



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

MEMORANDUM

Date: December 7, 2020  
To: Morgan Smith, City Manager; Ellen Schroer, Deputy City Manager  
Cc: Heather Wright, PCD Director; Chris Wierzbicki, Public Works Director; Joe Levan, City Attorney  
From: David Greetham, Planning Manager  
Subject: Triangle Property – Current Status and Outstanding Issues

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The purpose of this memo is to describe the current status of the site commonly referred to as the Triangle Property, including outstanding issues relating to agency oversight of mining operations.

**Current Status**

The Triangle Property is located at the intersection of Bucklin Hill, Fletcher Bay, and Lynwood Center Roads. The City issued a Grade and Fill permit for a project at the site in 2008. In 2009 the project was determined to be of sufficient size to qualify as a mine reclamation site under state standards. Jurisdictional authority was subsequently transferred to the state Department of Natural Resources (DNR) as lead agency to oversee site operations under a state mining reclamation permit. Mining activities have occurred sporadically at the site, both before and subsequent to issuance of the 2008 Grade and Fill permit. Activity levels were relatively high during late 2019 and early 2020 as the site operator excavated sand materials for export to local projects and imported fill as part of on-going site reclamation. At various times over the years, nearby residents have raised concerns about the impacts mining operations may be having on the City’s drinking water aquifer, including local wells.

COBI has subsequently been in correspondence with DNR to seek clarity on their jurisdictional authority over on-going mining activities, including but not limited to enforcement of the original Grade and Fill Permit conditions relating to surface and groundwater protections.

**Agency Oversight**

**DNR**

In response to COBI’s request for further information, DNR responded with a letter dated October 7, 2020 describing the extent of their jurisdictional oversight (attached). In summary, DNR stated that the original project for which COBI issued a Grade and Fill permit has been completed, and therefore conditions specific to that project are not necessarily applicable to current site activities. DNR acknowledges their authority to oversee site operations under the state Mining Reclamation Permit

which has been in place since 2009. DNR's jurisdiction specifically relates to site operational and reclamation activities, including oversight of imported materials and site grading in compliance with standards for future site reclamation.

#### Ecology

DNR has clarified that jurisdictional authority over surface and groundwater protection measures lies with the Department of Ecology via the state Sand and Gravel General Permit that was issued for the site. Follow up discussion with Ecology's Water Quality staff confirmed that there is an active Sand and Gravel General Permit for the site (no. WAG994432). Ecology's primary focus is on surface water, however further coordination would occur with the State Dept. of Health should any surface water issues be observed that would potentially contribute to groundwater contamination. The permit holder has submitted the water quality reports that are required under the permit, and there have been no violations reported or investigated to date. Copies of the reports can be viewed by the public [at this link](#) (enter the permit number above), and selecting "monitoring reports."

#### Outstanding issues/questions

COBI has been assured by state agencies that the Reclamation and Sand And Gravel General Permits provide for the necessary oversight to ensure mining activities are within in acceptable standards for site operation/reclamation, including protection of surface and groundwater resources. However, COBI has requested further clarification from DNR with regard to the site operator's future plans, DNR's professional determination of the site's potential groundwater vulnerabilities, and when and on what basis DNR determined that the 2008 grade and fill project was deemed completed (attached e-mail from City Manager Morgan Smith to DNR representative Rian Skov dated 11/9/2020).

The response from DNR will assist COBI in determining whether adequate protections are in place to ensure current and future site operations are adequately protecting the City's water resources, and whether site operations are being conducted in compliance with applicable permit conditions.

