

January 15, 2020

Dear City of Olympia Planning Department,

We are writing in response to the December 16, 2019 letter to Cari Hornbein from Heather Burgess of Phillips Burgess PLLC, attorney for Applicant, Green Cove Park, LLC.

In this letter, the Applicant refuses to complete the additional environmental testing required by the City in its substantive review letter of August 8, 2019 and demands the City complete its land use review without this information. Additionally, the Applicant requested deviations from established legal requirements on various subjects in its meeting with City staff (see October 31, 2019 meeting notes) for the City's review of this project.

We adamantly disagree with these unreasonable and unwarranted demands for the reasons noted below, and ask that the City deny the permit for this Project.

1. The City's list of consulting reviewing agencies fails to include Washington Fish and Wildlife, US Fish and Wildlife, National Marine Fisheries, US Army Corps of Engineers, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration or Housing and Urban Development. Since the storm and groundwater flowing through and out of this site has a direct connection into the federally protected and tribal waters of Puget Sound through Butler and Green Cove Creek, (See attached photos) as stated in the Applicant's own reports (Robinson Noble, 2008 & Soundview Consultants, 2018), it must abide by the Clean Water Act, the Endangered Species Act, the Rivers and Harbors Act, the Marine Mammal Protection Act, the Fishable Swimmable Waters Act and Federal Water Pollution Control Act. **None of the responsible federal agencies have even been contacted by the Applicant or the City, as is required by law. As**

federal laws prevail, the City is not qualified to review or approve this proposal.

The Green Cove Basin has been designated an environmentally sensitive area by both the City and Thurston County and is the subject of its own Comprehensive Plan adopted in 1998. In fact, it is a highest priority watershed for WRIA 13. Green Cove Creek is home to a fall Chinook Salmon and Winter Steelhead run, for which Thurston County is presently applying for a grant to remove fish barriers. Green Cove Basin is also home to the endangered Olympic mud minnow and other sensitive wildlife, such as the marbled murrelet and the spotted owl. The Southern Resident Orcas that inhabit Puget Sound are on the brink of extinction, and their existence depends on the Chinook salmon that spawn in this Creek and others in South Puget Sound. The impacts of this Project on the greater Green Cove Watershed Basin have never been studied. **For this reason alone, the Project should be denied until all relevant federal agencies have had an opportunity to evaluate it, especially since it is considered the highest priority area for WRIA 13. Failure to do so will result in the City being reported to all State and Federal funding agencies with a request of a review of the City's funding.**

2. The Applicant states that opponents have provided the City with "anecdotal evidence of illegal dumping and other alleged unlawful activities occurring on the former mine site going back decades." **This evidence is not alleged.** It is corroborated by dozens of Department of Natural Resources (DNR) and Department of Ecology (ECY) documents, by satellite imagery available on Google Earth, by dozens of photos of industrial waste by neighbors, and by emails from the City's own staff.

3. The Applicant asserts it has completed extensive environmental study and testing on the property. **This is not true.** Though superficial testing has been done, none penetrated below 13 feet below ground level (AGES, Preliminary Geotechnical Report, 2015) to the 35 foot depth of fill that was deposited. Neither was sediment sampling done for dioxins,

pentachlorophenol (PCP), polyaromatic hydrocarbons (PAHs) and Target Analyte List (TAL) metals, toxics associated with wood treatment wastes. Further, seeps, direct overland drainage ways and adjoining wells have not been tested.

4. The Applicant sites four different environmental companies' Environmental Site Assessments (ESAs) of the Project site. He fails to state that not one of these reports can guarantee the absence of potentially hazardous materials or conditions. In fact, all recommend further testing, and several suggest that the use of the site as a gravel mine, log storage yard and dump site have "historically been considered environmentally suspect land use activities due to the potential disposal of petroleum or other chemicals within the materials dumped on the site." (AGES, Phase 1 ESA, 2015) One report (Pacific Rim, 2007) identified "non-native materials...including burn layers, construction, debris, oyster shells (possible fill from a waterfront source), metal, asphalt, concrete, and large logs and planks, all which may represent an environmental concern." (Robinson Noble, Data Gaps Analysis, 2019) . Can the City expect to approve a housing development that would be home to 181 families, having been warned of contamination for years, without being able to guarantee the safety of the site or its residents? Of course not.

