Critical Areas and Clearing Permit
Findings and Decision
Type II

Samish Heights Forest Management Plan: CAP2016-0036

Critical Area Types:
- Geologic Hazards: Landslide and Erosion.
- Wetlands and Streams
- Habitat Conservation Area (HCA)

Proposal: To conduct a selective harvest of timber averaging 30% (ranging from 10%-60%) on a previously logged 110-acre parcel of land. Work is limited to weekdays between 7 am and 5 pm and will continue for approximately 6 weeks. Log trucks and other equipment will use one of three access points from Whitewater and Wildwood Drives (see Exhibit A). No work will occur within the following critical areas: wetlands, streams and their buffers, and on slopes 30% and greater. The entire site is an HCA and cannot be avoided entirely. Additional non-harvest areas include: a 50-foot buffer from the western property line, an additional 50 feet limited-harvest buffer, and a 20-foot buffer along the eastern property line where it abuts city property. All buffers to be marked in the field.

Applicant: Kiersten Sahlberg, the RJ Group for Samish Heights, Inc., 222 Grand Avenue, Suite C, Bellingham WA 98225, 360-738-0036

Owners: Samish Heights, Inc. 904 Clivedon Ave., Delta, BC V3MR5R CANADA

Location: The west slope of Samish Hill, approximately between 42nd Street, 48th Street, Adams Avenue, and Donovan Avenue/Samish Crest Drive (if all extended). Exhibit A provides a site map.

Decision: Approved with conditions.

Date of Decision: June 26, 2017

B - Land use applications and responses.
F - Public comments.
I. FINDINGS OF FACT AND CONCLUSIONS

1. The proposal is located within Area 5 of the Samish Neighborhood and is zoned Residential, Single.

2. On May 18, 2016 the City of Bellingham received an application to partially log a parcel east of Whitewater Drive between Yew Street and 42nd Street, south of Dumas Avenue.

3. On June 10, 2016 the City of Bellingham issued a Notice of Incomplete Application (NIA) and Request for Information (RFI).

4. On September 19, 2016 the applicants responded to this NIA/RFI.

5. On October 5, 2016 the City of Bellingham issued a Notice of Application and Optional DNS Process. The last date of comment was October 19, 2016. Twenty four citizens commented, with one commented six times. Comments (Exhibit F) included lack of a Habitat Conservation Area (HCA) review (impacts on species, habitat, movement corridors, ‘no net loss’, ecosystem impacts, and biodiversity); damage to water quality (nutrient loading, adequacy of stormwater standards, and the hydrologic cycle), timing; disease; landslides; invasive species; recreation; climate change; impact on local roads/routes including safety and road damage; and the relationship between long-term development plans, timing, and this proposal.

City staff evaluated these comments and determined that:

a. A HCA review is complete, and recommendations from this review are attached as conditions to this permit.

b. Stormwater quality and quantity Bellingham Municipal Code (BMC) requirements will also be applied to this proposal via stormwater permit STM2016-00068.

c. The State of Washington Department of Natural Resources tracks tree disease.

d. Exhibit E specifically discusses landslides and erosion, concluding that if the proposal were conditioned as recommended, then the proposal will have minimal to no impacts to the project area (Page 9).

e. The number of invasive species on this site will increase.

f. Trespass recreation on this site will be constrained by this proposal.

g. A climate change analysis has not been done.

h. Logging truck loads will have to meet weight limits. Both Wildwood Drive and Whitewater Drive were constructed to meet city construction standards when the subdivision was built, and should be able to take truck loads meeting weight limits. If damage occurs to the streets due to trucking activity it will be the responsibility of the applicant to repair the damage.

i. The applicant proposes to provide flagging for each truck, and will notify the Police Department regarding their trucking plans.

j. The applicant is not required to provide long-term development plans, but has determined that approximately 12 single-family housing sites may be created next year. Such site development will be reviewed separately from this proposal.

k. No significant ground disturbance activities such as placement of gravels or excavation is planned. Stumps will be left in place. Slash will be distributed on site to minimize erosion by chipping in place and spreading on open ground and/or placement on closed logging roads.

l. A 100 foot wide vegetated strip will remain along all downgradient property lines to disperse any increased stormwater runoff prior to it leaving the site. This strip will
include a 50 foot no-log area closest to the exterior boundary and a 50 foot hand-log-only area between the no-log area and the rest of this site.
m. The two entrances will be built to Department of Ecology standards.
n. Street sweepers will be employed to clean City roads whenever they are dirtied.

