROL: Thoroughly clean all equipment and gear before arriving and leaving the job site to prevent the transport and introduction of aquatic invasive species. Properly dispose of any water and chemicals used to clean gear and equipment. You can find additional information in the Washington Department of Fish and Wildlife's Invasive Species Management Protocols (November 2012), available online at http://wdfw.wa.gov/publications/01490/wdfw01490.pdf.

4. WATER QUALITY PROBLEM NOTIFICATION: If a water quality problem occurs at the job site, immediately stop all activities causing harm. Immediately notify the Washington Department of Fish and Wildlife Habitat Biologist at 425-449-6790 of the problem. The Washington Department of Fish and Wildlife may require additional measures to mitigate impacts.

STAGING, JOB SITE ACCESS, AND EQUIPMENT

5. Establish staging areas (used for equipment storage, vehicle storage, fueling, servicing, and hazardous material

storage) in a location and manner that will prevent contaminants such as petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials from entering waters of the state.

6. Clearly mark boundaries to establish the limit of work associated with site access and construction.

7. Check equipment daily for leaks and complete any required repairs in an upland location before using the equipment in or near the water.

CONSTRUCTION-RELATED SEDIMENT, EROSION AND POLLUTION CONTAINMENT

8. Work in the dry watercourse (when no natural flow is occurring in the channel, or when flow is diverted around the job site).

9. Protect all disturbed areas from erosion. Maintain erosion and sediment control until all work and cleanup of the job site is complete.

10. All erosion control materials that will remain onsite must be composed of 100% biodegradable materials.

11. Straw used for erosion and sediment control, must be certified free of noxious weeds and their seeds.

12. Stop all hydraulic project activities except those needed to control erosion and siltation, if flow conditions arise that will result in erosion or siltation of waters of the state.

13. Prevent project contaminants, such as petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials, from entering or leaching into waters of the state.

14. Route construction water (wastewater) from the project to an upland area above the limits of anticipated floodwater. Remove fine sediment and other contaminants before discharging the construction water to waters of the state.

15. Deposit waste material from the project, such as construction debris, silt, excess dirt, or overburden, in an upland area above the limits of anticipated floodwater unless the material is approved by the Washington Department of Fish and Wildlife for reuse in the project.

CONSTRUCTION MATERIALS

16. Store all construction and deconstruction material in a location and manner that will prevent contaminants such as petroleum products, hydraulic fluid, fresh cement, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials from entering waters of the state.

17. Do not stockpile construction material waterward of the ordinary high water line.

OUTFALL

18. To prevent scouring, protect the watercourse bank and bed at the point of discharge.

DEMOBILIZATION AND CLEANUP

19. Upon completion of the project, remove all unneeded materials or equipment from the site and dispose of all excess spoils and waste materials in an upland area above the limits of anticipated floodwater.

LOCATION #1:	Site Name: Barcello Homes SFR 4634 E Mercer Way, Mercer Island, WA 98040		
WORK START:	June 19, 2019	WORK END:	December 31, 2019
WRIA	Waterbody:		Tributary to:
08 - Cedar - Sammamish	Lake Washington		Ship Canal

HYDRAULIC PROJECT APPROVAL

Washington Department of
Fish & Wildlife
PO Box 43234
Olympia, WA 98504-3234
(360) 902-2200

Issued Date: June 19, 2019
Project End Date: June 18, 2024

Permit Number: 2019-4-361+01
FPA/Public Notice Number: N/A
Application ID: 18010

1/4 SEC:	Section:	Township:	Range:	Latitude:	Longitude:	County:
All	18	24 N	05 E	47.562335	-122.210706	King
Location #1 Driving Directions						
Google Maps to: 4634 E Mercer Way, Mercer Island, WA 98040						

APPLY TO ALL HYDRAULIC PROJECT APPROVALS

This Hydraulic Project Approval pertains only to those requirements of the Washington State Hydraulic Code, specifically Chapter 77.55 RCW. Additional authorization from other public agencies may be necessary for this project. The person(s) to whom this Hydraulic Project Approval is issued is responsible for applying for and obtaining any additional authorization from other public agencies (local, state and/or federal) that may be necessary for this project.

This Hydraulic Project Approval shall be available on the job site at all times and all its provisions followed by the person (s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work.

This Hydraulic Project Approval does not authorize trespass.

The person(s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work may be held liable for any loss or damage to fish life or fish habitat that results from failure to comply with the provisions of this Hydraulic Project Approval.

