

## Aven, Heather M.

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**From:** Paul Brock <brock\_paul@hotmail.com>  
**Sent:** Wednesday, January 8, 2025 10:39 AM  
**To:** G.Proj.Wood at Viewcrest; Bell, Kathy M.; Sundin, Steven C.  
**Cc:** Lyon, Blake G.  
**Subject:** The Woods at Viewcrest, Applicant 4th RFI Response

CAUTION: This message originated from outside of this organization. Please exercise caution with links and attachments.

In addition to the wetland comments already provided on this topic, and after carefully reviewing the documents provided by the applicant. I would like to enter the following comments into the public records.

RFI Response items.

Per BMC 16.55.480(C)(4) a detailed discussion on impacts to water quality was not provided. This is especially true of the water quality impacts to Mud Bay other than to say that because shellfish are already polluted that the project will have no impact on shellfish harvesting. This is not a detailed discussion or valid conclusion of the impacts to the water quality of Mud Bay.

Mitigation Report:

In the first sentence of the mitigation report where it states that the project is a 38 home residential development when in fact it's a 38 lot development. 38 lots does not equal 38 homes and the higher density of "middle housing" was not accounted for in the report. The use of the term 38 home development seems to be a way for the applicant to counter the public recognizing middle housing and state law changing to allow for 4 housing units per single family lot. Because the applicant is proposing lots, and not homes, the applicant has no influence on the number of units per lot. If there are questions on this law or Bellingham's commitment to using it please see Blake Lyon's comments in the 4 minute BTV production "[Middle Housing in Bellingham](https://www.youtube.com/watch?v=AICLebRzwb0)" (<https://www.youtube.com/watch?v=AICLebRzwb0>).

Project avoids all wetlands except the public trail is false. The applicant recognizes that Mud Bay is categorized as E2USN (Marine Wetland). The report specifically says that the stormwater conveyance and outfall are in the shoreline HCA buffer but avoids the fact that that buffer is protecting what the applicant is going to send pollutants directly into. There is a commonsense question to ask about this mitigation. If there is a buffer protecting the shoreline then why is it preferred to pipe pollutants over the buffer only to convey the pollutants directly to the shoreline that requires the buffer?

Northwest Ecological Services states that the conveyance pipe will remain above ground to avoid impacts, but Pacific Surveying was clear that the conveyance pipe should now be buried or armored to avoid damage by rockfall. This is a glaring discrepancy and not accounted for in the ecological mitigations. This concept of armoring the conveyance was a new development in the latest round of

documents and it appears not all parties are aware of all the changes being proposed leading to conflicting statements and conclusions.

Saying that stormwater treatment will be enough to rectify all water degradations is not supported by the applicant's shellfish statement. In that statement the applicant says that because the shellfish are already polluted, harvesting won't be impacted. If there was no impact to Mud Bay as a receiving water, then the applicant could have said so much rather than avoid this topic in the city requested shellfish statement.

Northwest Ecology Services states that trees will be maintained on steep slopes but there is no guarantee that once the lots are sold that trees will be maintained on the steep slopes that are only 10 feet from the building envelopes. It seems unreasonable to expect that trees will be maintained in such close proximity to structures. This is evident in the wildfire hardening policies of the Bellingham Fire department and general practices of homeowners. This area also experiences wind gusts in excess of 100 Mph from the south. It can be expected that homeowners will remove any surviving trees directly south of any structure after they experience their first windstorm.

Blasting is not mentioned in the eliminating hazards section. This is a new and concerning revelation and it appears not all parties are aware of all the changes being proposed leading to conflicting statements and conclusions.

#### Element Reports:

Lot 37 is off Sea Pines and unless lot 37 is to be sold with no utilities this can't be true. Construction vehicle access and exit shall be limited to one route on Viewcrest Drive.

It is well within the applicants' rights not to include the 2009 Element report but that doesn't invalidate the findings in the report. Just because the applicant chooses to commission a new report from the same group that comes to generally the same expected result the details of a recommendation for a lot-by-lot review found in the 2009 report still stand because the proposed land use activity and surrounding site conditions are unchanged. This discrepancy has not been resolved.

The applicant is invoking BMC 23.48.030(C).2.b and BMC 16.55.460(A).1.b to reduce building envelopes from 60x60 feet by 10% and reduce hazard buffers from 50 to 10 feet. It's agreed that the director gets the discretion to decide if that a hazard buffer reduction to 10 feet is going to provide the protections necessary however it's suspect that every buffer has been reduced to the minimum en masse with no variations in buffer reduction levels. Additionally, there is no evidence in the public documentation that the director has approved such a reduction, or been demonstrated to, that the adequate protections will be in place with the reduction. In many case the applicant is asking to reduce both the buffer and the building footprint in the same location to squeeze them into the difficult building conditions of a property without offering what public benefit will be achieved by these departures from BMC 23.08.060(D) and BMC 16.55.460.

BMC 23.48.030(B) has not been satisfied so these footprint departures should be denied.

B) To obtain a departure, an applicant must demonstrate that the overall development, including departures from the standards, would better serve the public interest, and the city must find that each proposed departure meets or exceeds the intent of the respective standard as compared to a strict application of the established standard.

BMC 16.55.460(A).1.b has not been satisfied so these buffer departures should be denied

b. *Buffer Reduction*. The buffer may be reduced to a minimum of 10 feet when a qualified professional demonstrates to the director's satisfaction that the reduction will adequately protect the proposed development, adjacent developments, and uses and the subject critical area.

#### Stormwater:

Since the applicant agrees Mud Bay is classified as E2USN by the National Wetland Inventory and E2USN is a wetland by NWI definition. The outfall map should be updated to show the proximity of the conveyance outfall to Mud Bay.

The project has "elected" to go beyond basic water quality treatment and put unknown sized Modular Wetland Devices in place. Since the applicant claims Modular Wetland Devices aren't required the claim that they will be sized to meet water quality requirements is nonsensical.

#### Wildlife Report:

The wildlife report incorrectly states and bases the impact of the development on the premise that the 38 lots will each contain a single family home. Raedeke Associates specialized in biology so I don't expect them to know that single family zoned lots may contain up to 4 housing units by state law. This is supported by Blake Lyon's comments in the 4 minute BTV production "[Middle Housing in Bellingham](https://www.youtube.com/watch?v=AICLebRzwb0)" (<https://www.youtube.com/watch?v=AICLebRzwb0>).

Pileated Woodpeckers nest late May to June and the wildlife assessment was done in 2 July days (July 14, 2024 and July 21, 2021). The applicant was asked to add additional information about the Pileated Woodpecker excavations and the applicant's biologists looked for them when it was obvious they would not be present. The only give statement about the pileated woodpecker is the following: "Other priority or protected species observed on site or in the vicinity include pileated woodpecker, great blue heron, and bald eagles. No active nest or roost cavities of pileated woodpeckers (a state Candidate species) were observed on site."

