

RESOLUTION NO. 2010-14

A RESOLUTION OF THE CITY OF BELLINGHAM IN OPPOSITION TO ALL REMOVAL ALTERNATIVES THAT NEGATIVELY IMPACT PLANNED USE OF LITTLE SQUALICUM PARK AND ARE NOT PROTECTIVE OF HUMAN HEALTH AND THE ENVIRONMENT AND IN SUPPORT OF ALTERNATIVE 2(C).

WHEREAS, the City of Bellingham (the "City") owns and/or leases from Whatcom County the property that comprises Little Squalicum Park; and

WHEREAS, the City operates Little Squalicum Park under that certain Lease by and between the City and Whatcom County dated February 18, 1992, for the purposes of developing, operating and maintaining a public park (the "Lease"); and

WHEREAS, the Lease requires the City to adopt Whatcom County's master plan for Little Squalicum Park, which is part of the Whatcom County Little Squalicum Park Site Management Plan; and

WHEREAS, Little Squalicum Park is listed in the Whatcom County Park and Recreation Open Space Plan (a component of Whatcom County's Comprehensive Plan) to be developed as a saltwater access park, a water trail park, a part of the multi-purpose trail system, shoreline trail system, and Coast Millennium Trail, and a scenic corridor site, all subject to a master plan with the City; and

WHEREAS, Little Squalicum Park is listed in the City's 2008 Parks and Recreation Open Space Plan (a component of the City's Comprehensive Plan) as open space, as a special use site, as part of the City-wide trail system, regional trail system and Coast Millennium Trail and as an access point to the waterfront; and

WHEREAS, restoration of Little Squalicum Creek as salmon spawning habitat is included as a Baywide Habitat Restoration/Protection Objective in the Final Habitat Restoration Documentation Report of the Bellingham Bay Demonstration Pilot Project; and

WHEREAS, the City adopted the Little Squalicum Creek Master Plan in January, 2010, after one year of public process, which included three public meetings, five stakeholder meetings, two Parks and Recreation Board meetings and one City Council meeting; and

WHEREAS, the Environmental Protection Agency ("EPA") was invited to all stakeholder and public meetings and attended at least four of those meetings; and

WHEREAS, the City communicated frequently with EPA regarding the City Master Plan and process; and

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 778-8270

WHEREAS, in 2003 EPA and the Oeser Company (“Oeser”), a wood treating company located adjacent to Little Squalicum Park, signed a Record of Decision (the “Oeser Site Record of Decision”) relating to contamination on the Oeser property caused by releases of chemicals associated with wood treating; and

WHEREAS, the Oeser Site Record of Decision determined that the discharge of chemicals to Little Squalicum Creek did not pose a threat to human health and the environment; and

WHEREAS, EPA has now determined that Oeser-related contamination potentially poses a risk to human health or the environment and will be cleaned up; and

WHEREAS, EPA has published a draft Engineering Evaluation/Cost Analysis (“EE/CA”) for public review and comment regarding removal alternatives for the contamination at Little Squalicum Park as part of a “non-time critical removal action” authorized under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), commonly known as Superfund; and

WHEREAS, the EE/CA identifies Oeser as the source of chemicals associated with wood-treating operations that have been found in and around the present and historical channels of Little Squalicum Creek; and

WHEREAS, EPA proposes several removal alternatives in the EE/CA and identifies Alternative 3 as the Preferred Alternative; and

WHEREAS, EPA’s Superfund Land Use Directive (“Land Use in the CERCLA Remedy Selection Process,” OSWER Directive No. 9355.7-04, May 1995) states that remedial action objectives should reflect the reasonably anticipated future land use or uses and EPA’s “The Reuse Assessments Directive” (OSWER 9355.7-06P) extends the applicability of the Superfund Land Use Directive to non-time-critical removal actions, such as the one at Little Squalicum Park; and

WHEREAS, Alternative 3 is incompatible with the Little Squalicum Park Master Plan and the Whatcom County Site Management Plan; and

WHEREAS, Alternative 3 includes a complete relocation of the creek channel which severely limits the City’s options for use of Little Squalicum Park, as planned use areas would be converted to wetlands; and

WHEREAS, the Little Squalicum Park Master Plan consolidates the wet critical area habitat and creek channel into one contiguous area that is compatible with the on-site hydrology and is naturally separated from the active area; and