Failure to comply with the provisions of this Hydraulic Project Approval could result in a civil penalty of up to one hundred dollars per day and/or a gross misdemeanor charge, possibly punishable by fine and/or imprisonment.

All Hydraulic Project Approvals issued under RCW 77.55.021 are subject to additional restrictions, conditions, or revocation if the Department of Fish and Wildlife determines that changed conditions require such action. The person(s) to whom this Hydraulic Project Approval is issued has the right to appeal those decisions. Procedures for filing appeals are listed below.

MINOR MODIFICATIONS TO THIS HPA: You may request approval of minor modifications to the required work timing or to the plans and specifications approved in this HPA unless this is a General HPA. If this is a General HPA you must use the Major Modification process described below. Any approved minor modification will require issuance of a letter documenting the approval. A minor modification to the required work timing means any change to the work start or end dates of the current work season to enable project or work phase completion. Minor modifications will be approved only if spawning or incubating fish are not present within the vicinity of the project. You may request subsequent minor modifications to the required work timing. A minor modification of the plans and specifications means any changes in the materials, characteristics or construction of your project that does not alter the project's impact to fish life or habitat and does not require a change in the provisions of the HPA to mitigate the impacts of the modification. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a minor modification through APPS. A link to APPS is at http://wdfw.wa.gov/licensing/hpa/. If you did not use APPS you must submit a written request that clearly indicates you are seeking a minor modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234, or by email to HPAapplications@dfw.wa.gov. You should allow up to 45 days for the department to process your request.

MAJOR MODIFICATIONS TO THIS HPA: You may request approval of major modifications to any aspect of your HPA. Any approved change other than a minor modification to your HPA will require issuance of a new HPA. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a major modification through APPS. A link to APPS is at http://wdfw.wa.gov/licensing/hpa/. If you did not use APPS you must submit a written request that clearly indicates you are requesting a major modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send your written request by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234. You may email your request for a major modification to HPAapplications@dfw.wa.gov. You should allow up to 45 days for the department to process your request.

APPEALS INFORMATION

If you wish to appeal the issuance, denial, conditioning, or modification of a Hydraulic Project Approval (HPA), Washington Department of Fish and Wildlife (WDFW) recommends that you first contact the department employee who issued or denied the HPA to discuss your concerns. Such a discussion may resolve your concerns without the need for further appeal action. If you proceed with an appeal, you may request an informal or formal appeal. WDFW encourages you to take advantage of the informal appeal process before initiating a formal appeal. The informal appeal process includes a review by department management of the HPA or denial and often resolves issues faster and with less legal complexity than the formal appeal process. If the informal appeal process does not resolve your concerns, you may advance your appeal to the formal process. You may contact the HPA Appeals Coordinator at (360) 902-2534 for more information.

A. INFORMAL APPEALS: WAC 220-660-460 is the rule describing how to request an informal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete informal appeal procedures. The following information summarizes that rule.

HYDRAULIC PROJECT APPROVAL

Issued Date: June 19, 2019
Project End Date: June 18, 2024

Permit Number: 2019-4-361+01
FPA/Public Notice Number: N/A
Application ID: 18010

A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request an informal appeal of that action. You must send your request to WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to HPAapplications@dfw.wa.gov; fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. WDFW must receive your request within 30 days from the date you receive notice of the decision. If you agree, and you applied for the HPA, resolution of the appeal may be facilitated through an informal conference with the WDFW employee responsible for the decision and a supervisor. If a resolution is not reached through the informal conference, or you are not the person who applied for the HPA, the HPA Appeals Coordinator or designee may conduct an informal hearing or review and recommend a decision to the Director or designee. If you are not satisfied with the results of the informal appeal, you may file a request for a formal appeal.

B. FORMAL APPEALS: WAC 220-660-470 is the rule describing how to request a formal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete formal appeal procedures. The following information summarizes that rule.

A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request a formal appeal of that action. You must send your request for a formal appeal to the clerk of the Pollution Control Hearings Boards and serve a copy on WDFW within 30 days from the date you receive notice of the decision. You may serve WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to HPAapplications@dfw.wa.gov; fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, you may request a formal appeal within 30 days from the date you receive the Director's or designee's written decision in response to the informal appeal.

C. FAILURE TO APPEAL WITHIN THE REQUIRED TIME PERIODS: If there is no timely request for an appeal, the WDFW action shall be final and unappealable.

Habitat Biologist
Larry Fisher

Larry.Fisher@dfw.wa.gov
425-449-6790

Larry Fisher

for Director
WDFW