6. On December 16, 2016 the City of Bellingham issued a second RFI.

7. On April 10, 2017 the Development Services Manager extended the land use application six months past the original 120 days, per BMC 21.10.080 A.


9. On June 5, 2017 the applicant notified the City of Bellingham that they:
   a. Would supply flaggers and notify the Police Department about the use of the road for logging trucks;
   b. The purpose of the harvest is to remove potentially dangerous and diseased trees while retaining healthy and appropriately sized future neighborhood trees;
   c. trees in environmentally sensitive areas and associated buffers would remain;
   d. They will use trucks that are designed to navigate tight radius logging roads and trucks will have no problem navigating a city intersection;
   e. They will provide signs warning drivers that trucks will be turning onto the roadway;
   f. Traffic would be coordinated with the appropriate parties as necessary as soon as the logging schedule is established; and
   g. They will use trucks designed to navigate steep inclines often found on the steep mountains of the Pacific Northwest. These trucks will have no problem navigating a steep city street.

10. On June 16, 2017 the City of Bellingham issued a SEPA Determination of Non Significance.

CRITICAL AREAS - FINDINGS AND CONCLUSIONS

WETLANDS AND STREAMS

11. The critical areas assessment (Exhibit C) includes an analysis of the eleven wetlands and two streams on site. It recommends wetland buffers based on land use intensity in accordance with BMC 16.55.510. Logging operations are not proposed within wetlands, streams, or their buffers.

12. The site plan (Exhibit A) shows wetland buffer widths for "low intensity land use" as defined in BMC 16.55.510 because logging is considered a low intensity land use. Construction of logging roads and staging area is considered moderate intensity land use as defined in BMC 16.55.510. Table 3 in the Exhibit C shows wetland buffer widths for low and moderate intensity land use.

13. Exhibit C does not include, nor does the site plan show, wetland buffer widths for "high intensity land use", as in BMC 16.55.510. Residential development at the density of more than one unit per acre – not proposed - is considered high intensity land use.

HABITAT CONSERVATION AREA
14. The project biologist, NES, determined that the entire 110-acre parcel meets the definition of a priority wildlife habitat/connection (HCA) as defined in BMC 16.55.470 A (7). The public property to the east also meets the wildlife HCA designation. See Exhibit D.

15. The HCA analysis determined that the area is a potential habitat for Townsend’s big-eared bat (Corynorhinus townsendii) and pileated woodpecker (Dryocopus pileatus), both Candidate species by Washington State. No additional federal or state Threatened, Endangered, or Candidate species or associated habitats, other than the wetlands and streams, were identified within the project area’s vicinity.

16. The project biologist included in the impact assessment, Exhibit D, the state management recommendations for the priority species. The impact assessment concluded that by leaving 70 percent of the forest canopy (overall) and conducting the harvest as conditioned, impacts to the HCA are “anticipated to be limited.”

17. The property is mapped in the Bellingham Habitat Restoration Technical Assessment (November 2015) as a high priority forest block.

18. Logging operations can damage critical root zones and branches of trees extending onto this site from adjacent properties when harvesting occurs. The forested property immediately to the east is public open space. The trees on the city property contribute to the HCA and are a public resource.

19. BMC 16.55.490 gives authority to the Planning director to condition approvals of activities in HCAs as necessary to minimize or mitigate any potential adverse impact. Some of the listed conditions in BMC 16.55.490 C include: the establishment of buffer zones, the preservation of critically important vegetation and/or habitat features such as snags and downed wood, and seasonal restriction of activities.

20. The applicant has offered to replace any damaged/destroyed public trees at a 2:1 ratio. Damage to public trees may not have any effect for several years, and at that time it would be difficult or impossible to prove tree death causes. As well, canopy trees cannot be replaced. Small replacement trees can take over fifty years to grow to a height where they contribute significantly to a HCA.

21. A 20-foot wide no harvest zone along the entire eastern property line would provide a buffer of protection to the trees, the critical root zone, and branches of trees on the adjacent city property. It would eliminate, or reduce significantly, any damage to city trees and therefore the need to plant replacement trees.

22. This property will eventually develop as residential land, which, as noted in Exhibit D, will have a significant impact on the HCA resources on this site. At the time of this development, one mitigation measure to lessen such HCA resource damage is a vegetated mature buffer between development and the HCA resources on adjacent public parklands.

