



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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November 5, 2019

James R. Tomlinson
PO Box 1657
Tacoma, WA 98407-1657

RE: Public Comment on Lennar Northwest, Inc. Application/NOI #25114 (WAR#308398)

Dear James Tomlinson:

Thank you for submitting comments regarding Lennar Northwest, Inc.'s request for coverage under the Construction Stormwater General Permit (CSWGP). A response to comments is enclosed. A brief background of the steps taken by Lennar Northwest, Inc. to obtain permit coverage, as well as the Washington State Department of Ecology's (Ecology) decision follows.

History

An initial Notice of Intent (NOI) form for coverage under the National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit (CSWGP) (Application ID 23632) was submitted by Vo & Company, LLC for the Wellington Heights development in Olympia, Washington on June 6, 2019. As part of this application, a public notice ran in the Yelm – Nisqually Valley Newspaper on June 6 and 13, 2019. This NOI was never finalized with Ecology.

Wellington Lennar submitted a new Notice of Intent form on July 9, 2019, for Wellington – Lennar (Application ID 24411) located in Olympia, Washington. Ecology issued coverage under the CSWGP on August 12, 2019 (Permit number WAR308267). Concerned citizens notified Ecology August 23 - 28, 2019, that the public notice process had not been followed and they were not allowed the opportunity to submit comments on the proposed permit coverage. Upon further review, Ecology confirmed that the public notice process had not been followed correctly, as Lennar used the public notice that had been run in June 2019. This caused discrepancies between the public notice and project information. Ecology contacted Lennar Northwest on August 30, 2019, to notify them that Ecology would be revoking permit coverage. Following requirements in WAC 173-223-240, Ecology revoked permit coverage of WAR308267 on October 4, 2019.

On September 5, 2019, a third NOI was submitted for the Wellington project in Olympia, Washington. This NOI was submitted by Lennar Northwest and assigned Permit Number WAR308398. As part of the application process, a 30-day public notice period was run September 5 through October 12, 2019, in the Yelm– Nisqually Valley Newspaper. Ecology received three documents during the public comment period. These include a comment letter from Mr. Dan Leahy on behalf of 50 concerned neighbors, a letter from James R. Tomlinson on behalf of Bruce Titus, and a Drainage Evaluation done for Bruce Titus.



Decision

As part of the application process, Ecology has reviewed public comments and determined that Lennar Northwest meets the requirements for coverage under the Construction Stormwater General Permit. Ecology has determined that the conditions contained in the permit are sufficient to protect water quality, and if properly implemented, will enable the permittee to comply with state water quality standards. Please bear in mind that this permit is not an authorization to degrade water quality. Instead, this permit brings construction sites under a set of standards to which they can be held accountable. You can get a copy of the permit and find additional information related to the permit at www.ecology.wa.gov/eCoverage-packet.

Sincerely,



Vincent McGowan, P.E., Manager
Program Development Services Section

Enclosures: Response to Comments

Cc: Interested Parties (via email)

Response to Comments – Lennar Northwest, Inc. – NOI #25114

The Construction Stormwater General Permit (CSWGP) conditionally authorizes stormwater discharges from sites during clearing, grading, and excavation during construction. The CSWGP does not apply to post-construction stormwater management, engineering, or land use determinations. These items are addressed through plan review and local ordinances at the municipal level, as well as through the State Environmental Protection Act (SEPA) processes.

Responses to summarized comments are below and organized by permit section. Full comments, along with commenter, are in Table 1.

