



Garkeeper Belt

Metropolitan King County Council

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June 3, 2002

TO: Councilmember Julia Patterson

FM: James L. Brewer, Legal Counsel

RE: Des Moines Beach Park

Kimberly Lockard has asked me to give you a written analysis of the County's role and jurisdiction on the issue of the proposed operation in Des Moines Beach Park of a fill material conveyor belt. I would like to thank Scott Johnson, Deputy Prosecuting Attorney, for his assistance to me in responding to your request.

King County owns a real property interest in one section of the Des Moines Beach Park. The deed conveying that portion of the park from the County to Des Moines has a covenant granting: "*King County and its people for their benefit the right to use the real property herein for public park and recreation purposes in perpetuity.*" If that portion of the park is ever used for other purposes without the written consent of King County, ownership of the park property reverts to King County. In addition, Des Moines is under a contractual obligation to King County to only use the park for "park and recreation" purposes unless King County consents to the inconsistent use and other land is substituted. This obligation applies to the entire park. It is likely these covenants were included, in part, because King County's contribution to the purchase of the park came from Forward Thrust bond proceeds.

The Office of the Prosecuting Attorney has indicated that it is their understanding that Des Moines Creek Park also was purchased by King County with Forward Thrust bond proceeds. The park was transferred to Des Moines in 1994. The deed to the City contains a similar covenant requiring that the park be maintained as public open space or a recreational facility or, if not, that other property be substituted. However, there is no requirement that King County approve the conversion before it occurs.

Factual and policy considerations affect the determination of whether any proposed use of a park, such as the proposed gravel conveyor belt, is consistent with park purposes. As a matter of general law: "*Park lands may be leased or licensed for uses which do not substantially interfere with use for park purposes, or for uses which are consistent with, and in furtherance of public use and enjoyment of the park.*" McQuillan, Municipal Corporations, Sec. 28.53. Determining this involves considering the extent of the impact of the proposed use on park uses, including the area, time, and the amount of disruption of enjoyment of the park.



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

P.O. Box 47600 • Olympia, Washington 98504-7600
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June 3, 2002

The Honorable Karen Keiser
Washington State Senator
405 John A Cherberg Building
PO Box 40433
Olympia, WA 98504-0433

The Honorable Erik Poulsen
Washington State Senator
406 Legislative Building
PO Box 40434
Olympia, WA 98504-0433

The Honorable Shay Schual-Berke
Washington State Representative
342 John L. O'Brien Building
PO Box 40600
Olympia, WA 98504-0600

The Honorable Joe McDermott
Washington State Representative
315 John L. O'Brien Building
PO Box 40600
Olympia, WA 98504-0600

The Honorable Dave Upthegrove
Washington State Representative
336 John L. O'Brien Building
PO Box 40600
Olympia, WA 98504-0600

The Honorable Toni Lysen
Washington State Representative
317 John L. O'Brien Building
PO Box 40600
Olympia, WA 98504-0600

Dear Senators and Representatives:

Re: Your letter of May 23, 2002 concerning potential sources of fill for the Port of Seattle's proposed Third Runway.

As you may be aware, the Department of Ecology is waiting for a decision from the Pollution Control Hearings Board on the 401 Water Quality Certification we issued to the Port for construction of the third runway. The issues you raise, in part, touch on some of the issues presently before the Board.

The September 21, 2001, 401 certification requires that any fill proposed for use in the third runway embankment must meet the fill criteria specified in the certification. The level set for the "drainage layer cover" is 7 mg/kg (mg/kg = parts per million). The level set for the remainder of the embankment is 20 mg/kg. In setting these levels, Ecology staff determined they were fully protective of surface and groundwater quality.

You have made a connection between the Tacoma smelter plume and potential sources of fill for the third runway and have concluded that the Port will not be allowed to use any material from a site that has arsenic contamination at levels that exceed MTCA Level A cleanup standards. This is an overly broad interpretation of the conditions that are in the 401 for the third runway project.



