



Department of the Army
Directorate of Public Works
Attn: Environmental Division (NEPA)
2012 Liggett Ave, Box 339500 MS 17
Joint Base Lewis-McChord, WA 98433-9500

July 30, 2015

SUBJECT: Off-base Helicopter Training Areas EA Scoping

Dear Sirs,

On July 2, 2015 DNR received a copy of the Environmental Assessment Final Scoping Document dated June 2015 for the JBLM Army Helicopter Training Area Training. Please accept this letter as the Washington State Department of Natural Resources' (DNR) scoping comments on the Environmental Assessment Final Scoping Document of June 2015.

DNR has multiple responsibilities ranging from the management of state trust lands, disposition and acquisition of lands, management of state aquatic lands, forest practices regulation, fire prevention of protection, to surface mining regulations on state and private lands. This project could conflict with DNR's land management, environmental requirements, fire protection, and recreation on state lands.

DNR's Trust Responsibilities

Washington is a land grant state entrusted with caring for state trust lands to benefit state institutions from statehood in perpetuity. With the State as trustee, the Legislature has designated DNR as manager of the state trust lands to support schools and other specific beneficiaries. The Federal Enabling Act, State Constitution, and the common law require DNR to manage state trust lands as a fiduciary trust for current and future beneficiaries without favoring one generation over another. Originally trust lands were primarily viewed as a source of revenue, but as Washington State has experienced growth, these lands have become important to the State's ecological health as well as for the recreational opportunities they provide.

To further conservation of important ecological functions the State Legislature tasked DNR with identifying, creating and managing the State's Natural Area Preserves in 1972, and Natural Resource Conservation Areas in 1987. These now include more than 150,000 acres of the most ecologically unique and important lands to the state.

Third-party activities on DNR managed state trust lands have the potential to conflict with DNR's trust management mandate by placing burdens on the land, limiting DNR's ability to realize full value of the land and its resources, placing unnecessary risk and liability on the

trusts, and damaging ecologically sensitive areas placed under conservation management status. Project scoping should consider all short-term and long-term impacts that activities may cause to DNR's ability to manage state trust lands in accordance with its trust mandate.

Activities that impact or have the potential to impact state trust lands should consider, at minimum, the following issues:

- The burden the proposed activity places on state trust lands;
- Whether the proposed use creates severance where the trust is unable, either temporarily or permanently, to realize the full value from state trust lands;
- Is the expected compensation or mitigation sufficient to compensate the trust for reduction in land value, revenue, recreation, and environmental function, both temporary and permanent;
- What risk and liability does the proposed activity place on the State;
- Are there any ecologically unique or important lands that face the risk of damage from the project?

Environmental Management

DNR and the federal services (US Fish & Wildlife Service and National Marine Fisheries Service) entered into an agreement (DNR HCP 1997) to provide habitat conservation and to avoid take of species under the Endangered Species Act (ESA) on 1.4 million acres of DNR managed land in Western Washington and on the eastern slopes of the Cascades. The State Trust Lands Habitat Conservation Plan (HCP) is an ecosystem-based forest management plan that helps DNR protect habitat for at risk-species including the Northern Spotted Owl, marbled murrelet, and riparian-dependent species such as bull trout and salmonids, which are listed as 'threatened' or 'endangered' under the ESA, while also carrying out forest management and other trust mandate responsibilities. This plan and agreement contains multiple conservation objectives, strategies and other related contract requirements that are being implemented on DNR managed lands. DNR cannot enter into agreements that would compromise protection afforded by the Trust Lands HCP and the agreement between DNR and the federal services.

The marbled murrelet is a small seabird that nests in coniferous trees and is listed as a 'threatened' species covered by the ESA and DNR's HCP. DNR has operated under an interim murrelet conservation strategy since its approval of the HCP by the services in 1997, while continuing to collect data to develop a long-term conservation strategy. In its HCP DNR identified that disturbances to nesting sites during the breeding season are known to reduce reproductive success. To reduce disturbances to nesting sites during critical breeding season DNR enforces timing restrictions on activities near nesting sites, including helicopter operations, which may impact murrelet breeding. DNR has identified protected murrelet habitat and areas where timing restrictions are enforced on attached Exhibit A.