Table 1: Comments Received

Comment Number	Commenter	Comment	Topic
1	Leahy	Their project does not eliminate the ground water that frequently floods businesses south of the new project's border, such as the Chrysler Jeep dealership.	Water Quantity
2	Leahy	Their project does not mention nor indicate what positive action must be taken to avoid further degrading Percival Creek which already does not meet water quality standards and is on the Clean Water Act Section 303(d) list.	Impaired Waterbodies
3	Leahy	In the invalid permit application submitted by Lennar Northwest on July 10 th and issued by Ecology on August 12, 2019, Lennar Northwest attests under penalty of fine and imprisonment that "Water will discharge to ground with 100% infiltration, with no potential to reach surface waters, directly and/or indirectly." However, in their new permit application of September 6 th , Lennar Northwest no longer attests to this 100% infiltration. Lennar Northwest now attests under penalty of fine and imprisonment that "Water will discharge directly or indirectly (through a storm drain system or roadside ditch) into one or more surface waterbodies (wetlands, creeks, lakes and all other surface waters and water courses.)"	Stormwater Discharge
4	Leahy	In the invalid permit application submitted by Lennar Northwest on July 10 th and issued by Ecology on August 12, 2019, Lennar Northwest attests under penalty of fine and imprisonment that the Location of Discharge into Surface Waterbody is "Outfall number 1, Tract E" at a particular Latitude and Longitude. However, in the new permit application of September 6 th , Lennar Northwest no longer attests to this Location. Instead, it now states the location as "Outfall number 1 - Overflow from infiltration vault. City of Olympia Ditch. Surface Water Body" at a different Latitude and Longitude.	Outfall and Stormwater Discharge

5	Leahy	<p>The plan to accommodate the now destroyed storm water system that used to facilitate storm water run-on from Wellington West is to channel this storm water through the site into a 36-inch diameter storm water pipe running east/west along the southern boundary of the project site. This plan is inoperable because it calls for the storm water to enter the existing north/south drainage ditch (City of Olympia Ditch) on the western side of the Bruce Titus dealership.</p> <p>There must be improvements to this north/south ditch in order to accept greater flow. However, neither the City of Olympia nor Lennar Northwest has obtained permission from Mr. Titus to enter his property to make these improvements. Additionally, the City of Olympia has not entered into a permanent maintenance agreement with Mr. Titus to maintain the positive flow in the east/west ditch on his property or to maintain the north/south ditch on the western edge of this property. Without this agreement and especially in light of the Lennar's clearcut, Mr. Titus' property is in greater danger of being flooded than ever before, especially given the relatively small size of the newly installed sedimentation pond.</p>	Water Conveyance and Maintenance
6	Leahy	<p>The storm water from both the proposed east/west pipe carrying Wellington West storm water and the emergency overflow storm water from the proposed StormTech infiltration system located in the southwest corner of the site is designed to send storm water into a yet to be improved north/south "City of Olympia Ditch" and from there to Percival Creek.</p>	Conveyance System Improvements and Maintenance
7	Leahy	<p>According to the Department of Ecology's <i>Water Quality Improvement Report and Implementation Plan (WQIR/IP)</i> of July 2018, "Portions of the Deschutes River, Percival Creek and Bud Inlet tributaries do not meet water quality standards and are on the Clean Water Section 303(d) list..." This means actions must be taken during permitting such as this one to ensure actions to improve water quality not degrade it.</p>	Impaired Waterbodies
8	Leahy	<p>During the two-year period the City of Olympia considered and approved this land turn over project there was never a public discussion or formal recognition of the fact that Percival creek does not meet water quality standards and that it was on the Clean Water Section 303(d) list. There is also no evidence in either permit application by Lennar Northwest that it intends to help meet these water quality standards. There is also no evidence that Lennar will meet the Total Maximum Daily Load (TMDL) goals during the construction phase of their project.</p>	Impaired Waterbodies
9	Leahy	<p>The StormTech system proposed for this project requires continual maintenance to ensure infiltration functions properly. Even if one assumes that this StormTech system will function to infiltrate all the project storm water except during high water events, clogging of the filtration system is an endemic problem.</p>	Post Construction Stormwater Maintenance

