

# **The Woods at Viewcrest**

## **Summary of Application Deficiencies**

### **Executive Summary**

BMC 21.10.190 and 21.10.200 require an applicant to meet the City's ***submittal requirements*** for the city to make a ***determination of completeness*** and issue a ***notice of application***. The Woods at Viewcrest application fails to meet the City's submittal requirements as detailed below. The City should issue a third ***request for information*** to address these deficiencies.

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3. **LANDSLIDE & EROSION HAZARD AREAS AND THEIR BUFFERS**: The City's requirements for Landslide Hazard Area buffers have not been met.
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### Detailed Analysis

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  - a. **MR #7 (Flow Control)** ([BMC 15.42.060.F](#)): Stormwater runoff from TDA 2 has been modified to discharge through the Sea Pines Road stormwater system into wetlands within the Chuckanut Village Marsh. **This marsh is not a flow-control-exempt waterbody.** The [SMR](#) does not comply with MR #7 because no on-site flow control BMPs as required by MR #7 are implemented for stormwater runoff from TDA 2.
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    - ii. MR #4 requires that natural drainage be maintained to the maximum extent possible. Currently, natural drainage from higher elevations in TDA 1 discharges downgradient, north west, to city stormwater conveyance pipes along Viewcrest Road. Project design for post development drainage has designated these higher elevations as part of TDA 2 that discharges east into Chuckanut Village Marsh. Existing pre-development natural drainage area for TDA 1 is a little over 7 acres. The post-development discharge area for TDA 1 is considerably less at under 4 acres. Post-development acreage for TDA 2 will increase more than 20% from pre-development acreage.
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- ii. Permeable Pavement
- iii. Bioretention
- iv. Sheet Flow Dispersion and Concentrated Flow Dispersion

The SMR does not explain how lot-specific runoff control will be managed, especially for lots downgradient from the public and private roads. The information provided by the SMR is insufficient.

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Although revised [6/16/23 SMR](#) (Section 6.1.5, page 9) correctly references the appropriate section of the current [2019 Ecology Manual](#), **Sections 6.1.5(1) through 6.1.5(6) still do not comply with the requirements of the 2019 Ecology Manual** and continue to erroneously reflect the steps outlined in the outdated [2005 Ecology Manual](#). (Section 3.1.5, Volume I, pages 3-3 to 3-5).

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Mr. Woodland, who has extensive professional project management experience, concludes that (1) additional evaluation is required beyond the feasibility scope and (2) because of the higher than typical risks inherent in the Woods at Viewcrest proposal, further engineering is needed. The information provided by the Geotech Report is insufficient.

- b. **Individual Lot Examination:** The Woods at Viewcrest application requests the City to expand development capacity from 4 lots to 38 lots. The City should not approve an application for additional lots unless the City has sufficient information to determine that these lots can accommodate the construction of residential units. Because the Geotech Report (Page 23, Section 4.4.3) “is not intended to serve as a detailed examination of the conditions on individual lots,” it does not provide sufficient information for the City to continue processing an application to subdivide the 4 existing lots into 38 lots. In light of the geohazards and geotechnical risks, doing so

will invariably lead to takings claims when subdivided lots cannot accommodate a residential unit.

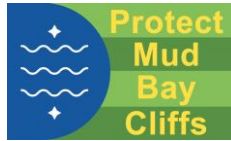
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  - e. **Outdated Plans and Maps:** The [10/6/22 Geotech Report](#) was not updated in response to the City’s [12/21/22 RFI](#). The *Project Area & Lot Layout* (Figure 2 on PDF page 54) and the *Percent Slope Map & Lot Layout* (Figure 3B on PDF page 56) are **outdated and do not reflect changes made to the project plans.**
  - f. **LIDAR:** The [Geotech Report](#) includes a LIDAR image as Figure 4 on page 57 of the PDF. The City should require the applicant to provide a LIDAR image with an overlay of the revised site plan and building envelopes. **This information is essential to understand how Landslide Hazard Areas will be impacted.**
3. **LANDSLIDE & EROSION HAZARD AREAS AND THEIR BUFFERS:** The *Proposed Building Envelope & Existing CAO Areas* plan on page 5 of the [Project Plans](#) reveals that **the City’s requirements for Landslide Hazard Area buffers have not been met.** As a result, the project plans do not meet the City’s submittal requirements.
4. **INCOMPLETE APPLICATION MATERIALS:** The following Land Use application materials are incomplete and contain sections not addressed. Additional assessment and analysis of critical area hazards is required to clarify impacts and identify mitigation of these significant hazard areas on the subject property:
- a. Critical Area Report
  - b. Critical Area Checklist
  - c. Mitigation Report Requirements
  - d. Specific Report Requirement Checklist for Wetlands & Wetland Buffers