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The certification prohibits the use of contaminated fill and even further prohibits the Port from using contaminated soils that have been remediated. However, when looking at a source of potential fill, we need to look at the extent of contamination on a site. Contamination deposited by the Tacoma smelter plume is very shallow (only the top 6 to 18 inches) and can be easily removed thereby exposing clean, uncontaminated fill. This clean, uncontaminated fill may be considered as a potential source of fill by the Port so long as it meets fill criteria established in the 401. Contaminated soils that are separated from the clean soils underneath cannot be used as fill for the third runway even if the soil is later remediated.

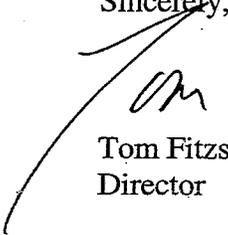
Let me remind you that the Port must demonstrate and document that all fill sources meet these fill criteria. If a site with surficial arsenic contamination is managed as described above, the Port is still required to demonstrate through sampling that the remaining soil meets the fill criteria established in the 401 certification. If the soils still contain arsenic or other constituents that exceed the levels set in the 401, the Port will not be able to use that fill source.

I am hopeful that this letter answers this issue for you. The distinctions described here are important to understanding that in fact a contradiction does not exist, neither in our approach nor in the testimony given by Ecology staff at the hearing.

Let me assure you that Ecology remains committed to its mission to protect the soil, air and water of Washington state. We believe that the 401 certification issued to the Port of Seattle fulfills this mission.

If you have further questions or still wish to meet on this issue, please let me know. I would be happy to get together with you at your convenience.

Sincerely,



Tom Fitzsimmons
Director

cc: Ray Hellwig, NWRO Regional Director
Ann Kenny, NWRO Senior Planner

File
Murphy, Deirdre

From: Parekh, Neil
Sent: Thursday, June 06, 2002 10:14 AM
To: Schual-Berke, Rep. Shay; Upthegrove, Rep. Dave
Cc: Girsch, Sue; Murphy, Deirdre
Subject: 33rd District Articles - Maury Island 6/6/02

The News Tribune 6/5/02 Gravel pit denied a free pass

Maury Island: King County rules that pit, dock expansion requests require permits

[Susan Gordon <mailto:susan.gordon@mail.tribnet.com>](mailto:susan.gordon@mail.tribnet.com); The News Tribune

King County officials have denied a request by operators of a Maury Island sand and gravel mine to bypass a shoreline development permit process.

Glacier Northwest will not be allowed to proceed with plans to expand its pit and enlarge a dock without both a substantial development permit and a conditional-use permit. Friday's decision followed four years of discussions between Glacier and county officials.

"The proposal does not demonstrate that this will not harm the shoreline environment," said Paula Adams, spokeswoman for the King County Department of Development and Environmental Services.

That's one of several reasons for denying requests from Glacier Northwest for exemptions from the permitting process, Adams said.

Foes of the pit expansion hailed the announcement.

"This decision is a great win for Vashon-Maury Island and demonstrates King County's strong leadership in the preservation of the quality of life in the near shore of Puget Sound," said Brenda Moore, president of Preserve Our Islands.

The nearly 1,000-member group has for more than five years lobbied against Glacier Northwest's effort to enlarge its Maury Island pit and dock.

The company has asked King County for authority to annually mine up to 7.5 million tons, or 5.5 million cubic yards, of sand and gravel from a 235-acre site on the eastern edge of Maury Island, which is north of Tacoma. Up to 193 acres would be mined over the next 11 to 50 years, according to the application.

The decision is the latest in a protracted regulatory process that so far has not weakened Glacier Northwest's commitment to its Maury Island expansion plans.

Ron Summers, Glacier Northwest vice president and general manager, said his company will proceed with the full-fledged shoreline development application, which already is completed. King County's decision wasn't a surprise, he said.