Page 11 Paragraph 1 the applicant states that the preserved buffer zone contains the most unique habitat features. I agree that 80% plus slopes are unique but that doesn't make them particularly effective wildlife habitat. Additionally, 2 site visits 3 years apart both in July don't give the surveyor much time or variation to objectively evaluate the habitat or the wildlife that are using the area.

Survey states homes will only be built in the northern portions of these lots, with restrictions on development in the southern portions, resulting in an effective buffer of 300 to 400 feet landward of the

OHWL of the shoreline. But no development restrictions have been documented except to show the areas as steep and cliffy.

Application:

The application says this is a phased development and as such it's subject to BMC 23.16.010 Section E. Since each phase shall meet all development standards in BMC ordinance 2024-02-006. Specifically, the average 20,000 sf minimum requirement for lot size and improvements to Fieldston and Willow roads shall apply to each phase independent of the other phases being completed.

Ch. 23.16 Preliminary Plats and Cluster Preliminary Plats | Bellingham Municipal Code

E. *Phasing*. A preliminary plat may be developed and recorded in phases provided a phasing plan is reviewed and approved by the city concurrently with the public facilities construction agreement for the first phase. Each phase shall consist of a contiguous group of lots that meets all pertinent development standards on its own and shall not rely on future phases for meeting any city codes. Specific improvements or dedications necessary to demonstrate compliance for the entire development may be required to be completed with the first phase, regardless of phase design or completion schedule of future phases, including but not limited to storm water, open spaces, landscaping, and dedications. [Ord. 2018-12-036 § 2 (Exh. A)].

Public Comment:

The applicant's choice to respond to themes instead of the specific public comments is wholly inadequate. This is especially true with regards to the wetland discussions by Richard Horner, Lyndon Lee and John Rybczyk who are all unquestionably experts in wetlands.

Paul Brock  
301 Crest Ln  
Bellingham WA 98229

## Aven, Heather M.

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**From:** Ava Ferguson <avaferguson@gmail.com>  
**Sent:** Wednesday, January 8, 2025 11:20 AM  
**To:** G.Proj.Wood at Viewcrest  
**Subject:** The Woods at Viewcrest — Applicant's response to fourth RFI  
**Attachments:** PMBC Public Comments\_4th RFI Response.pdf

Some people who received this message don't often get email from avaferguson@gmail.com. [Learn why this is important](#)

**CAUTION:** This message originated from outside of this organization. Please exercise caution with links and attachments.

**TO:**  
Blake Lyon  
Kurt Nabbefeld  
Kathy Bell  
Steve Sundin

**CC:**  
Mayor Kim Lund  
Renee LaCroix  
Bellingham City Council

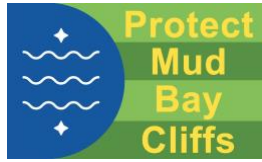
**FROM:**  
*Protect Mud Bay Cliffs* (PMBC)

**RE:** The Woods at Viewcrest — Applicant's response to fourth RFI

Please find attached *Protect Mud Bay Cliff's* public comment submittal for *The Woods at Viewcrest* applicant's response to the city's fourth RFI, for the Administrative Record.

Thank you for your timely consideration of these materials.

Sincerely,  
Paul Brock · Ava Ferguson · Larry Horowitz · Wendy Larson  
Janet Migaki · Gary Ranz · Brent Woodland  
Protect Mud Bay Cliffs Coordination Committee Members  
[Info@MudBayCliffs.org](mailto:Info@MudBayCliffs.org)



1050 Larrabee Ave Suite 104 · PMB #476  
Bellingham, WA 98225

January 8, 2025

Blake Lyon, Planning & Community Development Department Director  
Kurt Nabbefeld, Development Services Manager & SEPA Responsible Official  
Kathy Bell, Senior Planner  
Steve Sundin, Senior Environmental Planner  
City of Bellingham  
210 Lottie Street  
Bellingham, WA 98225  
Via Email

Copy Via Email:  
Mayor Kim Lund  
Renee LaCroix, Assistant Director, Public Works Natural Resources  
Bellingham City Council

Re: The Woods at Viewcrest — Applicant's response to fourth RFI

Dear Mr. Lyon, Mr. Nabbefeld, Ms. Bell, and Mr. Sundin:

Protect Mud Bay Cliffs (PMBC) is a grassroots volunteer community group sponsored by Responsible Development. PMBC was formed in 2021 out of the public's concern regarding the significant adverse environmental impacts The Woods at Viewcrest subdivision proposal is likely to impose. PMBC appreciates the opportunity to provide public comment for the administrative record.

PMBC's review of the most recent materials provided by the applicant in response to the city's fourth RFI shows it to be incomplete; containing significant inaccuracies, errors, and mischaracterizations; and lacking meaningful additional information required for the city's upcoming decisions. Across the board, the applicant has failed to fully respond to the numerous deficiencies in the application materials and has skirted addressing key concerns raised in both the city's fourth RFI and in the Public Comments.

While the applicant's most recent response is voluminous, it fails to adequately address the city's request for information. Rather, it:

- repeats inadequate and misleading information previously submitted;

- incorporates vague and unsubstantiated statements that fail to provide the needed quantitative and qualitative data requested by the city and legally required by the planning process;
- introduces new errors and troubling assertions.

Because the applicant has: (a) made no changes to the proposed project plans, (b) made no meaningful changes to the information they previously provided, and (c) chosen not to respond to the specific issues of law and non-compliance documented in the Public Comments, **PMBC's previous public comments stand.**

In addition to the issues previously documented in PMBC's and others' public comments, we further note that the applicant has introduced some troubling new issues in the latest response to the city's RFI. **These issues include, but are not limited to, the following** (additional details can be found in Attachment A of this letter):

1. **Mud Bay Wetlands Status:** The applicant continues to assert that Mud Bay, a Category I Estuarine Wetland, is not a wetland. However, the applicant has submitted documentation that contradicts their own 'not a wetland' assertion. (See (a) below). Also, in an attempt to support their 'not a wetland' assertion, the applicant submitted a litany of historical references in which Mud Bay is not delineated as a wetland, while ignoring all the sources where Mud Bay **is** clearly delineated as a wetland – including expert assessments submitted in the Public Comments. For example:
  - a. The National Wetland Inventory (NWI) clearly classifies Mud Bay as a category **E2USN** body (a tidal wetland). Bellingham CityIQ also classifies Mud Bay as a category E2USN body. Finally, the applicant's own experts classify Mud Bay as a category E2USN body – a **tidal wetland** – in their wetland determination form.

