

August 8, 2019

We are making a response to the technical memorandum (TM) noted above to delineate the following concerns that we have.

Paragraph 1, sentence 2 of the TM states that “this review is intended to provide additional insight into the environmental condition of the property based on the history of site activities and citizen concerns regarding past and potential future environmental impacts.”

However, this review does not provide additional insight into the environmental condition of the property based on the history of site activities, as these site activities, many of which were unlawful, are not documented here at all. Neither is it based on citizen concerns regarding past and potential future environmental impacts because documents and data that were given to the City from concerned citizens for the last 15 years, before the site was annexed by the City, were not included.

2. Paragraph 2 does not include adjacent pieces of property owned by the applicant/owner/developer of Green Cove Park, which were included in all prior requests for development. According to Cari Hornbein of the City of Olympia Planning Department, part of these parcels are slated for future development, and should therefore also be considered. Otherwise, this piecemeal approach will fail to determine the project’s true impact.

3. Paragraph 3 says “the site historically operated as a gravel mine.” It was not noted that this operation was only permitted for 7 years from 1972-1979, at which time the County discovered the permit to mine 11.3 acres had been violated by the illegal mining of more than 50 acres. Nor did the TM acknowledge that it primarily operated illegally as a gravel mine and waste dump from about 1938-2015 on that part of the site. During its use as an unpermitted waste dump, Mr. Sundberg’s policy was “buy a truckload of gravel from me and I will take a truckload of waste from you.” Later, it was illegally operated by Mr. Mahan and his lessees/contractors as a gravel mine and waste dump without proper business licenses and without paying any taxes to any jurisdiction.

In addition about 30 acres of the site was operated for about 30 years as the Port's and Weyerhaeuser's log export yard, where logs from Weyerhaeuser's Agent Orange-sprayed trees were debarked before export. That bark was contaminated with 2-4D, 2-4-5T and dioxin, as was the customary logging practice during that time.

Paragraph 3 sentence 2 states "Over time, fill materials have been brought onto the site in (an) attempt to level the land with the surrounding grade and reclaim the mined area for future use." In fact, no permits from the City or County for such fill or grading of the site to reclaim it were ever applied for by Mr. Sundberg or Mr. Mahan, etc. The bulleted list of Paragraph 4 lists "Potential soil contamination from various fill materials placed on the site" as an environmental concern. In fact, the "fill materials" brought onto the site in an attempt to level the land with the surrounding grade and reclaim the mine area for future use were not "clean fill" that could be used legally according to the terms of the Department of Natural Resources (DNR) reclamation permit for this mine. Neighbors and employees report that these materials were mostly solid and hazardous waste from the Port, the City of Olympia and others. Under the ownership of both Mr. Sundberg and Mr. Mahan continuing through 2015, hazardous material was illegally dumped and buried on the site to conceal it. These materials cannot be used to reclaim the mine for future use. This site was simply an illegal solid and hazardous waste dump a short 4 minute drive from the Port of Olympia. In addition, the County officially designated about 2 acres near the gate as a petroleum contaminated site.

4. Paragraph 4 Robinson Noble stated "We conducted a review of pertinent environmental records for the subject property that were provided by the City. Through our review of the records we identified several potential environmental concerns which are listed below." Since those concerns have been expressed, they do require the City to withdraw its action accepting the application as complete.

Further, as we noted in our request for relief, the City failed to provide Robinson Noble "all pertinent environmental records for the subject property" as they omitted most of the 14 years of citizen comments, concerns and submitted data, testimony and documentation, maps, aerial photos, satellite photos and all DNR, Department of Energy (DOE) and Thurston County records and citations for illegal activity conducted on the site that are also "pertinent environmental

records”. These would have documented “the history of site activities and citizen concerns regarding past and potential environmental impacts”. These documents were absolutely necessary for any responsible technical review of this site and represent a lack of due diligence by both the City, Robinson Noble, and the developer who failed to provide all the documents needed for a proper review to ever be done.