"We still think King County is interpreting their code wrong," he said. "We're evaluating whether we want to appeal.

"We have high confidence in the end. A good project always survives."

Besides Glacier's failure to show that its plans won't hurt the environment, Adams said, timing and size also influenced the decision to deny Glacier's request for a permit exemption.

Glacier's request to renovate the dock came too late, she said, since the dock has been in decline or unused for at least 20 years. Moreover, the proposed renovation would substantially increase the dock's area.

King County's refusal to exempt Glacier from the shoreline permit process followed a recent state Department of Fish and Wildlife decision permitting Glacier to upgrade and expand its dock.

Besides a county shoreline development permit, the company still needs a new lease on the ground beneath the dock. The state Department of Natural Resources has held up action on the lease until state officials decide the future of the Maury Island aquatic reserve.

The protected area was set up by former Lands Commissioner Jennifer Belcher, an avowed conservationist, as a way to safeguard vanishing fish habitat.

Susan Gordon <<mailto:susan.gordon@mail.tribnet.com>>: 253-597-8756

susan.gordon@mail.tribnet.com

CONVEYOR BELT

Murphy, Deirdre

From: Brett Fish [bzdiving@yahoo.com]
Sent: Friday, May 10, 2002 11:44 PM
To: beckett@nwlink.com
Cc: AdvancedI (E-mail)
Subject: Re: The conveyor belt brings us New
 Sierra Club, Becky Stanley

Hi Becky,

The response to the ads is turning out is an unexpected bonus for the fight against the conveyor belt and the third runway. These ads have generated some pretty upset people! I've had three calls about this so far from people I don't even know. They are **HOT!** They should be.

This begs the obvious, what part of **NO!** don't they understand?

The risks are minimal: if the Port's 401 permit stands (very unlikely) and if a Superior Court judge rules that the conveyor project is an essential public need (most unlikely) and rules that the City of Des Moines must sign as the "applicant" (more unlikely), there are about 12 hoops that insulate us from this stupidity. Any one item will likely stop this foolishness. It bears watching however to make sure it is a dead issue.

There certainly is value in new activists, they come from all walks of life, each with special talents, thoughts, points of view and connections. If the Wescott ads generate 100's-1,000's of new recruits against those projects, far be it from me to interfere.

I will forward this to the appropriate folks and thank you for the information.

Brett

Beckett Stanley <beckett@nwlink.com> wrote:

Brett,

I was forwarded an email from Faith Young and Kevin Gilbert. They live in DesMoines and have not been politically active in the past. They want to change this. They are mad about the conveyor belt television campaign. Mad = Energized (my new motto)! I think this series of emails is the complete set of communications I have had with them....

They sent the first message to the Sierra Club information, which is monitored by Roy, this is it - I put the emails in order of when I got them:

From: Faith Young
To: cascade.chapter@sierraclub.org
Sent: Saturday, May 04, 2002 9:48 AM
Subject: Des Moines Creek Park/Conveyer Belt

5/13/02

We are very concerned about recent publicity being put out the the Des Moines City Council and the company that is proposing to run a conveyor belt from Puget Sound through Des Moines Beach and Creek Parks up to Sea-Tac airport in support of the conveyor belt. Apparently this company is a multi-mining corporation who attempted to get legislation to exempt themselves from environmental laws relating to their operation. We believe that if this conveyer belt becomes reality, it would be extremely destructive to the ecosystem that exists along Des Moines creek. In addition to environmental issues, there are labor issues involved as well, all the truckers presently employed trucking in the fill dirt will all be out of work if the conveyor belt goes through. So far we have seen no negative publicity about it, just advertisements supporting it sponsored by the city council itself during prime time programming. We would like to get involved in some activities opposing the conveyor belt. Another thing that concerns us is this about-face on of some of the city council members' part on the 3rd runway issue. Des Moines is part of the Airport Communities Coalition which is vehemently opposed to construction of the 3rd runway at Sea-Tac, so supporting any sort of runway development runs contrary to the principle put forth by the ACC. Because of this, we would really like to have an investigation started on whether or not these particular city council member have all of a sudden developed a vested interest in the conveyor belt and/or the company that is proposing to operate it.