GEOTECHNICAL
23. There are slopes on the subject property that meet the definition of both landslide and erosion geologically hazardous areas. Work is proposed within the required 50’ setback from these slopes.
24. The regulations for Critical Areas Ordinance (CAO) permit applications for geologically hazardous areas are set forth in BMC section 16.55.410-460.

25. The geotechnical report EXHIBIT E includes an evaluation of the site geology, soils, and surface conditions and assesses the potential for landslide and erosion hazards within the proposal, as required under BMC 16.55.210, 16.55.410, 16.55.430-.440, and 16.55.470.

26. Exhibit E provides conditions to minimize steep slope hazards. It notes that on steep slopes (30% and greater), timber removal will occur only with hand-operated equipment. This restriction includes the 50-foot buffer zone around critical area slopes. Skid trails are located in steep slope buffers.

27. Exhibit E states that exposed soil on established skid trails should be re-surfaced with at least 6 inches of erosion control materials. They also recommend additional plantings on near slope faces.

28. Exhibit E stated that operation for later this summer season will minimize the potential difficulties and site impacts related to inclement weather. Operations may also be feasible during the 'fall shoulder season' with additional protective measures or procedures within/in the vicinity of critical area slopes. Exhibit E does not encourage harvest in the wet season or early spring. Exhibit E includes Standard Erosion Protection measures (pages 11 – 12).

29. Qualified professionals have determined the proposed logging complies with the general and specific code requirements under the Critical Areas Ordinance (BMC 16.55), provided incorporation of proper site management and the recommendations of Exhibits C, D, and E.

30. This proposal uses reasonable methods to avoid potential impacts to critical areas. This permit approval does not give permission to degrade a critical area or ignore risk from natural hazards.

31. As conditioned, this proposal meets the review criteria in BMC 16.55.200.

GENERAL CONCLUSION
32. As conditioned, the proposal is consistent with the general purposes of the CAO. A permit should be granted for the proposal.

CLEARING - FINDINGS AND CONCLUSIONS
33. The regulations of the Clearing code, BMC 16.60, apply to clearing (logging) on this site. BMC 16.60.080 A. requires:
   a. No clearing without an approved management plan for forestry, including a site plan; a description of proposed uses, drainage and erosion control measures; and methods of property management which shall prevent damage to adjacent land and natural resources as required.
   b. Prior to clearing, an approved and constructed drainage and erosion and sedimentation control plan.
   c. Prior to clearing, acquisition of a Department of Natural Resources Forest Practice Permit, based on an approved timber management plan, that provides for selective cutting only on a continuous basis (less than 30 percent).
34. The purpose of the clearing code includes to reduce the harmful effects on the community and environment of clearing, to minimize the destruction of existing vegetation and maintain its existence for as long as possible, to maintain wildlife and fisheries habitat, reduce erosion, air and water quality degradation and minimize visual blight, and to require appropriate methods, materials and timing for land clearing with a minimum of disruption. The clearing code does not forbid the clearing of vacant land within the City of Bellingham.

35. This site has been logged in the past. This proposal is a phase of “selective cutting only on a continuous basis”, which may be defined as the use of a site, over decades or centuries, for the growth and harvest of trees. This permit constitutes an approved Timber Management Plan as required by BMC 16.60.080 A. 7.

36. Temporary logging roads will be mulched and restored to Forest Practices standards after this proposal is complete.

37. The applicants will replace any tree damaged on city parklands with two trees of the same species, near the same location.

38. The following clearing code requirements apply to this proposal:
   a. Clearing shall not result in any damage to abutting lots or parcels, public property, or water resources. A setback should be provided between the east boundary of this proposal site and public parklands.
   b. All public rights-of-way shall be kept clear of silt, mud, and debris.
   c. Clearing limits will be clearly marked prior to logging.

39. As conditioned, the proposal provides methods of property management which prevent damage to adjacent land and natural resources as required, and it does not pose an unreasonable threat to the public health, safety, or welfare on or off the development site. A permit should be granted for this proposal.