We do agree that the nine concerns enumerated by Robinson Noble in Paragraph 4 are a small part of the citizens’ concerns about the environmental impacts from the actions on this site and this project. However, they do not cover all concerns because of the missing data noted above. In addition, concerns 7, 8 and 9 talk about wetlands, stormwater, and sensitive species in the Green Cove Creek without any citation of the Green Cove Creek Basin Plan. It should be noted that according to this sub-area Comprehensive Plan made pursuant to the Growth Management Act, the entire Green Cove Creek Basin was found to be an environmentally sensitive area by both the City and Thurston County.

## SOILS

Paragraph 1 - We agree with the first section of the Memorandum that the site was used as a log storage site and that “additional sampling of the wood be done to identify any contaminants that may be associated with the wood.”

To elucidate, the log yard was in operation from sometime in the late 1950’s through the late 1980’s. These trees were sprayed by Weyerhaeuser with 2-4-D, 2-4-5-T as well as with nitrate fertilizers, mostly through airborne applications. 2-4-5-T and 2-4-D are part of the chemical mixture known as “Agent Orange” used by the United States military and banned by the Geneva Convention for use in warfare in the 1970’s. However, its use was continued by Weyerhaeuser through the time that 2-4-5-T was actually withdrawn from use by the EPA in 1985 because it contained high levels of dioxins, which are found in both these chemicals. 2-4-5-T is a synthetic auxin, an artificial growth stimulating hormone that acts through being incorporated into the growing part of the tree, i.e. the bark. The Weyerhaeuser trees that were sprayed and subsequently stored at the log yard were debarked and buried in many areas of the site as fill for the gravel mining operations and for filling of the ravines that can be found on early topological

maps of the area. Please refer to the previous site plan maps for the past planned projects filed by Mr. Mahan for this site, showing the project overlaid on early topological maps that show 30-40 foot deep ravines on the site, and the comments by Mr. Jerry Dierker about these plans and those topological features. Please also refer to the original pre-1938 topological maps for this site.

Sampling for these chemicals should be included, as well as for creosote and the various wood treatment chemicals, such as pentachlorophenol, polyaromatic hydrocarbons, and Target Analyte Metals, that were used during the 60 year operations for industrial wood treatment of pilings, telephone poles and beams at the Port of Olympia, and noted as being buried or on the surface of this site.

Paragraph 2 - We agree with the findings of Paragraph 2, and further we note that at least one portion of the site near the front gate has been designated as a petroleum contaminated site by Thurston County.

Paragraph 3 - We agree with the findings of Paragraph 3.

Paragraph 4 - In general, we agree with what has been found in this section. However, the 21 test pits never went below the level of the fill in many places on the site, so no sampling was done at levels below the fill. Neither was sampling done for dioxins or wood treatment chemicals at that level, including the pentachlorophenol resin that was found near North Road at the north end of the property which would have come from contamination from the Port of Olympia, as noted in Paragraph 1 of the Soils section of the Memorandum. Further, while the wood debris from the Port may be contaminated, the sediments and soils that were also removed from the Port and illegally dumped here as "fill" require additional sampling, as noted in this section. The presence of oyster shells indicates fill from waterfront sources on this site. This requires more chemical testing for all the different types of materials that have moved through the Port of Olympia or have been utilized for industrial processes there through 2015, when dumping ceased based upon citizen complaints. This is also another glaring example of a very large data gap that has to be "filled" before the application for this project can be considered complete by the City of Olympia. Much of this information, which apparently was omitted from the documents given Robinson Noble, should be available from the City's own records, and

those of the City's partner, the Port of Olympia. The rest of the missing information can be found in the records of the Department of Natural Resources and the Department of Ecology on this site and the contaminated areas of the Port of Olympia. DNR's Surface Mine Inspection Report of July 29, 1997 cites "Large wood waste at north end of site should not be buried: depending on volume, wood waste may require permit from County."

Further, in 2015, neighbors reported that 400 truckloads of waste from the south end of the Mottman Industrial Park in Tumwater was brought to the site and dumped by D.R. Horton, the same building contractor who Mr. Mahan may be using for this project. Since no sampling has been done since 2008, a broad spectrum of testing needs to be done to determine the nature of the industrial materials that were illegally dumped both at that time and others during the past several decades.