The "System Definition" of E2USN from the National Wetland Inventory states that: "The Estuarine System consists of deepwater tidal habitats and adjacent **tidal wetlands** that are usually semi-enclosed by land but have open, partly obstructed, or sporadic access to the open ocean, and in which ocean water is at least occasionally diluted by freshwater runoff from the land. The salinity may be periodically increased above that of the open ocean by evaporation. Along some low-energy coastlines, there is appreciable dilution of sea water."

- b. The National Wetland Inventory also classifies a portion of Mud Bay as **E1UBL**. However, the applicant makes no mention of this wetland category which NWI says “Includes all wetlands and deepwater habitats with at least 25% cover of particles smaller than stones (less than 6-7 cm) and a vegetative cover less than 30%.” The NWI definition contradicts the applicant’s assertion that a wetland must have more than 50% vegetation. The NWI maps Mud Bay as a wetland, as can be seen in PMBC’s previously submitted Public Comments.
- c. SEPA is in place in part to resolve discrepancies between state and federal laws. It’s clear that SEPA’s Best Applicable Science standard, when applied directly to Mud Bay (which has recent, detailed and specific expert assessments of its estuarine wetlands status), should most appropriately use this information, and the federal Clean Water Act’s protection of all mudflats as Special Aquatic Sites – irrespective of any consideration of vegetation. Although (perhaps inadvertently) state law differentiates between mudflats that are vegetated and those that are not, SEPA is not bound by such distinctions. Within SEPA, the question as to whether vegetated mudflats deserve the same protection as unvegetated ones must be asked and answered. SEPA should consider the obvious flaw and unintended consequence created by the adoption of the EPA/Army Corps wetland manual.
- d. As part of PMBC’s public comment, we submitted testimony from two wetland experts that Mud Bay is a Category I estuarine wetland. One expert is a professor at Western Washington University who operates a wetlands lab. The other is a nationally recognized wetland expert who runs a wetland school. We also submitted evidence in the form of city and county documents noting that vegetation has been observed in Mud Bay. None of this testimony or evidence was challenged by the city nor the applicant. In the RFI, the city essentially admitted that they don’t know if the property (which the city owns) is a wetland or not. If there were ever a situation that called for an independent and objective Environmental Impact Statement, this one certainly qualifies.



2. **Wildlife Assessment Issues:** The issues with the applicant's inadequate wildlife assessment information continue. These issues are so numerous that we refer you to the public comments already submitted. Yet, because the applicant's responses to the fourth RFI were so high-level as to be non-responsive, we will mention just a few examples for illustration:
- a. For example, the applicant failed to provide a detailed discussion on impacts to water quality, even though it is required per BMC 16.55.480(C)(4).
  - b. For example, the applicant's revised Wildlife Assessment report erroneously argues that any pollutants found in stormwater runoff from the development will be inconsequential to the public or to Mud Bay's wildlife since recreational harvesting for clams, oysters, and mussels has been closed due to biotoxins and pollution; hence, the applicant illogically and wrongly concludes there will be no additional harm caused by their proposed plans. This profoundly troubling assertion flies in the face of ongoing city, community, and tribal efforts to restore Mud Bay as a safe site for harvesting shellfish, including the ongoing efforts to re-establish native oyster populations. The applicant fails to characterize these ongoing efforts in their submitted response.
  - c. For example, the applicant's Wildlife Assessment continues to provide inadequate information to enable the city to understand the building site's current functions as a Wildlife Hub, Wildlife Corridor, and mature coastal forest ecosystem. No quantitative or qualitative information has been provided which meaningfully assesses those complex functions with the quantitative and qualitative data required by SEPA and which is essential for the city to make decisions.
  - d. For example, the city's fourth RFI had a SEPA checklist action item regarding observations of Pileated woodpecker excavations. The applicant's response to this request was to mention they saw evidence in July of Pileated woodpecker excavation (because the applicant's two wildlife reports were both based on extremely limited July field-observation dates). July follows the bird's spring nesting period. In the applicant's response, there was no effort to map these excavations to avoid impact to this key species, or to show their locations in relation to the proposed development sites, or to update the information about this key species' presence on site. Pileated woodpeckers are frequently observed on this site in the spring.

3. **Blasting:** Despite the applicant's Preliminary Stormwater Management Report (page 80, 5.8.2), and despite the PMBC-commissioned Stratum Geotechnical report, both of which conclude that blasting is dangerous and ill-advised given the site substrates, the applicant is now proposing to "blast" on site. Such activity would put private properties to the east, west, and north at risk, and it would put the public assets of the shoreline park and the public waters and wetlands of Mud Bay at risk, along with interconnected public assets and amenities. Blasting can be reasonably expected to significantly alter the hydrogeology of the entire site and its surroundings. This troubling plan to "blast" underscores the imperative need for both detailed geotechnical analysis and assessment and for a hydrogeology analysis and assessment, both of which would involve investigating the long-term impacts of any such blasting activities — both to the proposed lots and to neighboring lands and shoreline. These analyses and assessments have long been called for in Public Comments, and they continue to be missing.
  
4. **Missing Stormwater Management Plans:** The project's proposed Preliminary Plat Application should not be approved because the stormwater regulations for the entire plat, including the individual lots, have not been met.

The applicant states that some issues pertaining to stormwater collection and conveyance non-compliance will be addressed by future lot owners who purchase the subdivided lots, in some unspecified manner. This proposal, essentially to 'figure stormwater management plans out later,' is unacceptable given stormwater infiltration BMPs will not be feasible and stormwater detention vault(s) will be required. This site—with its hydro-geomorphologic complexities and associated high risks—needs thorough, well-defined and regulation-compliant stormwater plans at the outset, not at some undefined date in the future. These plans need to be comprehensive from the beginning and based on Best Available Science (which would include conducting a hydrogeological analysis, for example). Otherwise, the city cannot make a properly informed determination as to whether the proposed development will significantly adversely impact the environment, public assets and amenities, and public safety. (For more examples and details of the myriad deficiencies in the applicant's response, see Attachment A of this letter and PMBC's previously submitted Public Comment documentation.)

- 5. Private Stormwater Management:** The applicant proposes that future lot owners and a future Homeowners Association will be responsible for determining and maintaining to-be-defined private stormwater management facilities that service individual lots. However, there is no information in the Stormwater Management Report that demonstrates such an arrangement will comply with Bellingham’s BMC 15.42.060 (F1 through F9).

The project property doesn’t meet infiltration criteria as defined in Ecology’s 2019 Stormwater Management Manual. Consequently, it is infeasible for future owners of the proposed lots to use infiltration BMPs for lot-level stormwater management. **The Preliminary Stormwater Management Plan does not include a design or description for how stormwater runoff will be managed at the lot level for this project.** (For more information and details on these issues, see Attachment A of this letter and PMBC’s previously submitted Public Comment documentation.)