e. Specific Report Requirement Checklist for Geologically Hazardous Areas

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  - b. The analysis is based on 38 single-family units; however, the project has the capacity for 38 quadplexes totaling 152 multi-family units, a four-fold increase in potential traffic from the project alone. Additionally, existing single family lots within the Edgemoor Neighborhood also have the potential to house quadplexes, further increasing the cumulative adverse impacts.
7. **WETLANDS / HABITAT RATINGS**: The low wetland ratings for wildlife habitat are inconsistent with the 2021 City of Bellingham [Wildlife Corridor Analysis](#), which identifies the Woods at Viewcrest property as an *Important Wildlife Habitat Area* and *Important Wildlife Corridor*. (Figure 8 on page 19) The wildlife habitat scores must be updated to reflect the importance of this property for the City's wildlife. The updated habitat scores can have a significant impact on the required wetland buffers and project plans.
8. **WILDLIFE HABITAT ASSESSMENT / BALD EAGLE NEST**: The [Wildlife Habitat Assessment](#) appears unreliable as it fails to include a bald eagle nest in a tree on the Woods at Viewcrest property that is in plain sight from the shoreline. "We saw no evidence of nesting activity by bald eagles in the vicinity of the project site during our field investigations." (Page 6) What else has the assessment failed to include?
9. **PUBLIC TRAIL EASEMENT / 10<sup>th</sup> STREET VARIANCE**: The [12/21/22 RFI](#) (Page 2) indicates that the City is "likely to recommend that an approval of the variance associated with 10th Street should be conditioned to require construction of the public trail [to Sea Pines Road] ... in lieu of the pedestrian facility that would have otherwise been associated with the street construction."

According to the 5/31/23 letter from Sea Pines Road residents Rud Brown, Sheila Kyle-Browne, and Greg Gudbranson, **the public trail to Sea Pines Road should be completely abandoned because it "would pose an extreme safety hazard** that will ultimately result in serious injury or death of a cyclist or runner, due to the location of its entry onto Sea Pines Rd." The letter provides details of their concern and references the AASHTO Guide for the Development of Bicycle Facilities (2012), which is listed as a primary resource relied on by the City when developing the Bellingham Bicycle Master Plan.

Because the proposed trail poses a public safety hazard, in a third RFI, the City should require the applicants to include the pedestrian facility that the trail was intended to replace.



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Bellingham, WA 98225

June 28, 2023

Mr. Blake Lyon  
Planning & Community Development Department Director  
City of Bellingham  
210 Lottie Street  
Bellingham, WA 98225  
Via Email

Copy Via Email:  
Seth Fleetwood, Mayor  
Kurt Nabbefeld, Development Services Manager  
Kathy Bell, Senior Planner  
Steve Sundin, Senior Planner  
Michael Lilliquist, Councilmember

**Re: *The Woods at Viewcrest* · Summary of Application Deficiencies**

Dear Mr. Lyon:

*Protect Mud Bay Cliffs* Steering Committee members Janet Migaki, Kate Grinde, Brent Woodland and I would like to thank you for taking time to meet with us on June 27. We appreciate the opportunity to explain why it's in the best interest of all parties for the City to issue a third Request for Information (RFI) from *The Woods at Viewcrest* subdivision applicant.

BMC 21.10.190 and BMC 21.10.200 require an applicant to meet the City's submittal requirements before the City can make a determination of completeness and issue a notice of application. The Woods at Viewcrest application fails to meet these submittal requirements. A third RFI is necessary to secure the information needed to address the application's significant deficiencies.

A copy of the 6-page *Summary of Application Deficiencies* document we reviewed during our meeting is attached. The electronic version of this summary contains hyperlinks to the referenced source documents to facilitate staff's review of these application deficiencies.