Paragraph 5- We agree that there was probable dumping into the on-site septic system. Again, much of that dumping could have been other liquid or powdered industrial waste from the Port of Olympia just 4 minutes away.

Paragraph 6 - Regarding the soil settlement from organic debris, we concur this presents a problem as the organics decompose. However, we believe that since the geotechnical reports did not investigate below the level of the fill, an additional geotechnical study that accounts for the original topological features that have since been filled is warranted, as we noted in our response to Paragraph 4 of Soils above. A review of the possible settlement and collapse of the surface and subsoils on this site has not been discussed in relationship to the use of pin piles as noted in the development plans for this site. Clearly, 20 foot tall pin piles will not hold up buildings, streets, roads, sidewalks or city services, like heavy sewer and water lines, especially in light of the fact that the ravines which were filled with material are V-shaped, indicating earthquake faults, not U-shaped as would be typical of glacial swales. These ravines lead directly south from one of the largest strike faults in Western Washington, which occurs at the northern edge of the 100 foot tall hill that the site occupies, the highest point in Olympia. Had DNR been consulted before producing this TM, this geotechnical problem would have been apparent. Further, this site consists of a 100 foot mound of gravel with steep sides on the north and west that precipitously drop 100 feet to the valley of the Green Cove Creek basin. It sits above extreme high pressure aquifers noted by DNR and the extremely sensitive recharge area for the Allison Springs and Grass Lake city wells noted on City and County maps. With such a similar

subsurface ground structure as the Oso landslide site in Snohomish County, it appears clear that there could be problems with landslides here as well. Clearly, additional geotechnical and chemical sampling studies as well as a complete review of all known data on this site from DNR, the City, the County, local residents and others needs to be completed, much of which has already been given to the City. We are shocked that this information was not considered as it poses substantial risk and liability to the City.

Paragraph 7 - We concur that methane gas can result from the breakdown of the organics. However, the distinct possibility of the presence of aromatic hydrocarbons and explosive material similar to the methane gas also necessitates monitoring. Further, the reclamation permit requires removal of all non-native materials from this site to fulfill the legal obligations of the permit holder.

## GROUNDWATER

Paragraph 1 - We agree that there has been a serious lack of any proper testing to determine the location, volume and contamination of groundwater on this site. The TM makes a fabricated claim without any evidence that “the groundwater encountered is likely a shallow, perched system.” This is impossible to say without any evidence. In fact, DNR’s Surface Mine Inspection Report dated September 3, 2002 cites the fact that the perched aquifer was pierced, as also noted in documents from DOE. Also, a DNR sketch map from 1972 shows a large area on the west side close to Cooper Point Road labelled “exposed water table.” The word “likely” in the TM indicates this claim is not based on any actual data, but merely a wishful conjecture. We recommend that a proper study of the aquifer and wetlands on the site needs to be done, not a claim that has no scientific data to support it.

Paragraph 2 - The TM refers to a study by Drost and others (1998 and 1999) to show “the subject property area is underlain by an alternating sequence of glacial and non-glacial sediments, forming several confined aquifer systems and groundwater flow direction in the location are to the east, towards Budd Inlet.” Please note the Drost study is a conceptual model and numerical simulation of ground-water-flow system in the unconsolidated sediments of Thurston County. It is not based on actual data from this site. In fact, groundwater flows north,

south, east and west from this site of the extremely high pressure aquifers DNR noted, and are being fed from an underground source, probably related to Mt. Rainier as suggested by the sulfur bearing waters that are exposed to the north at the base of the hill. Wells more than a mile away to the north also contain sulfur. Clearly, groundwater also goes to the west because the City and County have designated this area as an extremely sensitive aquifer recharge area for the wells at Allison Springs and Grass Lake that lie to the west and southwest. Further, there are no actual confined aquifers in the area, or in Washington under state law. They are all in hydrological continuity with each other, and there are no stratigraphic layers that have not been broken, either from earthquakes, volcanic action from Summit Lake and Mt. Rainier, or from the glaciers that churned the ground over and over. There are no impermeable aquitards confining one aquifer from another in this area because of the geological history of this area. To make such a claim is clearly absurd based upon this geologic history.