- 6. Wetland Impacts:** The applicant falsely asserts that the project avoids all wetlands with the exception of the proposed public trail. That’s because the application materials specifically say that the stormwater conveyance and outfall will be located inside the shoreline HCA buffer—but they then avoid the fact that the HCA buffer is intended to protect what the applicant proposes dumping stormwater into. It’s illogical to have a buffer that is designed to protect the shoreline, and then pipe pollutants over that buffer and deposit them directly onto the shoreline that requires that buffer. Clearly, the proposed stormwater conveyance and outfall directly impact the shoreline and wetlands of Mud Bay. The applicant has yet to show that alternate approaches won’t work. (For more information on this issue, see Attachment A of this letter.)
- 7. Housing Density:** The applicant asserts that the 38 proposed lots would result in only 38 single-family homes. This is incorrect, since a 2023 Washington state law allows lot owners to build up to four units on every residential lot (with a few exceptions for lots with pre-existing restrictive covenants, etc., which do not apply to this site)<sup>1</sup>. This law would allow as many as 152 units to be constructed on the proposed project site and not merely 38. Given this state law, the city and the public must assess this project’s proposal for the readily foreseeable outcome that, if 38 lots are approved, the future lot

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<sup>1</sup> State of Washington “GROWTH MANAGEMENT ACT—MINIMUM DEVELOPMENT DENSITIES IN RESIDENTIAL ZONES”; <https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/House/1110-S2.SL.pdf#page=1>

owners will maximize the value of each lot by building quadplexes— either in the initial development phases or over time. Indeed, this eventual outcome by lot owners is made more likely by the city’s encouragement of this type of denser development.

8. **Number of Units Allowed:** The applicant has now entered this false assertion into the application and administrative record: “Although the City zoning would allow 82 units on the site, the proposal is for only 38 single-family lots or homes, or less than half of the allowable density.”<sup>2</sup> As the applicant is fully aware, unit allowances can only be developed AFTER reductions for critical areas, stormwater considerations, and rights of way. The site of the proposed subdivision is full of critical areas, geohazards, unanalyzed geo-hydrology challenges, and numerous other complexities. There is no single “allowable density” that would automatically allow for 82 units, given that specific sites have specific considerations.

Indeed, it’s long been recognized that this site would not allow the number of units asserted by the applicant. In the city’s 2005 Land Supply Analysis (LSA) of what these four specific lots might potentially allow for development, the county’s worksheet indicates a maximum number of about 20 units on these four lots (not the proposed 38 and not the falsely asserted 82). Note that this LSA estimate was made without any detailed consideration of lot-specific analysis and assessment of critical areas, site hazards, stormwater and geohydrology risks (since the LSA exercise was conducted at a very high level and because that site-specific information still doesn’t exist). The current project proposes about 90% more units than the high-level LSA estimate. Moreover, it’s reasonable to expect that the LSA estimate is on the high side: after thorough geological, hydrological, hydrogeological, and other analyses and assessments are properly conducted, the allowable number of units can reasonably be expected to be fewer than 20.

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<sup>2</sup> Applicant’s December 20, 2024 RFI No. 4 Response Letter; <https://cob.org/wp-content/uploads/2024-12-20-response-letter.pdf>

Given all of this, the summary<sup>3</sup> of the detailed issues PMBC documented in its previous Public Comments submission still holds true:

1. The application materials:
  - a. Are fundamentally flawed as they contain significant deficiencies, including errors, omissions and unsubstantiated and/or false claims.
  - b. Do not provide sufficient information necessary to identify and evaluate all significant adverse environmental impacts this project is likely to impose, as is required by state law under WAC 197-11-080<sup>4</sup>.
  - c. Do not fully comply with Bellingham Municipal Code (BMC) regulations.
  - d. Do not fully comply with state and federal guidelines and regulations.
  - e. Do not fully comply with Best Available Science and Best Management Practice (BMP) standards, especially as they apply to protecting the functions of shoreline ecological values and critical areas and the preservation of anadromous fisheries.
2. Although the application materials don't provide sufficient information to fully identify and evaluate all potential significant adverse environmental impacts, it's clear from these materials that the proposal is likely to impose significant adverse environmental impacts that cannot be adequately mitigated. Consequently, the city must issue a ***SEPA Threshold Determination of Significance*** (DS) and prepare an Environmental Impact Statement (EIS).
3. Because of the likely significant adverse impacts, the flawed application materials, and the failure to fully comply with city, state and federal laws and regulations:
  - a. The proposal does not qualify for a *Mitigated Determination of Nonsignificance* (MDNS)
  - b. The city should not approve—or recommend approval of—the applications for the:
    - i. Preliminary Plat
    - ii. Subdivision Variance

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<sup>3</sup> PMBC's comprehensive Public Comments submittal for the proposed project's administrative record can be viewed at <https://cob.org/wp-content/uploads/public-comment-PMBC.pdf>. The Table of Contents of page 4 of the PDF contains links to each Exhibit. Simply click on the Exhibit Description to navigate to the exhibit you select.

<sup>4</sup> WAC 197-11-080; <https://app.leg.wa.gov/wac/default.aspx?cite=197-11-080>

- iii. Critical Areas Permit
- iv. Shoreline Substantial Development Permit
- v. Shoreline Conditional Use Permit
- vi. Street Vacation Petition

*The Woods at Viewcrest* proposal is certain to adversely impact:

- Slope stability, both on the project site and within existing adjacent subdivisions
- Ecology of the Mud Bay shoreline, estuary and estuarine wetland habitats
- Ecology of the Chuckanut Village Marsh
- Critical areas, including onsite wetlands and geologically hazardous areas
- Drainage & hydrology, including surface water, ground water and water runoff
- Probability, frequency & magnitude of erosion, landslides, and rockslides
- Fish & Wildlife Habitat Conservation Areas, including fishery resources
- Urban forest & dense vegetation
- Transportation & traffic
- Public safety of the community, including pedestrians, cyclists, motorists and pets
- Cumulative impacts of all of the above

According to SEPA, development on unique, complex sites must be fully informed by Best Available Science and Best Management Practices and must protect public safety and adjacent public assets and amenities by fully complying with applicable regulations and law supported by a level of information commensurate with the identified significant risk areas. A proposed development on a site with unique characteristics and in a unique setting such as this one demands information commensurate with the identified risks. Indeed, the city has fiduciary responsibilities to protect the public's safety, the public's assets and amenities, and potential future lot owners. **The required information** to determine the advisability of the proposed project is **readily obtainable via an objective EIS**.