A critical aspect of The Woods at Viewcrest proposal is the threat to public health and safety. A key function of government - and a primary responsibility of a city mayor - is

to protect public health and safety. As you know, members of Protect Mud Bay Cliffs requested a meeting with Mayor Fleetwood to share our concerns about the potential public safety threats this development - on the steep and unstable cliffs overlooking Mud Bay - is likely to impose.

Because Mayor Fleetwood declined our request and refused to meet with us, the burden of ensuring public safety falls onto you as Director of the Planning & Community Development Department. In order to address the project's safety, environmental, and ecological risks, the City and the public require sufficient information to determine those risks and develop mitigation strategies. A third RFI is essential to acquire this information.

It would be inappropriate for the City to make a determination of completeness and issue a notice of application. Doing so would force the public, public agencies, tribes, and other stakeholders to waste valuable resources reviewing the more than 800 pages of incomplete application materials now - and then again once the significant application deficiencies are addressed.

This duplication of effort can be avoided if the City issues a third, more comprehensive, Request for Information.

Again, thank you for your time and your consideration of our request. Please let us know if you have any questions or would like additional information.

Sincerely,  
Larry Horowitz  
On behalf of Protect Mud Bay Cliffs  
*A Responsible Development Program*  
dakini1@comcast.net / Info@MudBayCliffs.org  
(360) 746-7154



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7. **WETLANDS / HABITAT RATINGS**: The low wetland ratings for wildlife habitat are inconsistent with the 2021 City of Bellingham [Wildlife Corridor Analysis](#), which identifies the Woods at Viewcrest property as an *Important Wildlife Habitat Area* and *Important Wildlife Corridor*. (Figure 8 on page 19) The wildlife habitat scores must be updated to reflect the importance of this property for the City's wildlife. The updated habitat scores can have a significant impact on the required wetland buffers and project plans.
8. **WILDLIFE HABITAT ASSESSMENT / BALD EAGLE NEST**: The [Wildlife Habitat Assessment](#) appears unreliable as it fails to include a bald eagle nest in a tree on the Woods at Viewcrest property that is in plain sight from the shoreline. "We saw no evidence of nesting activity by bald eagles in the vicinity of the project site during our field investigations." (Page 6) What else has the assessment failed to include?
9. **PUBLIC TRAIL EASEMENT / 10<sup>th</sup> STREET VARIANCE**: The [12/21/22 RFI](#) (Page 2) indicates that the City is "likely to recommend that an approval of the variance associated with 10th Street should be conditioned to require construction of the public trail [to Sea Pines Road] ... in lieu of the pedestrian facility that would have otherwise been associated with the street construction."

According to the 5/31/23 letter from Sea Pines Road residents Rud Brown, Sheila Kyle-Browne, and Greg Gudbranson, **the public trail to Sea Pines Road should be completely abandoned because it "would pose an extreme safety hazard** that will ultimately result in serious injury or death of a cyclist or runner, due to the location of its entry onto Sea Pines Rd." The letter provides details of their concern and references the AASHTO Guide for the Development of Bicycle Facilities (2012), which is listed as a primary resource relied on by the City when developing the Bellingham Bicycle Master Plan.

Because the proposed trail poses a public safety hazard, in a third RFI, the City should require the applicants to include the pedestrian facility that the trail was intended to replace.

**Aven, Heather M.**

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**From:** Lyon, Blake G.  
**Sent:** Thursday, June 29, 2023 8:22 PM  
**To:** Bell, Kathy M.  
**Subject:** FW: Additional info re: 2 items discussed yesterday

Kathy,

Please include this correspondence in the public record.

*Blake Lyon*

Director of Planning & Community Development  
City of Bellingham  
210 Lottie Street  
Bellingham, WA 98225  
Office: 360-778-8308  
Email: [bglyon@cob.org](mailto:bglyon@cob.org)

Please note that email messages are subject to public disclosure requirements per RCW 42.56.

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**From:** Larry Horowitz <dakini1@comcast.net>  
**Sent:** Wednesday, June 28, 2023 9:36 AM  
**To:** Lyon, Blake G. <bglyon@cob.org>  
**Subject:** Additional info re: 2 items discussed yesterday

Good morning Blake,

Below is additional information regarding two issues we addressed briefly last evening:

**1) 12/8/22 letter sent by three Jones family members (and Ali Taysi) to "Edgemoor and Chuckanut neighbors"**

You inquired yesterday about Protect Mud Bay Cliffs' (PMBC) relationship with The Woods at Viewcrest applicant. As part of my response, I referenced the 12/8/22 letter sent by the applicant to Edgemoor and Chuckanut residents. Every PMBC Steering Committee member received this letter.