Paragraph 3 - The TM states the Washington State Department of Health's water assessment program mapping application does not show any Group A or Group B wellhead protection areas which overlap the subject site. However, to conclude that the site is not a potential concern to any public water system ignores the City's and County's maps showing aquifer protection areas, wellhead protection areas, groundwater protection areas and wetland areas, and also is inconsistent with the Green Cove Creek Basin Plan's maps and findings. Even if this site only occupies a recharge area for the Allison Springs and Grass Lake wells which now supply 40% of the City's water, the Grass Lake well 59,550 people alone, it is very likely to be of potential concern to public water systems. Further, the map shows 15 public water systems downstream from the site, under the jurisdiction of the PUD and within the County limits which utilize water that would naturally flow from the extremely high pressure aquifer on the site. Therefore, again there has been an improper editing of the record about groundwater which was reviewed for making this TM in order to eliminate any data already established by law and/or scientific data for this area, as noted in County maps and the Green Cove Basin plan. This publicly available data, part of an interlocal agreement, was ignored without proper testing or review of legally consistent and verifiable data. The TM used only one data point to draw their conclusion that groundwater contamination is "unlikely" in the lower aquifers used for drinking water. It does not provide any real evidence to back this claim.

Paragraph 4 - Regarding the well referenced herein, and like the septic system that was probably used for dumping unknown and possibly hazardous materials that AMEC (2004) identified under SOILS, the well itself could have been used as a dump to dispose of waste, connecting directly to the lower aquifers. It would need to be tested before being decommissioned.

## STORMWATER, SURFACE WATER AND WETLANDS

Paragraph 1 -The Revised Hydrogeologic Report completed by Earth Solutions in 2016 noted a number of wetlands (A, B, and C), and other studies from DOE have found other wetlands (D,E). The TM claims almost all the stormwater from these wetlands infiltrates before reaching an above ground drainage system, citing a Wetland and Fish and Wildlife Habitat Assessment Report by Soundview Consultants (revised 2018). This is inconsistent with the revised hydrogeologic report done by Earth Solutions in 2016, which found that the stormwater and wetlands on site dumped water into the “above ground drainage system” west of Cooper Point Road and into the offsite wetlands on the west side of Cooper Point which borders Green Cove Creek. The wetland also drains along the east side of Cooper Point Road through an “above ground drainage system” that goes under 28th Ave NW to the north into Thurston County and into a wetlands and pond which comprise the headwaters of the west fork of Butler Creek. That same report from Earth Solutions found that stormwater also crossed through drainage systems under 28th Ave NW about midpoint between Cooper Point Road and where Division St. starts to the center fork of Butler Creek and Lake Kaufman. It also drains towards the northeast corner of the property down a ravine identified as the east fork of Butler Creek, which also supplies water to Lake Kaufman. As the Earth Solutions report noted, Butler Creek empties into Budd Inlet and Green Cove Creek empties into Eld Inlet, both part of Puget Sound. Both are listed as impaired bodies of water under Section 303 of the Clean Water Act. See also the letter from the Squaxin Island Tribe regarding discharge into treaty waters.

Obviously, Earth Solutions noted that this site dumps stormwater into the County through other peoples’ property into Puget Sound. *This project affects a much larger area than that reviewed by this TM.*

Paragraph 2 - The TM notes concerns about contamination from the operation of the gravel mine on the site. Actually, had they seen all the citizen concerns, which they did not, they would have



learned that the site was used as an illegal, unpermitted solid hazardous waste dump, and a log yard where contaminated trees were debarked and the waste used as fill. At least the TM reviewed one notice of correction from DNR from February 2014, which expressed concern that “a stormwater pond was connected through culverts and ditches to the north and discharged outside of the permitted discharge area of the subject property”. However, we note that many other notices of correction from DNR exist about improper stormwater management and improper use of this site, etc. that were not considered. Additionally, the one quoted DNR notice was not included in the bibliography. Clearly, it would be prudent to review all documents on this site from any agency, the City and County for notices of violations and review all documents submitted by citizens that were not provided to Robinson Noble by the City and not reviewed by Robinson Noble as part of their due diligence.