**From:** Morgan Smith <msmith@bainbridgewa.gov>  
**Sent:** Monday, November 9, 2020 1:07 PM  
**To:** Skov, Rian (DNR <Rian.Skov@dnr.wa.gov>  
**Cc:** Joe Levan <jlevan@bainbridgewa.gov>; Gary Christensen <gchristensen@bainbridgewa.gov>; David Greetham <dgreetham@bainbridgewa.gov>; Chris Wierzbicki <cwierzbicki@bainbridgewa.gov>; Ellen Schroer <eschroer@bainbridgewa.gov>  
**Subject:** Follow-up questions on Bainbridge Island "Triangle Property"

Rian:

Thank you for the October 7 email and letter from DNR in response to the City's inquiry from May, 2020. I have reviewed with City staff and have a couple of follow-up requests to share at this time, with additional response likely to follow at a later time:

1. Per #2 below, on 3/13/2020, DNR provided with the City with a copy of the resource identification request letter DNR sent to the permit holder. Did the permit holder reply? If so, can you please share that response with the City.
2. Per #1 below, in your 3/1/32020 email, you indicated that DNR was still working on a the hydrogeology clarification letter for the Aspect report. Does DNR still expect to provide that information?
3. Per your 10/7/2020 letter, DNR states that "most of the report recommendations were specific to the Bucklin Hill project which has concluded [...]." Can you please share information about when and on what basis DNR determined that the Bucklin Hill project was deemed completed?

Thank you in advance for your consideration of these requests and ongoing assistance with this matter. Morgan



**Morgan Smith**

City Manager

ICMA-CM

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**From:** Morgan Smith  
**Sent:** Friday, February 28, 2020 4:34 PM  
**To:** [CASEY.HANELL@dnr.wa.gov](mailto:CASEY.HANELL@dnr.wa.gov)  
**Cc:** [rian.skov@dnr.wa.gov](mailto:rian.skov@dnr.wa.gov); Joe Levan <[jlevan@bainbridgewa.gov](mailto:jlevan@bainbridgewa.gov)>; Heather Wright <[hwright@bainbridgewa.gov](mailto:hwright@bainbridgewa.gov)>; David Greetham <[dgreetham@bainbridgewa.gov](mailto:dgreetham@bainbridgewa.gov)>; Chris Wierzbicki <[cwierzbicki@bainbridgewa.gov](mailto:cwierzbicki@bainbridgewa.gov)>  
**Subject:** Follow-up items: Feb. 25 phone call related to Triangle property

Casey:

Thank you again for the very productive and helpful discussion via phone earlier this week. I appreciate the work from DNR to help to complete our understanding of the issues related to this site, and the good level of partnership and collaboration from your team.

I wanted to capture a few follow-up's from our discussion on Tuesday. If there are other items you think it would be helpful to track moving forward, please let me know.

1. As a follow-up to our discussion on Feb. 25, can you please help to clarify what the Aspect report you referenced (dated approximately 2008 and related to additional hydrological requirements) indicates about the water resources at the site and the extent to which there may be vulnerabilities of those resources related to the activities at the site?
2. Rian indicated that he intends to request that the operator provide a report that details remaining capacity at the site, and plans for future activities. Once DNR has provided that request to the operator, can you please share a copy of this DNR request with the City?
3. As discussed, the City will develop a list of the SEPA conditions for which we would like DNR feedback on whether DNR believes these conditions apply to the current operations at the City. I expect to send that list to DNR by the end of next week.

Please let me know if there is additional information I can provide at this time, or other questions City staff can assist with. Thank you again for your assistance and response in this matter. Morgan



**Morgan Smith**

City Manager

ICMA-CM

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WASHINGTON STATE DEPT OF  
**NATURAL  
RESOURCES**

WASHINGTON GEOLOGICAL SURVEY  
1111 WASHINGTON ST SE  
MAIL STOP 47007  
OLYMPIA, WA 98504-7007

October 7, 2020

Morgan Smith  
City Manager - City of Bainbridge Island  
280 Madison Ave North  
Bainbridge Island, WA 98110

**RESPONSE TO CITY LETTER REGARDING SURFACE MINING RECLAMATION  
PERMIT #70-013120 (BUCKLIN HILL LYNNWOOD CENTER TRIANGLE)**