In closing, we wish to emphasize that a SEPA *Mitigated Determination of Non-Significance* (which the applicant appears to be seeking) is **impossible** for the city to legally make at this time. The applicant has failed to provide the city with the information it needs to either identify or to plan mitigations appropriately, or for the city to make any discretionary allowances and variances requested by the applicant. Across the board, the readily

foreseeable, high-severity risks that would need to be mitigated haven't been qualitatively nor quantitatively assessed and analyzed as required for this site, given its unique characteristics and its unique setting. Therefore, it's clear that the city is in no position at this time, given the lack of needed information, to identify or define meaningful mitigations. Indeed, it's likely that the currently proposed project plans will require substantive changes—not mere mitigations—when the appropriate information is made available to the city.

No public benefit has been shown for proceeding with these plans as currently proposed given the readily foreseeable public costs, burdens, and dangers which could ensue. Only with an objective Environmental Impact Statement can appropriate plans with appropriate conditions and mitigations be developed to protect the public interest and ensure public benefit.

Thank you for adding these comments to the administrative record for this proposed project. We welcome your questions and feedback.

Sincerely,

Paul Brock, Ava Ferguson, Larry Horowitz, Wendy Larson, Janet Migaki, and Gary Ranz

Coordination Committee Members  
*Protect Mud Bay Cliffs*  
A *Responsible Development* Program  
[Info@MudBayCliffs.org](mailto:Info@MudBayCliffs.org)



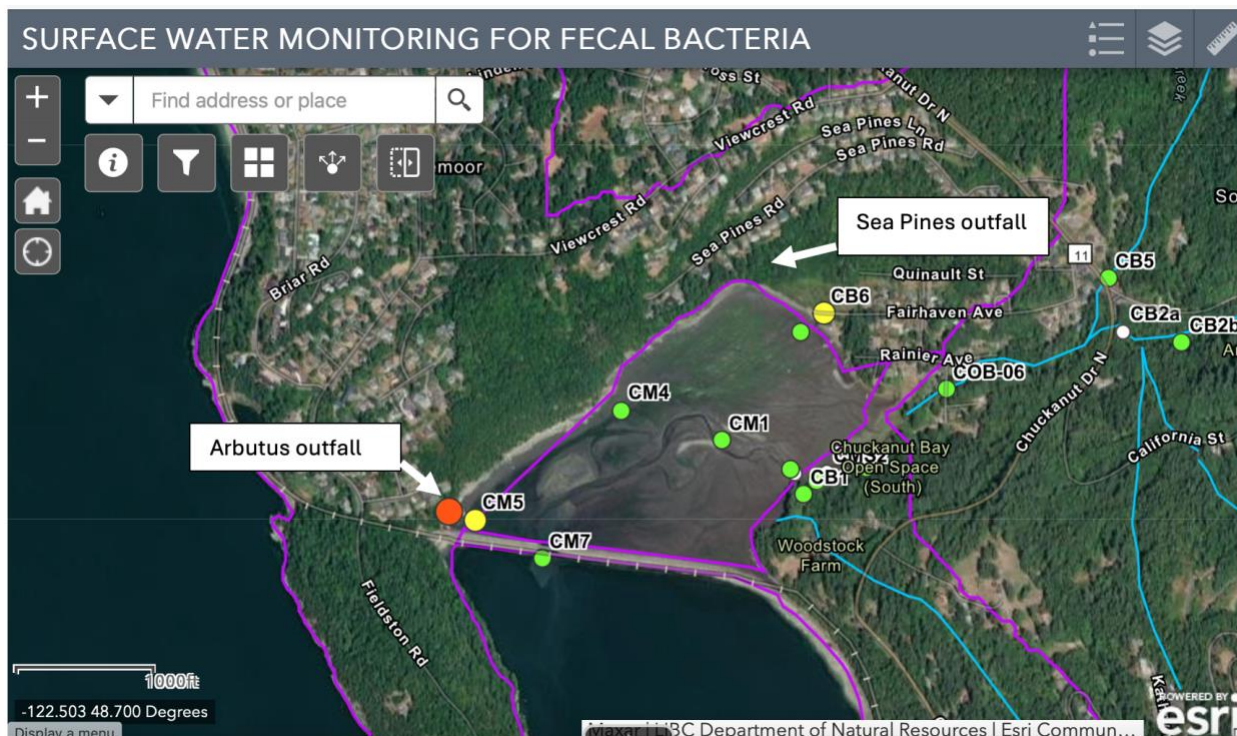
## Attachment A

**This attachment provides a partial evaluation of selected RFI #4 Action Items and Responses associated with Geotechnical and Stormwater Management Issues.** More information and details can be found in PMBC's previously submitted Public Comments documentation.

### 1. Wildlife Habitat Assessment

*City Action Item: Include an analysis to address the existing water quality impairments of the estuary for fecal coliform due to existing development and septic systems and Chuckanut Creek as a listed 303d impaired waterbody due to bacteria.*

PMBC response: Applicant's project documents compare the proposed new stormwater outfall discharge to the existing outfall discharge at Arbutus Place. Years of sampling data taken at the stormwater discharge outflow pipe at Arbutus Place consistently reveal fecal coliform levels exceeding health standards. The data also consistently show that the high fecal coliform levels from this outfall discharge exceed samples taken from any other location within the boundaries of Mud Bay.

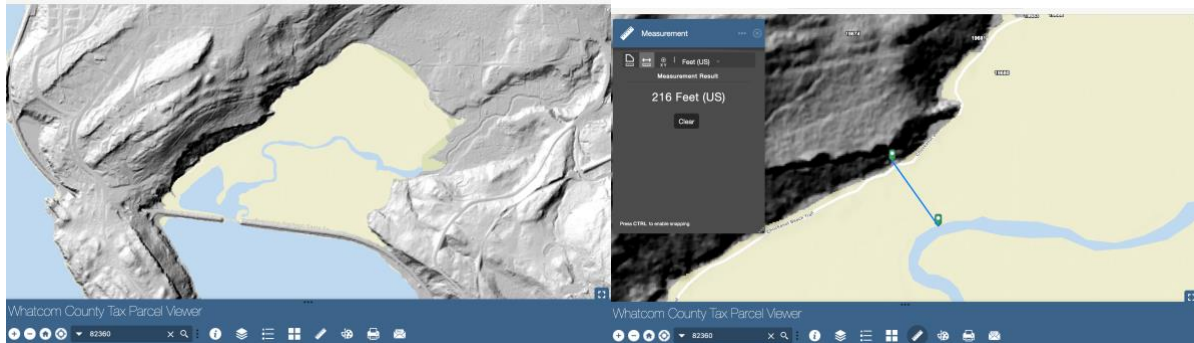


#### Legend Fecal Coliform Sample Results





## 2. Water Quality Considerations: Chuckanut Creek runs through Mud Bay



Whatcom maps clearly show the well-channeled course of Chuckanut Creek running through Mud Bay at low tide. In addition, satellite images clearly show the creek channel.