On 12/22/22, PMBC responded with our own [Comments on Developers' December 8, 2022 Woods at Viewcrest letter](#) document that we shared with our supporters in a variety of ways. Also on 12/22/22, PMBC Steering Committee member Wendy Larson submitted both of these documents along with a cover email to Kathy Bell, Steve Sundin, Kurt Nabbefeld, Seth Fleetwood and City Council. Wendy's email and the two documents can be found on the city's project webpage under [Comments Received September 15, 2022 - January 5, 2023](#) (PDF pages 42-49).

**2) Lesson to be learned from the April 2023 landslides in Draper, Utah**

As I mentioned last night, the message we wanted to share with Mayor Fleetwood regarding the Draper landslides is the need to gather sufficient independent and objective information about the potential risks of a proposal on properties that contain substantial geologically hazardous areas, including erosion hazards, landslide hazards, and seismic hazards. As you know, the Jones property is littered with all three.



In Draper, the homebuilder, Edge Homes, released a statement following the slide that "despite all the engineering and quality control efforts," the retaining wall and hillside slope "experienced a complete failure." Additionally, Draper City Manager David Dobbins stated that the city was handcuffed in approving the subdivision development because it had to rely on technical reports provided by the developer. In a 4/24/23 KSL News report, Mr. Dobbins stated that building laws make it hard to say 'no' to risky development, especially after parcels are subdivided into legal building lots.

This may help explain why we are so adamant about obtaining accurate, complete and unbiased information about The Woods at Viewcrest proposal. Below is the email I sent to Mayor Fleetwood on 5/12/23 explaining why we wanted to meet with him.

Please don't hesitate to email or call if you have any questions or would like additional information.

Best,  
Larry Horowitz  
Landline: 360.746.7154

[My 5/12/23 email to Mayor Fleetwood follows:](#)

Subject: Request to meet with Mayor Fleetwood  
Date: Fri, 12 May 2023 16:11:23 -0700  
From: Larry Horowitz <[dakini1@comcast.net](mailto:dakini1@comcast.net)>  
To: Seth Fleetwood <[SMFleetwood@cob.org](mailto:SMFleetwood@cob.org)>

Seth,

Thank you for responding to our May 5th request to meet with you. With all due respect, I am disappointed that the City Attorney's Office advised you to decline our request to meet without first inquiring about what information we were hoping to share with you.

As you might expect, we are well aware of the City's review process and the fact that the City's Hearing Examiner determines whether the permit applications should be approved. But before the City issues its recommendation to the Hearing Examiner, there is at least one major administrative decision the City makes itself.

The issue we had hoped to discuss with you is entirely separate from the Bellingham Municipal Code and involves one of the Mayor's major responsibilities: protecting public health and safety. This is an issue that cannot be delegated to the City's Planning & Community Development Department. As the City's Chief Executive & Administrative Officer, you certainly have "a role to play" in protecting the health and safety of Bellingham's citizens.

We were prompted to reach out to you now because of a recent event in Draper, Utah, which I suspect you are aware of. About two weeks ago, a pair of homes in the recently approved Hidden Canyon Estates subdivision slid down a hillside and collapsed. You can view the KSL News report about the incident here.

The homebuilder, Edge Homes, released a statement following the slide that "despite all the engineering and quality control efforts," the retaining wall and hillside slope "experienced a complete failure." You can read more about that in a 4/24/23 Salt Lake Tribune article here.

Previously, Draper City Manager David Dobbins stated that the city was handcuffed in approving the subdivision development because it had to rely on technical reports provided by the developer. In a 4/24/23 KSL News report, Mr. Dobbins stated that building laws make it hard to say 'no' to risky development, especially after parcels are subdivided into legal building lots. The 4/24/23 KSL report can be viewed here.



The obvious lesson to be learned is for the City to be sure to gather sufficient independent and objective information about the potential risks of a proposal on properties that contain substantial geologically hazardous areas, including erosion hazards, landslide hazards, and seismic hazards. The Jones property is littered with all three.