Aside from voting in presidential elections, we have been pretty much apolitical in the past. We have no idea how to go about implementing our ideas on this issue. We'd appreciate it if you could point us to whomever may be involved in these issues, or how to go about starting a group opposing the conveyer belt.

Thank you.

Faith Young
 Kevin Gilbert
 21015 - 12th Ave S
 Des Moines, WA 98198
 (206) 419-7471

-----Then I (becky) replied that
 we were having a meeting Wed. the 8th & they should come and meet us etc.
 and this is their response:

Dear Becky,
 Thank you for your reply. We would love to go to some of these meetings, but, alas, we work swing shift, 1:00pm -9:30pm Sun-Thu, so we are unable to attend the majority of such meetings. We have already been in contact with Dave Upthegrove. He said that he is working on legislation to help prevent the conveyor belt, but as far as the Des Moines City Council is concerned, he is unable to comment on that due to ethics issues. Yes, the company who is to build the conveyor belt is running TV ads during prime time. The way

in which they run the ad makes it appear that it is sponsored by the city of Des Moines itself - there is no mention of the company name, and it ends with "Contact the City of Des Moines City Council." It's very concerning, because one of the things they use as bait is the promise that after the conveyor belt has served its purpose, the Des Moines Creek trail will be extended all the way from S 200th St to Des Moines Beach Park. The trail extension itself is a good thing, but we don't believe it is worth the environmental cost of the conveyor belt. As far as the possible corruption going on in the City Council, we don't have enough details about that, we first of all need to find out which four members are ganging up together. I'd love to talk to you about this, although with our schedules, e-mail is actually the best way to contact us, but if you would prefer to talk by phone, please let us know when would be a good time to call you.

Thanks again,
Faith Young & Kevin Gilbert

-----Then I (becky) asked
permission to forward the info to you:...

-----Original Message-----

From: Faith Young [mailto:fnk4evr@attbi.com]

Sent: Tuesday, May 07, 2002 10:33 PM

To: beckett@nwlink.com

Subject: Re: Des Moines Conveyor Belt! The South King County Group of the Sierra Club

Yes, by all means, include whoever you think is necessary to put a stop to this! I already gave Dave Upthegrove permission to forward our names to the appropriate organizations. We had heard that the mayor was part of the group, and also the Pete's Towing guy, but can't remember the other two. We were also outraged that this group was able to oust that other councilmember, whose name I also can't remember, and also about holding an illegal city council meeting during which the other members left because they knew it was illegal, but the gang of four kept on going and actually voted on things anyway. (Can you tell how apolitical we have been?) This small-town politicking is the exact thing I was afraid of when our area got incorporated into Des Moines several years ago. I'd like to recall all four of them!

Friends of Des Moines Creek sounds familiar. Although we are not members, we did sign up as volunteer trail stewards with the Parks Department a few years ago, and try to keep the 13th Ave S trailhead as clean as possible when we have the time. We pick up any trash we see as we walk along the trail. Unfortunately, we haven't had time to walk the trail as often as we would like to in the last year or so.

We are also concerned about the SR-509 expansion, we have seen the markers at the north end of the trail. But since that part is in the city of Sea-Tac, we figure it is a lost cause since Sea-Tac is in bed with the Port of Seattle. Have you noticed all the road improvements they have done in the

past few years, as well as all the farmland being destroyed and warehouse-type building going up in its place? I'm sure the Port has rewarded them well for not being part of the ACCA (or whatever that coalition is called).

Faith & Kevin

Man did not weave the web of life, he is merely a strand in it. Whatever he does to the web he does to himself."Chief Sealth, 1854 "Great Wall of SeaTac" Miller Creek istory

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