		The responsibility for maintenance of this complex infiltration system is assigned to hypothetical and currently non-existent Home Owners Association (HOA). In other words, Lennar Northwest is only obligated to ensure system effectiveness for a two-year period rather than for the life of the project. Given that the treatment of storm water is critical to Ecology's regulatory function, Lennar Northwest must be held accountable for the life of the project. A mere two-year commitment means the permit application should be rejected.	
10	Leahy	You should review the effectiveness of WAC 173-226-130 with regard to public notice. It states the public notice should be "designed to inform interested and potentially affected persons of the proposed general permit" and "should be circulated within the geographical area of the proposed general permit." But then, you write to us that "Although the newspaper is not within Olympia," a public notice in a newspaper of general circulation within the county meets the obligations of the WAC. It might meet the obligations of the WAC, but it does not reach potentially affected persons.	Public Notice Process
11	Leahy	The WAC that apparently allows a revoked permit to remain in effect for 30 days after revocation can clearly cause significant damage. Lennar Northwest could have acted in good faith and waited until they had obtained a valid permit, but they did not. Our neighborhood suffered significant damage due to this 30-day provision. Even if Ecology cannot fully remedy the damage to our neighborhood, it can at least change this provision to protect future neighborhoods.	Permitting Process
12	Leahy	Although we were told on August 30, 2019, that Ecology was in the process of revoking Lennar Northwest's permit, we were never sent a notice of revocation nor were we informed of the actual date of revocation. Information to this effect would have been helpful to us.	Permitting Process
13	Tomlinson	The developer is proposing to divert 44 CSF of flow-through drainage into a 36" pipe, then into the existing drainage ditch easements that run east-west across the north end of the dealership property then north-south across the west end of the dealership property. This 44 CSF of water, however, does not include the anticipated "emergency overflow" from the infiltration pond. The existing drainage ditches do not have the capacity to carry the 44CSF of water plus the anticipated emergency overflow without modification. A downstream analysis extending from the development site to Percival Creek must be completed prior to issuing the CSWGP to determine the full downstream requirements and impacts of the project. Additionally, once the actual surface water volume is determined, design requirements must be imposed to prevent scour and surface water intrusion into the dealership property.	Post Construction Stormwater Flow Design; Water Quantity

14	Tomlinson	The developer's design for the infiltration of the storm water generated from the site is based solely on a single groundwater measurement taken during one summer period. This period of groundwater measurement is inadequate. A mounding analysis using at minimum a full one-year's data regarding the water table below the proposed drainage facility must be required prior to the issuance of the CSWGP. After that analysis is completed, the stormwater infiltration system and emergency overflow should be redesigned to ensure the winter water table conditions will not have an adverse effect on the dealership property.	Engineering Mounding Analysis
15	Tomlinson	Once the true overflow volume is understood, improvements must be made to the ditches within the drainage easements on the dealership property to accept the increased flow that will occur. To date, however, neither the City of Olympia nor Lennar have contacted Bruce Titus regarding the improvements to be made to the drainage ditches on his property or to obtain permission to enter his property to make the required improvements. Additionally, nothing has been done to require the City of Olympia to adequately monitor and maintain the drainage ditches in perpetuity after they are initially improved. Adequate conditions must be imposed insuring the long-term maintenance of the drainage easement by the City of Olympia across the dealership property.	Stormwater Quantity, Flow Control Maintenance

Ecology's Response to Comments

S2.A - Permit Application Forms

Commenters: Dan Leahy

Table 1 Comments: 3, 4

Summary of the Range of Comments:

- The July 2019 and September 2019 NOI's submitted by Lennar Northwest have discrepancies between outfall location as well as stormwater discharge to a surface water body or infiltration.

Response:

Ecology contacted Lennar Northwest for clarification of these questions. Lennar Northwest does not anticipate stormwater discharge during the construction phase of the project. The site design is for all stormwater to infiltrate onsite, however if a discharge should occur, Lennar included the stormwater discharge location to the ditch at the south of the site.