<https://whatcom.maps.arcgis.com/apps/webappviewer/index.html?id=f2f8eaa500b04f54948c680bb280129f&find=82360>

### Applicant's Exhibit X states:

"Chuckanut Creek is on the Ecology 303-D list of impaired waters for fecal coliform and dissolved oxygen (likely resulting from elevated levels of bacteria such as fecal coliform)... However, these impairments are not mapped to extend into Chuckanut Bay, presumably due to dilution associated with mixing of the much larger marine waters."

(See \*\*1, \*\*2, and \*\*3 below)

"Post-Developed Condition.... Stormwater associated with this project will be the only development discharging to Chuckanut Bay that will provide any level of engineered treatment."

(See \*\*4 below)

"This project is required to meet basic water quality treatment standards per BMC 15.42. However, this project has elected to increase the level of stormwater treatment and meet the enhanced treatment standard using modular wetland devices."

(See \*\*5 below)

### Applicant's Exhibit D states:

Water Quality Atlas "... Chuckanut Creek is approximately 2,000 feet southeast of the project site across tidal mudflat, and is listed as a Category 5 water for Dissolved Oxygen and Bacteria – Fecal Coliform, and as a Category 2 water for Temperature and pH. The proposed project will not increase fecal coliform levels within Chuckanut Creek as all sewage will be routed to the City of Bellingham's sewer system. In addition, the proposed stormwater treatment for the project utilizes the best available science and WDOE standards for stormwater treatment.

The enhanced treatment proposed for the project exceeds the basic requirements of the City of Bellingham code. As such, we do not anticipate any impacts to the impaired water body from the project.”  
(See \*\*6, \*\*7, and \*\*8 below)

“The existing outfall below Arbutus Place provides a comparison opportunity for potential impacts to tidal area conditions... This comparison location does not appear to have experienced impacts resulting in a loss of shoreline and tidal area function.”  
(See \*\*1 below)

### PMBC’s assessment of these Exhibit X and Exhibit D assertions:

\*\*1 The two areas of the Mud Bay estuarine wetlands recording the highest levels of fecal coliform pollution are the two test sampling locations corresponding to the two city stormwater discharge outfalls (the one below Arbutus Place, and the one below Sea Pines). The Arbutus Place stormwater outfall pipe consistently discharges polluted stormwater with fecal coliform levels far higher than established health standards, increasing the risk of waterborne illnesses like gastroenteritis for swimmers or anyone coming into contact with the water.

\*\*2 The decline in dissolved oxygen concentrations in waterbodies is most attributable to warmer waters, increased sediment runoff, increased nutrient runoff, and fecal coliform.

\*\*3 The WSDOE 303(d) impaired list is a list of streams, rivers, and lakes that do not meet state water quality standards; **marine waters are not tested.**

\*\*4 The current Arbutus Place discharge outfall provides engineered treatment with a WQF-373 treatment facility (downturn elbow Oil Water Separator). A Records Request on the city maintenance records for the Arbutus Place treatment facility, WQF-373, show only one inspection and one manhole cover replacement performed at the facility for over 20 years.

\*\*5 Stormwater runoff discharging to marine waters is **required to have enhanced treatment**, not just basic treatment. (per Department of Ecology SWMMWW, 2019)

\*\*6 At low tide Chuckanut Creek runs within feet of the property’s shoreline border (see maps above).

\*\*7 The proposed project will contribute to, and exacerbate, the fecal coliform impairment of Chuckanut Creek because runoff from the proposed project’s TDA basins will be conveyed through the city conveyance system to the Arbutus Place outfall discharge into Mud Bay. As the maps show,

Chuckanut Creek runs near this location, and incoming tidal waters will carry the proposed project's polluted runoff to and up into Chuckanut Creek.

**\*\*8** Even though the water quality treatment *product line* proposed for use by the proposed project are GULD/Ecology approved, to demonstrate regulation compliance, the units selected for use must be correctly sized, located, and maintained according to manufacturer exacting specifications. **This project's treatment BMPs are not sized correctly, are not located to capture and treat large amounts of runoff from the proposed development areas and eventually landscaped lots, and will likely be inadequately maintained by city public works department based on the city's well-established track record.** (See **\*\*1** and **\*\*4** above.)

Current and past studies monitoring Mud Bay water quality deterioration from the Arbutus Place stormwater outfall are NOT mentioned in the applicant's project documents as potential impact to Mud Bay. Yet the water quality data taken from the outfall discharge area below Arbutus Place stormwater outfall consistently record **the highest levels of fecal coliform of any sampling location within the Mud Bay boundary.**

### **3. Wetlands**

City Action Items: #4. Address BMC 16.55.210(C)(2)(c)

PMBC response: The project is out of compliance with BMC 16.55.210(C)(2)(c).

#### **Impacts to Wetland B**

The project will alter all TDA basin drainage patterns and Wetland B will be significantly impacted. Currently large amounts of runoff drains the central and northeast areas of the property to neighboring properties north of Viewcrest. Post-development plans are to collect, reroute, condense, and funnel as a discharge to a small gravel spreader within a landslide hazard area within Wetland B buffer. Not only will this adversely impact Wetland B, but the proposed new and excessive drainage volume will flow downgradient and impact the areas comprising Wetland C, the seeps around Wetland C, Wetland D, and eventually flow above ground to Sea Pines Road and/or to marine waters.

The project's Administrative Record should now include the assessment and evaluation of impacts by the US Army Corps of Engineers so that the city can make appropriate decisions regarding the proposed project.

## **Incorporation of Lot Drainage into Stormwater Plan**

The project documents have incomplete, inadequate, scattered, and obfuscating sentences referring to incorporation of lot drainage into the Stormwater Plan. The proposed project does not demonstrate compliance with BMC 15.42, especially 15.42.060(F)(1), 15.42.060(F)(5), 15.42.060(F)(6), 15.42.060(F)(7), 15.42.060(F)(8).

When a plat is approved, the approval includes the stormwater requirements for the entire plat, including the individual lots.

<https://ecology.wa.gov/regulations-permits/guidance-technical-assistance/stormwater-permittee-guidance-resources/municipal-stormwater-permit-guidance/stormwater-management-program>

Development of the Jones property is significantly encumbered by difficult hydrogeomorphic complexities: wetlands interspersed with steep slopes and cliff outcrops; property borders that abut a public trust marine resource and recreational shoreline; a property shoreline with exposed upland rock faces; poorly infiltrating Class C soils with high runoff potential and severe erosion hazard; shallow subsurface depths to restrictive layers and/or bedrock; and winters with frequent high intensity storms.