Protect Mud Bay Cliffs (PMBC), an organization sponsored by Responsible Development, has been reviewing the technical reports submitted by the Woods at Viewcrest developers for more than two years, since the Pre-Application Neighborhood Meeting in February 2021. During that time, we have identified scores of inaccurate, misleading and biased information, some of which we have reported to the City's planning department. In December 2022, the City issued its second Request for Information (RFI) from the developer with an initial deadline of April 20. The deadline has since been extended to June 20.

Shortly after the developer responds to the RFI, the City will issue a Notice of Application and initiate the Public Comment Period. As soon as 30 days later, the City will issue its SEPA Threshold Determination. As you may know, the City has not issued a single Determination of Significance for a residential proposal - without pressure from citizens - since at least 2005. The only residential Determination of Significance the City issued was for the Fairhaven Highlands project on the Chuckanut Ridge / Hundred Acre Wood property; but only after the City was pressured by citizens to do so.

We fully expect the City will lean towards issuing a Mitigated Determination of Nonsignificance (MDNS), which we adamantly oppose. An MDNS can only be issued if the City is made fully aware of all significant adverse environmental impacts that require mitigation. Based on our thorough review of the technical reports submitted with the application materials, it is clear that the City has not been made fully aware of these impacts. As the City of Draper has learned the hard way, relying on biased, misleading and inaccurate information only leads to disaster.

We would have preferred to share this information through a genuine dialogue with you. As you can see, you certainly have a role to play to protect the citizens of Bellingham from experiencing the nightmare Draper residents are now living through.

We would still like to meet with you to share this information in person. Please let me know if that is something that can be arranged.

Sincerely,  
Larry Horowitz  
President, Responsible Development  
Co-Founder, Protect Mud Bay Cliffs  
Landline: 360.746.7154



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## Aven, Heather M.

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**From:** Charlotte Allen <c.allen@comcast.net>  
**Sent:** Wednesday, August 23, 2023 5:14 PM  
**To:** Bell, Kathy M.  
**Cc:** Charlotte Allen; info@mudbaycliffs.org  
**Subject:** The Woods at Viewcrest

[You don't often get email from c.allen@comcast.net. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification> ]

Dear Ms. Bell,

I am a close neighbor of the proposed Woods at Viewcrest project so I have been following it as it moves through Bellingham's approval process. Though it would be virtually next door to me (I live at 413 S. Clarkwood Dr.), my main concern is with the impact it might have on the Chuckanut Pocket Estuary. The Pocket Estuary management recommendations produced by Northwest Ecological Services for the City of Bellingham describe the pocket estuaries as "significant in maintaining aquatic habitat for a variety of fish species, waterfowl, shorebird and terrestrial wildlife by providing links between fractured habitat corridors" and says of the Chuckanut Pocket Estuary that it "has the greatest numbers of habitat features and supports the greatest diversity of wildlife species of all the reviewed sites."

The same study states that the greatest threats to the Chuckanut Pocket Estuary as water quality, and "potential future development of private land that could reduce the quantity and quality of forested buffer and result in interruptions of wildlife travel corridors".

The proposed Woods at Viewcrest development threatens the water quality of the Chuckanut Pocket Estuary, its forested buffer, and the wildlife travel corridors that surround it. Since the City has identified this pocket estuary as a critical ecological resource, it seems to me that the City is required to closely scrutinize any development plan that would threaten the ecological health of the pocket estuary.

The two parts of the development plan that trouble me the most are its inadequacies in the area of its impact on the water quality of the Chuckanut Pocket Estuary, and its neglect of the development's impact on wildlife corridors. I believe the City must require that both of these be studied in depth before making any decisions on the project.

Finally, in light of the recent Washington State law regarding residential zoning, the Woods at Viewcrest development plan must account for the potential impact of having fourplexes built on each individual lot rather than the single-family dwellings in the proposal. Although the initial development may be single-family units, the City must plan for the potential of each of these lots having fourplexes in the future. Traffic impacts, sewage impacts, and stormwater discharge impacts need to be described both for the single-family and fourplex dwelling scenarios.

Thanks for your attention to these considerations.

Charlotte Allen  
(She/her/hers)  
413 S. Clarkwood Drive  
Bellingham, WA 98225  
c.allen@comcast.net