Analysis of environmental impacts should consider how the proposal affects DNR's compliance with its HCP, including activities that:

- Interfere with DNR's habitat management plan;
- Fall within protective buffers around nesting or denning sites;
- Violate timing restrictions on nesting or denning habitat during critical breeding seasons; and
- Otherwise compromise, or have the potential to compromise, HCP compliance.

HTA 2 and HTA 3, as identified in the Environmental Assessment Final Scoping Document are within areas where DNR has designated protected habitat and instituted timing restrictions for marbled murrelet. Portions of HTA 3 are also identified for spotted owl habitat protection.

Without a statutory or regulatory exception, when granting a permit for activities on state trust lands DNR must comply with the State Environmental Policy Act (SEPA). This project does not fall within any existing SEPA exceptions. In order for DNR to adopt any final NEPA document in the SEPA process without delay or additional environmental analysis the NEPA scoping process should include consideration whether the project jeopardizes DNR's compliance with the State Trust Lands HCP.

Existing Land Use

DNR trust land management involves a range of activities that can conflict with third-party activities including timber operations, silviculture, agriculture, leases, and permits for activities by third-parties. Use of state trust lands should be limited in area and scope so as not to interfere with existing land use activities.

Specific land use activities that have potential to impact helicopter training activities include:

- Permits for helicopter activities by Department of Wildlife in HTA 3 and HTA 4 for use of the areas for deer capture and monitoring;
- Contracts for helicopter herbicide spray that will be flown inside HTAs 2, 3, 4;
- Communications towers, utility lines, wind turbines, and other hazardous structures to low altitude flights; and
- Ongoing logging contracts that use up to 80 ft. tall towers to facilitate cable yarding operations that may pose hazard to low level flights, particularly near ridges.

Other activities may arise requiring temporary flight restrictions such as firefighting aviation operations. Proposed activities should not conflict with operating restrictions and requirements of temporary flight restrictions. The project scope should include plans for verifying temporary flight restrictions, and avoiding conflict with operating restrictions and requirements of temporary flight restrictions.

A list of current encumbrances can be acquired from DNR's title records office. This records search could require a wait time of several months due to current workload and the extent of the proposal.

Fire Protection Management

Low-level helicopter flights over mountainous terrain and other remote forest land creates heightened risk of accidental collision, release of flammable substances, and other fire hazards. Project scoping should include consideration of timing or area restrictions during periods of heightened fire risk, as well as fire hazard abatement plans to stop potentially disastrous wildfires. In the event DNR permits any training activities on state trust lands, DNR

would like a commitment to reimburse DNR for the full cost of suppressing any wildfires occurring in the license area as a result of Army Helicopter Training operations, regardless of cause.

Recreational Activities

Chapter 79.10.120 RCW directs DNR to provide recreation on state trust lands when it is compatible with DNR trust obligations. Recreation on DNR-managed lands includes hiking, hunting, fishing, horseback riding, camping off-road vehicle riding, mountain biking, and boating. DNR provides trails and campgrounds in a primitive, natural setting. Most recreation on these lands takes place in the 2.2 million acres of forest that DNR manages as state trust lands. DNR has recreation agreements with the Washington Recreation Conservation Office (RCO), which have come in the form of leases, easements and restrictive covenants; these are specific obligations that DNR must meet. These recreational opportunities paid for with RCO funds require DNR to maintain the recreational opportunity for 30 years. If other land management or other activities interfere with recreational opportunities DNR is required to provide another recreational opportunity of equal value for the remainder of the 30 years.

Disbursed recreation currently exists in all of the proposed training areas. DNR does not restrict disbursed recreation opportunities in the potentially impacted state trust lands. Low flights and landing may conflict with recreational activities. The project scope should identify the impacts to recreation and either avoid or minimize those impacts.

DNR looks forward to working cooperatively at the earliest time possible to avoid conflicts between your proposal and DNR's responsibilities as a state agency.

Please contact me, Rochelle Goss, at (360) 902-2117, Rochelle.goss@dnr.wa.gov for any questions, clarification, or copies of DNR documents.

Sincerely,



Rochelle M. Goss
SEPA Program Lead
Department of Natural Resources

EXHIBIT A

Murrelet Habitat & Timing Restrictions