Therefore, any sampling of wetland sediments to be conducted to determine if there is contamination would have to be done on all areas affected all the way to Budd and Eld Inlets, before the application for this project could have been submitted for review by the City. Obviously the application is woefully incomplete.

Paragraph 3 - The TM states “There are additional concerns regarding how stormwater will be handled after development of the site and the impact of additional stormwater flow to Green Cove Creek, as well as the impact of stormwater flow on sensitive species that may live in the wetlands associated with Green Cove Creek.”

Unreviewed documents from other interested citizens and agencies express yet more concerns about how the area will react to stormwater, including possible landslides from the saturated soils along the 100 foot drop down into the Green Cove/Butler Creek basin to the north and west. See as an example the comments on previous proposed projects for this site and adjacent sites from Jerry Dierker.

Further, the TM claims that “no priority habitats or threatened, endangered, or sensitive plant or animal species were observed” according to the developer’s consultant, Soundview Consultants. This is absurd in light of the findings of the Green Cove Creek Basin Plan which show numerous priority habitats and numerous endangered plant and animal species. It is also absurd in light of the City and County maps on the recharge areas and wellhead protection areas, as well as the findings of the DNR on the high pressure aquifer. Clearly, putting large, extremely

heavy stormwater facilities near the wetlands which dump water down the 100 foot bank down to the Green Cove Creek and Butler Creek area and into Puget Sound, as well as the increase in the saturation of the soil along the edge from any infiltration of those stormwater ponds, could reasonably and likely cause a landslide on such saturated soils, further contaminating the priority habitats and the threatened and endangered plant and animal species in the area. This is clearly inconsistent with the findings of the Green Cove Creek Basin study and in violation of the City and County's Green Cove Creek Basin Comprehensive Plan. In fact, this area is the subject of a special individual comprehensive plan held jointly by the City and County because of its extremely sensitive nature and the very sensitive priority habitats for threatened and endangered sensitive habitat species in the area. The area impacted, as noted, includes at least two of the inlets of South Puget Sound, namely Budd and Eld Inlets, just from stormwater alone. Therefore, those species have to be considered and reviewed especially in light of the fact that there are many Endangered Species Act requirements, etc. and species that are listed in this area, including the South Puget Sound orca, the chinook salmon, the marbled murrelet, the spotted owl, the Olympic mud minnow as well as species of plants, etc. that clearly would suffer. Developers' consultants cannot ignore City and County comprehensive plan findings and laws concerning such priority habitats, and cannot ignore the numerous findings of the DNR, the DOE and the City and County over the last decades for this site, simply because they want to build here and support the development of this site. Consequently, this is a failure of due diligence to look at what is really there by adequately reviewing the existing scientific data on threatened and endangered species. It is clearly improper, and again shows that the developer, the City and the consultant have not properly followed normal procedures that would actually produce a viable geotechnical report.

## CONCLUSION

Based upon their inadequate review of the extremely limited number of environmental documents, the TM has recommended the City obtain a great deal of additional information. We agree that clearly there is not enough information to make any determinations. Information was to be submitted to The City, and it was not. This application has to be returned by the City as incomplete.

One final observation. At the end of the document after the bibliography in small print, the author notes this report is “for the exclusive use of the City of Olympia”. In other words, this was paid for by the City of Olympia. The City was obligated to use an independent” consultant who was provided with all the material on this site. Instead, the City paid for a “developer consultant report” that was biased towards the developer. The last statement, “Unless specifically stated in the document, no warranty, expressed or implied is made”. What, then, is the value of this report since there is no warranty for likely or unlikely findings or conclusions?

Consequently, while we believe the City should return the application for this project as being incomplete, we also have serious concerns as to the improper actions taken by City staff in limiting the record and in employing an obviously biased technical firm with a conflict of interest on this site who could not act independently since it has worked for the developer repeatedly, on this site and others. The City should find an independent consultant without such a conflict of interest with this development community. Further, the City should consider having other staff do the environmental review who have not previously worked on this project who can bring a fresh and unbiased perspective to the complexities of this site, and who have access to the complete document file.

Finally, according to law, it is the responsibility of the developer to bear the cost of an unbiased investigation of the site, not the City and the taxpayers.

Respectfully submitted,

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