Because of these severe plat-wide hydrogeomorphic constraints **on-site stormwater runoff infiltration BMPs are infeasible**, irrespective of lot-specific conditions. (Exhibit F - The Preliminary Stormwater Management Plan 6.5 REQUIREMENT NO. 5 – ON-SITE STORM WATER MANAGEMENT.)

Missing from the Stormwater Management Plan is an evaluation of BMPS for managing other runoff surfaces like rooftops. The following do not meet feasibility criteria for infiltration and should not be considered for use on the proposed property (to be decided by the lot owner and building envelope design evaluation).

1. Downspout infiltration systems
2. Downspout dispersion systems
3. Downspout perforated stub-out connections

**Stormwater infiltration will not be feasible based on impermeable Class C soils, steep slopes, and shallow depths to impermeable restrictive layers or bedrock. Consequently, stormwater detention vault(s) will be required.**

See also the “Bellingham Potential Infiltration Area” mapping on the next page, which shows the site of the proposed project is **clearly mapped as not a potential infiltration area.**

See the PMBC Comment Letter for substantiation that the project site is predominately comprised of NRCS soil unit 110, Nati Loam, 30 to 60 percent slope and Class C hydrologic soil group. The applicant incorrectly states in Exhibit F that the soils consist mainly of Soil Unit 52, a Class B soil group.

This is critically important because, when compared to Soil Unit 52, the project property's predominant Soil Unit 110, **Nati loam, a Class C soil**:

- 1) is more susceptible to erosion (severe vs moderate erosion hazard)
- 2) is more susceptible to site degradation (highly vs moderately susceptible)
- 3) is less suited for local roads and streets (poorly vs moderately suited)
- 4) has greater limitations for subsurface water management (very limited vs somewhat limited)
- 5) has greater limitations for shallow excavations (very limited vs somewhat limited)
- 6) is more susceptible to windthrow (high vs low windthrow hazard)

<https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>

### BELLINGHAM Potential Infiltration Area

If your project site is within a shaded [green] area, you may be able to use infiltration.

KEY: approximate Woods at Viewcrest proposed property outlined in red



**The applicant's materials for stormwater management are entirely deficient, as is seen in their Exhibit E:**

Page 13: "Detailed lot-specific review and exploration for final design recommendations for structures is **outside the scope of this study**. We expect that detailed plans for handling of individual lot stormwater will be incorporated in full civil design of the plat and/or later lot-specific design. .... "Full stormwater design has not been completed at this stage for the preliminary plat approval process."

**Assessment of SE Bluff & Drainage of Lots 23 to 33**

The incomplete and inadequate description of the assessment of drainage for Lots 23 to 33 represents how the project is non-compliant with BMC 15.42, especially 15.42.060(F)(1), 15.42.060(F)(5), 15.42.060(F)(6), 15.42.060(F)(7), 15.42.060(F)(8)

According to current project stormwater management plans, Lots 23 to 33 and other proposed lots are DOWNGRADE of any proposed primary stormwater conveyance to treatment utilities, and the stormwater runoff from these lots will flow DOWN, unmanaged and untreated. The RFI #4 response states: "Additional assessment of the areas downhill of Lots 23 to 33 is not necessary for preliminary plat approval." The project will be in noncompliance with 15.42.060(F)(6) and 15.42.060(F)(7).

**4. Impacts of Stormwater Release on Tidelands**

Stormwater release on the Mud Bay shoreline will have significant adverse impacts on the Mud Bay marine ecosystem and nearby Chuckanut Village Marsh ecosystem, and also Chuckanut Creek, which traverses the tidelands across Mud Bay and connects with Chuckanut Village Marsh.

As a comparison, the current Arbutus outfall pipe has had devastating impacts to the Mud Bay marine ecosystems. Residents and visitors report swampy and sulfur smells, extremely mucky suction to knee high mud. Moreover, the fecal coliform data monitoring reports are well above acceptable health standards at the Arbutus Place discharge / outfall location. These are some of the many indicators of accelerating decline at the comparable outfall discharge location – and a reason why no additional stormwater drainage should be added to the already over-burdened Arbutus outfall stormwater line.

**5. Commentary on Hydrology**

There are no hydrologic studies conducted for this project. **The applicant has inaccurately assessed and characterized the site's soils,**

consequently, a required assessment and evaluation of stormwater runoff volumes and speeds is missing.

**6. Example of inaccuracies in Memorandum #2 – Response to Public Comment & COB RFI (RFI Issued 8/14/2024):**

- A. Exhibit BB Sheet 1 of 9 depicts a green area as a “geologically significant critical area.” The Woods at Viewcrest project has created, and now uses, this invented “GSCA” on the applicant’s maps, instead of BMC-defined and required Landslide Hazard Areas (LHA), LHA buffers, Erosion Hazardous Areas (EHA), and EHA buffers. This invented-by-the-applicant ‘GSCA’ is NOT a legal substitute recognized in Bellingham’s BMC, and it is not a property terrain area defined or used in Bellingham’s BMCs. GSCAs cannot legally replace LHA, EHA, or LHA/EHA buffer areas on project maps for compliance. It is unacceptable and non-compliant of regulations to invent and substitute GSCAs as an equivalent area representing BMC-defined LHAs, LHA buffers LHAs and LHA buffers. A boolean search in the Bellingham Municipal Code for "geologically significant critical area" has no matches. BMC requires exacting measurements associated with this project’s numerous critical areas, and exacting distances reflecting the proposed development’s proximity and/or encroachment on critical areas: on this complex site, these this information is of utmost importance for a host of decisions the city must contemplate.

**The applicant continues to fail to submit mandatory maps showing all the landslide hazards and their regulated buffers and all the erosion hazard areas and their regulated buffers with all proposed Lot building envelopes.**

**\*\* The project REMAINS out of compliance with key Critical Area Ordinance regulations:** The project has not submitted a map compliant with 16.55.210, to include specifically 16.55.210.C.2.

- B. The city’s RFI #1, RFI #2, and now RFI#4 have all asked the applicant to submit a map identifying the preliminary plat map building envelopes, site’s landslide hazard areas and the recommended buffer widths. PMBC adds that the site’s erosion hazard areas and the recommended buffer widths are also required to be delineated on said regulation map.

The Geotechnical Investigation and Geohazard Report did not include sufficient information to determine if the proposed building envelopes, shown on Figure 3B of said investigation and report, are outside of recommended buffer widths from landslide hazard areas for specific lots.