The outfall listed at 47.031578, -122.927546 is the correct outfall location for the application. This is the approximate location where the emergency overflow from the infiltration trench will be and where water would be leaving the site to go down the slope and enter the ditch.

S2.B Application Requirements – Public Notice

Commenters: Dan Leahy

Table 1 Comments: 10, 11, 12

Summary of the Range of Comments:

- WAC 173-226-130 and 173-226-240 are ineffective relating to public notice and revocation.
- Commenters did not receive copy of revocation letter nor were they informed of the date of revocation

Response:

Ecology follows state rules in the Washington Administrative Code (WAC). WAC 173-226-130 includes information for public notice procedures for issuance of a general permit, as well as coverage under general permits. The CSWGP is a general permit and reissued once every 5 years. Permittees may apply for coverage under the permit at any time while it is effective. As part of the reissuance process, Ecology is required to place the general permit on public notice, the process of which is described in WAC 173-226-130 (1) – (4).

Ecology expects to begin the reissuance process next year and will consider potential improvements to public notice requirements. Public notice requirements for new dischargers are listed in WAC 173-226-130(5). This includes the requirement to issue a public notice in a newspaper with general circulation within the geographical area of the proposed discharge. Lennar Northwest followed this requirement. Ecology also provided information on the public notice to known interested parties in an email on September 12, 2019.

S8. Discharges to 303(d) or TMDL Waterbodies

Commenters: Dan Leahy

Table 1 Comments: 2, 7, 8

Summary of the Range of Comments:

- Percival Creek is an impaired waterbody and listed on the 303(d) list for not meeting water quality standards.

Response:

Information provided in the 2018 Deschutes River, Percival Creek, and Budd Inlet Tributaries Temperature, Fecal Coliform Bacteria, Dissolved Oxygen, pH, and Fine Sediment Total Maximum Daily Load Water Quality Improvement Report and Implementation Plan - Final, shows Percival Creek is impaired and listed on the 303(d) list for bacteria, dissolved oxygen, and temperature. Although Percival creek is impaired, these parameters are not impacted by the conditional discharge authorized by the CSWGP. Conditions in the CSWGP related to impaired waterbodies are focused on management of stormwater discharges of turbidity, pH and phosphorus from active construction sites. All of these conditions are required to be followed on this site.

Water Quantity

Commenters: Dan Leahy, James Tomlinson

Table 1 Comments: 1, 5, 6, 9, 13, 14, 15

Summary of the Range of Comments:

- Project cannot accommodate the stormwater that comes from Wellington West neighborhood. Removed trees from work completed has negatively affected the Wellington Heights storm water system.
- Proposed project does not eliminate groundwater which frequently floods businesses south of the projects border, including a car dealership
- Post construction surface water volume, infiltration analysis and emergency overflow capacity
- Application does not address improvements to drainage ditches, nor maintenance of drainage ditches, which will potentially receive stormwater from the finished project.

Response:

Ecology is delegated the authority, by EPA, to administer the NPDES permitting program under the Clean Water Act in Washington State. Part of this program includes the general permits, of which the CSWGP is one. The CSWGP regulates the discharge of stormwater from point source discharges such as active construction sites or industrial facilities. Post construction stormwater management falls to local government to implement. Ecology also issues Municipal Separate Storm Sewer Systems (MS4) NPDES permits to municipalities and counties for managing the water that enters their stormwater/conveyance systems, both during and after construction.

The City of Olympia is currently covered under a Phase II MS4 permit, which includes stormwater management requirements for new and redevelopment projects. The City of Olympia applies the requirements of the MS4 permit to projects being constructed in the city and is the main point of contact for specific projects. Water quantity, land use, and flooding mitigation issues are addressed during the planning phase through local review and ordinances. For questions regarding implementation of the municipal permit, please contact Chris Montague-Breakwell at 360-407-6364.