WHEREAS, EPA’s proposed new creek alignment in Alternative 3 creates additional wetlands, buffers and critical areas that cannot be changed in the future due to environmental permitting restrictions and the physical constraints of the capped contamination areas; and

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 778-8270

WHEREAS, the creation of such wetlands will prohibit the City from developing active use areas such as trails and informal play areas; and

WHEREAS, Alternative 3 prohibits the City from maximizing the habitat potential and connectivity in Little Squalicum Park; and

WHEREAS, EPA's risk assessment study underestimates the risk to human health and the risk analysis is incomplete; and

WHEREAS, the decision to exclude consumption of blackberries and exposure to sediments from the human health risk evaluation is unjustified; and

WHEREAS, the decision to focus on older surface water data that doesn't consider seasonal variations is unjustified and underestimates risks; and

WHEREAS, the decision to selectively evaluate only some chemicals and some media in more detail while ignoring other data is unjustified; and

WHEREAS, Alternative 3 does not address the complete nature and extent of Oeser-related contamination and does not include a permanent removal of the contaminants of concern; and

WHEREAS, Alternative 3 contemplates that excavated soils and sediments from the lower, upper, and historical creek areas will be placed within the middle reach of the creek channel before capping; and

WHEREAS, these grossly contaminated materials should be excavated and removed from the site; and

WHEREAS, the selection of a non-permanent remedy requires monitoring of contaminants; and

WHEREAS, Alternative 3 does not include monitoring of contaminants left in place; and

WHEREAS, Alternative 3 includes a cap of clean estuary soil, which may not be sufficient to be protective of human health and the environment; and

WHEREAS, the City should not be responsible for and does not have funding for the mowing, weeding and tree removal of the capped contaminated areas mandated in Alternative 3; and

WHEREAS, Alternative 3 changes the on-site hydrology, which may lead to a re-routing of groundwater resulting in potential migration of the contaminants; and

WHEREAS, Alternative 3 does not include long-term monitoring of the cap's integrity and downgradient groundwater and surface water; and

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 778-8270

WHEREAS, both CERCLA and the The National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") require 5- year reviews for actions that leave residual contamination above cleanup levels; and

WHEREAS, as a matter of policy, EPA has determined that 5-year reviews are required for any "removal action that takes place at a site on the NPL [National Priorities List] that leaves hazardous substances, pollutants, or contaminants on site above levels that allow for unlimited use and unrestricted exposure and where no remedial action has or will take place." *See* EPA's Comprehensive Five-Year Review Guidance, at 1-3 (June 2001); and

WHEREAS, EPA guidance states that the "focus of the 5-year review should be review of monitoring data to evaluate whether the remedy continues to provide for adequate, risk-based protection of human health and the environment". *See* EPA's Guidance for Monitoring at Hazardous Waste Sites: Framework for Monitoring Plan Development and Implementation, at Intro-2 (January 2004); and

WHEREAS, the cost of Alternative 3 is severely underestimated, particularly regarding monitoring and maintenance and wetlands costs, rendering an accurate relative cost analysis with the other alternatives impossible; and

WHEREAS, Alternative 3, 4 and 5 are the least permanent solutions, requiring extensive long-term monitoring and institutional controls, and restrict use of Little Squalicum Park; and

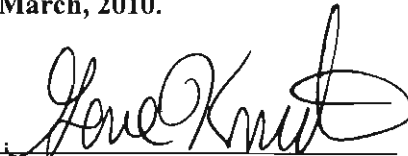
WHEREAS, with the addition of long-term monitoring and more soil/sediment removal from the upper creek area, Alternative 2(c) would best meet the criteria of effectiveness, implementability and cost; and

WHEREAS, Alternative 2(c) is the most cost effective alternative when considering the expense and time involved in maintaining the institutional controls and changes in onsite hydrology that are proposed with the other Alternatives.

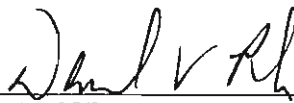
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BELLINGHAM: that the City opposes the adoption of Alternative 3 as the Preferred Alternative; and

BE IT FURTHER RESOLOVED: that with the addition of monitoring and more soil/sediment removal from the upper creek, the City supports the adoption of Alternative 2(c) as the Preferred Alternative.

PASSED BY COUNCIL THIS 29th DAY OF March, 2010.



COUNCIL PRESIDENT

APPROVED BY ME THIS 6th DAY OF April, 2010.


MAYOR

ATTEST: 
Finance Director

APPROVED AS TO FORM:


Office of the City Attorney