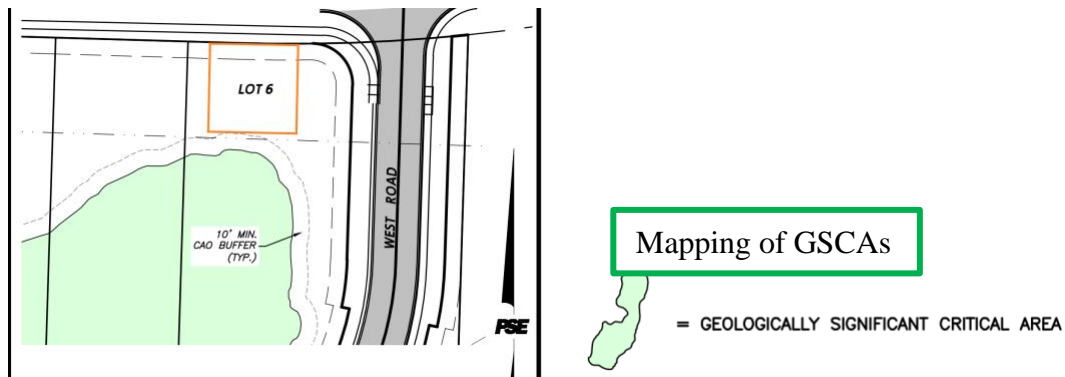


*City Action Item: "The Geotechnical Investigation and Geohazard Report did not include sufficient information to determine if the proposed building envelopes, shown on Figure 3B of said investigation and report, are outside of recommended buffer widths from landslide hazard areas for specific lots."*

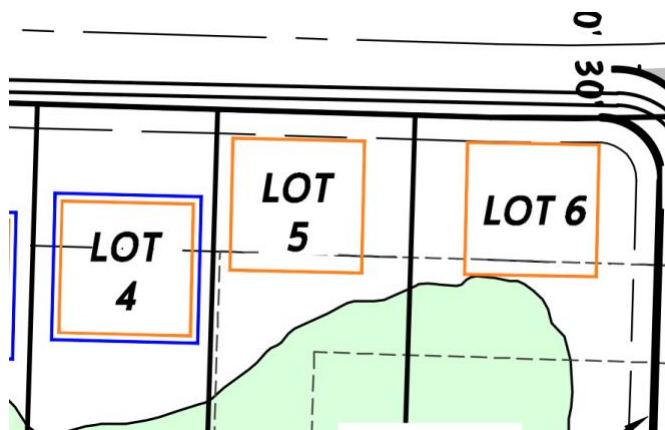
**City:** **a)** "Submit a map identifying the preliminary plat map with building envelopes, site's landslide hazard areas and the recommended buffer widths".

**b)** "Our 4/28/2022 RFI requested showing adequate buffer widths for lots 25-35 but that has not been clearly provided."

Below is an example of the applicant's currently used project property maps depicting GSCAs, rather than the required Landslide Hazard Areas (LHA), LHA buffer areas, and Erosion Hazard Areas (EHA), and EHA buffers:



<https://cob.org/wp-content/uploads/2024-11-24-exhibit-bb.pdf>



<https://cob.org/wp-content/uploads/exhibit-a-project-plans-2023-12-04.pdf>

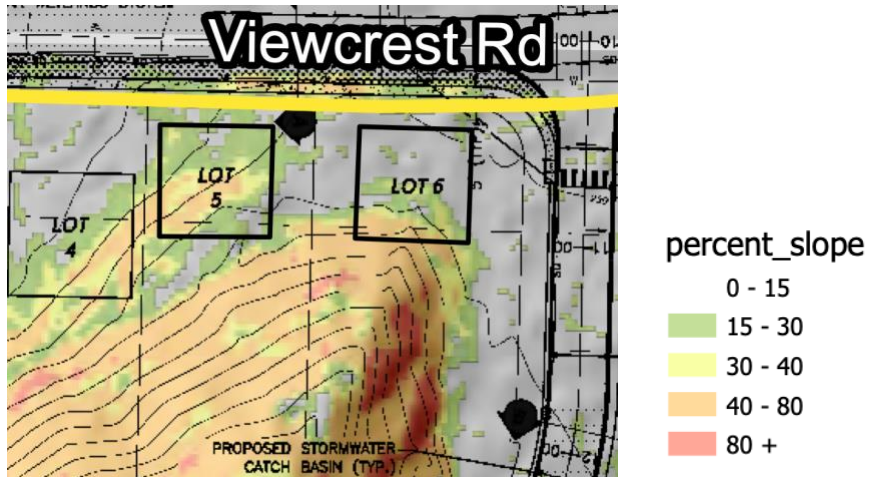
In the applicant's submissions:

- **NO BMC landslide hazard area (LHA) or LHA buffer area is delineated**, instead a project-defined GSCA is drawn.



- **NO BMC erosion hazard area (EHA) or EHA buffer area is delineated**, instead a project-defined GSCA is drawn.

These project-defined areas do not meet the requirements, and it is possible they obfuscate important information. This is an especially egregious continuing failure by the applicant, since the applicant is asking the city to make discretionary changes to proximities to hazards.



Most of the building envelope area proposed for Lot 5 is shown within a LHA and EHA. No buffers are shown. All of the building envelope for Lot 5 will be within landslide hazard area and its buffer area, and erosion hazard area and its buffer.

Most of the the building envelope proposed for Lot 4 and for Lot 6 will be within a landslide hazard area and its buffer area, and an erosion hazard area and its buffer.

**Aven, Heather M.**

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**From:** Paul Brock <brock\_paul@hotmail.com>  
**Sent:** Monday, January 13, 2025 4:39 PM  
**To:** Bell, Kathy M.; Sundin, Steven C.; G.Proj.Wood at Viewcrest  
**Cc:** Lyon, Blake G.  
**Subject:** The Woods at Viewcrest

CAUTION: This message originated from outside of this organization. Please exercise caution with links and attachments.

Kathy,

It's been 21 days since the applicant has submitted their RFI response and 14 business days is coming up soon. Has the City determined that the information is sufficient or specified in writing what additional information is required? Would it be possible to get the project website updated with the action the city has taken, if any, after receiving the applicant's 4 RFI response?

#### GENERAL

Please reconcile all plans, figures and reports to reflect the most current development proposal and ensure all referenced exhibits are attached to the reports. City staff identified several outdated plans in the critical area, stormwater and geology reports.

Review of these application(s) cannot continue until this information is received and determined to be sufficient. **Within 14 days of submitting the above information, the City will either determine that the information is sufficient or specify in writing what additional information is required.** If the information is sufficient, processing of the application(s) will resume in accordance with BMC 21.10. This request for additional information is accordance with BMC 21.10.190 B. (4).

Thank you,  
Paul Brock  
301 Crest Ln  
Bellingham WA 98229