II. DECISION

Based upon the Findings of Fact and Conclusions, the Director of Planning and Community Development or designee, approves a Clearing and Critical Areas Permit (CAP2016-0036), for the project described herein and as provided in Exhibits A - E subject to the following conditions:

1. Site work and maintenance shall be consistent with all recommendations of Exhibits C, D, and E, including but not limited to:
   a. If conditions on site differ from that described in Exhibit E, the applicants shall immediately hire a geotechnical engineer or engineering geologist to provide alternative mitigation measures, as needed. These mitigation measures shall be provided to the city for written confirmation.
   b. Critical area slopes and their vegetation shall be minimally disturbed as described in Exhibits A, B, C, D, and E.
   c. This logging operation shall be executed in the dry summer season as allowed by the Department of Natural Resources. Additional protective measures may be required during other seasons, as reviewed and required by the relevant qualified professional(s).
during other seasons, as reviewed and required by the relevant qualified professional(s).
d. No vegetation clearing or other impacts shall occur in wetlands, streams, or their buffers as described in Exhibits A, B, C, and D.
e. All timber harvest activity, including tree cutting, road building and log hauling, shall be done in accordance with the "Additional project details" list on pages 8-9 of Exhibit D.
f. Wetland buffer widths shall be determined on the intensity of land use (see Table 3, page 19, Exhibit C).
g. Non-marketable snags (standing dead trees) and downed woody debris shall be left on site.
h. All wetland and stream buffers shall be surveyed and marked in the field.

2. Harvest shall be limited to less than 30% of marketable timber.

3. Pursuant to BMC 16.55.460(A)(4), removal of vegetation from an erosion or landslide hazard area or buffer is prohibited except as described by Exhibit E.

4. Continuous Perimeter Markings (flagging, stakes, paint spots, continuous ribbon, or other readily visible means) shall be installed to clearly identify:
a. The 20-foot wide no-entry buffer between the easterly boundary of this project site and adjacent public land. See Exhibit A.
b. Property lines and corners if clearing will take place in close proximity.
c. The wetland, stream, and steep slope areas and their buffers.
d. The 100-foot perimeter buffer with 50-foot hand-logging area.

5. A pre-operation site visit with City staff to verify wetland, stream, steep slope, and their buffer markings, and perimeter markings shall be scheduled. Staff shall verify such markings prior to any timber falling.

6. Stormwater/Erosion Control: The stormwater permit STM2016-0068 controls stormwater quality and quantity discharge (BMC 15.40). Also the following minimum Clearing and Critical Areas requirements shall be met:
a. Supply standard erosion protection as described in Exhibits A, B, C, D, and E, including but not limited to the following: Exposed mineral soils re-surfaced with organic material such as wood chips; Existing exposed soil on established trails stabilized with erosion control measures prior to or during logging; and Construction entrance erosion controls including a combination of silt fencing, rolled erosion control products, or organic materials such as straw or hay as determined by the project engineer.
b. All public rights-of-way including easements for roads, trails and utilities shall be kept clear of silt, dirt, mud and debris and immediately cleaned and/or restored to their original condition prior to impact.

7. Clearing shall not result in any damage to abutting lots or parcels, public property or water resources, including but not limited to, tree trunk, bark, or limb damage; damage to roads, trails or utilities; water or soil contamination; alteration of drainage courses; transport and disposition of dirt, mud or sediment; or the creation of a fire hazard or other unsafe conditions.

8. Changes to development plans shall not be made unless approved - in writing - by the City of Bellingham and a qualified professional(s).
9. All activities shall be conducted using the best management practices that result in the least amount of impact to all critical areas.

This Type II permit is granted with the conditions specified above pursuant to the Critical Areas Chapter of the Bellingham Municipal Code. It does not excuse the applicant from compliance with any other federal, state or local statutes, ordinances or regulations that may be applicable to this project.

In the event the owner/applicant fails to comply with the terms of the conditions herein, the permit may be rescinded. All work must be completed according to this permit.

III. EXPIRATION

In accordance with BMC 21.10.260, this permit shall expire five (5) years from the date of decision unless a complete building permit application is filed before the end of the five-year term. In the event the applicant or a person completing the project fails to comply with the terms or conditions herein, the permit may be rescinded.

IV. APPEAL

Any party aggrieved by the decision of the Director may file an appeal within 14 days of the notice of decision in accordance with BMC 21.10.250. Any appeal must be filed with the Planning and Community Development Department on the appropriate forms and be accompanied by a filing fee as established by the City Council.

V. EFFECTIVE DATE

Critical Area permits shall be effective after the close of the appeal period, or if an appeal is filed, after the withdrawal of, or final decision on an administrative appeal (BMC 21.10.240 C.3.). The effective date of this permit is July 10, 2017 unless an appeal is filed.

Prepared By

Jacquelyn Lynch, Planner
Planning and Community Development Department

Approved By

Kim Weil, Planner
Planning and Community Development Department