Further, hundreds of truckloads of fill have been deposited on this site without a permit since the last onsite evaluation in 2008, imported from the Applicant's other projects from other potentially contaminated sites, and clearly visible on Google Earth. Of course, there is no documented evidence that this illegal fill material is contaminated because no testing was ever performed. It is no wonder the Applicant does not want further thorough geotechnical testing. (See Robinson Noble, 2008)

5. The Applicant states that because the site does not appear on any federal, state or local hazardous waste list, it should be treated like any other undeveloped site. This completely ignores the history of this site as an unpermitted, illegal industrial gravel mine and hazardous and sol-

id waste dump site, used for 6 decades. It also ignores the direct connection of the waters of this site to federally protected waters. Further, WAC 173-340-330 states "sites shall be ranked and placed on the hazardous sites list if, **after the completion of a site hazard assessment**, the department determines that further action is required at the site." No such assessment has yet been done, which is what the City has been requesting for 15 years before a project review can be done, **as required by law.**

6. The Applicant's reports after 2008 rely exclusively or almost exclusively on the review of documents or previous reports on the site paid for by the Applicant, and not on actual unbiased on-site investigations, including this latest technical memorandum by Pioneer Technologies. Further, some of the reports cited were done before 2014 and have expired, and at least one report stated it was given limited access to the site (AMEC Earth & Environmental, 2004). Further, the critical area report (2016 Soundview) was not done by a licensed biologist, as required by law. **These reports would be considered "anecdotal" at best if judged by the standards of Best Available Science.**

7. The Applicant's own report (Robinson Noble, 2008) states that the site "is located within the extended capture zone of the Allison Springs Wellhead Protection Area", and also within 1 mile of more than 60 private wells. (See USGS maps, AMEC, 2004). DNR has noted at least 2 piercings of perched aquifers in many of its mine inspection reports. DNR also found an extremely high pressure groundwater aquifer exists on this site which pushes groundwater up through any so-called "impervious" layers to its highest elevation, where it bubbles up as a groundwater spring easily seen flowing just north of the entrance of the site along Cooper Point Road, and then downhill. Clearly, there are no impervious layers that water and contamination could not go through existing on and below this site which would protect the lower groundwater used by the City and private wells in the area. Planner Cari Hornbein admits she knew Mr. Sundberg had sold blue gumbo clay from the bottom of the mine pit be-

fore he refilled it with organic solid and hazardous waste, more than 35 feet below the floor of today's pit. These wells on-site and in the area also could provide a direct conduit through all levels of the aquifers, from both inside and outside the well casings. The City must be able to insure that no contamination has reached the groundwater on site. Therefore, its request that the Applicant sample groundwater is necessary to perform their legal duty to protect the municipal water supply and wells from potential contamination issuing from this site.

Further, as noted in "Thurston County's Water Resources Monitoring Report, 2017-2018 Water Year," Green Cove Creek ranked extremely high in nitrate+nitrite contamination, and is on the cusp of scoring as a stream with "high concern for impairment." The addition of yet more contamination from runoff would surely seriously impair the Creek, which could put it on the Section 303(d) list as an impaired body of water which flows into Eld Inlet of South Puget Sound, home of the endangered Orca and Chinook salmon that would use this stream.

8. The Applicant's report by AGES, LLC (2015) identifies that the property was used for log storage as well as for gravel mining. In addition to the contamination from the gravel mining and refilling of the pit with waste, Weyerhaeuser's log yard also operated at a time when the use of DDT and Agent Orange-type herbicides in the forests were customary. Several of the very shallow tests pits were filled with wood debris and old pilings, and entire ravines have been filled with disposed bark, which is liable to be contaminated and has the potential to extrude methane gas as it decomposes. This material also needs to be tested.

9. Both the mine site and the wood waste from the log yard buried on this site also create problems for unstable ground, requiring further geotechnical testing down to the level where the waste ends, more than 20 feet below the level of the deepest test pit in previous reports. This unstable soil became evident in December, 2019, when a sinkhole opened up on the property draining a significant amount of water from the site

during a rainstorm. The City must sample for methane and wood waste contaminants to insure soil settlement does not occur and that contamination is not leaching into groundwater seeps and offsite. **Clearly, this untested material cannot be left under the site, as required by DNR's reclamation permit, and as the Squaxin Tribe noted in its August 1, 2019 letter.**

10. DNR also notes that this site has one of the largest strike faults in western North America going through it, so any geotechnical report should consider the regional geological hazards for this site, which could include severe impacts for the people downhill from it, the highest hill in Olympia. Clearly, regional impacts have not been reviewed for this site in any way.

In light of the Applicant's continued refusal to comply with reasonable requests for information, the City must deny this Project because it lacks the necessary information to perform a complete review. The City is likely to incur substantial liabilities for potential future health, environmental and engineering effects resulting from this lack of information that are possibly irreversible and life threatening. To assume responsibility for the site without knowing what exists there would be ill-advised, unreasonable and imprudent, or worse.

In conclusion, we ask that the City deny this Project for the Applicant's **refusal to comply with all applicable laws,** and the Applicant's failure to comply with the City's reasonable requests for information necessary to the City's proper consideration of this proposal, so that its decision is based upon actual data when performing its project and environmental review, as required by law.

WHEN CONSIDERING THE PUBLIC HEALTH AND THE HEALTH OF THE ENVIRONMENT, NO ONE IS ABOVE THE LAW.

Thank you for your consideration. We stand ready to consult further.

Sincerely,

Jerry Dierker
Esther Kronenberg