Dear Ms. Smith,

Thank you for your letter dated May 22, 2020 and your continued attention to this matter. It's important to clarify different jurisdictions in mine sites and where DNR's specific authority lies. The City requested confirmation from DNR regarding which of the original SEPA conditions contained within the report recommendations (Aspect Consulting 2007, report cited in 2008 SEPA MDNS Condition #1, issued by City of Bainbridge Island) that DNR believes apply to the current operations. While most of the report recommendations were specific to the Bucklin Hill project which has concluded, the overall goal of the recommendations addressed protection of the unconfined aquifer, establishment of stable slopes at final grades and stormwater control. These protections which would still apply to the active operation are currently addressed by permits issued by two State agencies (DNR for final grades and reclamation, and Ecology for groundwater protection and stormwater control). The approved reclamation plan addresses grades, backfill and vegetation requirements. Stormwater management at the mine (which includes surface discharges as well as infiltration) is under the jurisdiction of the Department of Ecology (Ecology) through the Sand and Gravel General permit.

DNR offers the following responses to your additional questions:

1. Perimeter Berm: Maintain a slightly raised berm around the external boundary to maintain all stormwater flow on site and allow direct infiltration of the natural soil zones that border the fill area. (Aspect, September 2007.)

Note and City Request: A key issue relates to avoidance of encroachment into the dedicated infiltration areas, as noted by DNR in its March 13, 2020 letter to Liden Land Development & Excavation. Please confirm whether DNR believes that the site operator has avoided and is continuing to avoid encroachment into the dedicated infiltration areas.

***DNR performed a review of historic aerial photos. There appears to have been some gradework performed in 2009 in one of the infiltration areas. This work is consistent with the reclamation plan (i.e., no backfill appears to have been placed over permeable sands in those areas). No future mining is planned for the infiltration areas.***

2. Fill material inspection: Twice weekly inspection of borrow pit during weeks the backfill material is being placed. This includes inspection for visible organic material greater than 6 inches in length or that comprises more than 2 percent of the volume. (Aspect, January 2008.)

Note and City Request: The City appreciates that DNR has provided the City with a copy of the site operator's Clean Soils Acceptance Policy. Please confirm whether DNR considers the above condition as still applicable.

***The requirement for continual fill material monitoring was specific to the Bucklin Hill project, which has been completed. During that project for which the mitigation was written, fill material would have been coming into the site at a normal rate rather than the market-driven pace at which the mine operates now. Ongoing monitoring of fill material is performed during DNR site inspections, and imported fill materials are documented in the clean soil program that was recently submitted to and accepted by DNR to improve documentation of fill material. Weekly or bi-monthly monitoring is not an effective means of monitoring at this point given the sporadic rate of imported materials. The clean soils policy addresses import commensurate with industry standards and provides protection for the mine and surrounding areas/aquifers.***

3. Stormwater Management: The stormwater management plan was summarized in the March 19, 2008 report entitled, Stormwater Drainage and Infiltration Plan. The report contains a 10-step plan to manage drainage and infiltration on site. (Aspect, January 2008 and March 2008.)

Note and City Request: Please confirm whether DNR believes that the 10-step drainage and infiltration plan has been enforced by DNR, and whether the plan is being monitored and complied with currently.

***Operational Stormwater management is under the jurisdiction of the Department of Ecology (Ecology) through the sand and gravel general permit. DNR's authority over stormwater control comes at final reclamation when mining and reclamation are complete. Please contact Ecology directly for input regarding stormwater management pre-reclamation.***

Morgan Smith  
10/7/2020  
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4. Groundwater Monitoring: Groundwater sampling pre-and post-replacement of backfill material. (Aspect, January 2008 and September 2008.)

Note and City Request: The groundwater monitoring plan first proposed in the January 2008 report is further addressed in the September 4, 2008 report entitled, Additional Hydrogeologic Information requirements Specified in SM-8A. The plan includes proposed monitoring of two nearby wells (p. 11), including sampling on a quarterly basis during mining and backfill, and on a biannual basis for one year following project completion. It appears that baseline information was obtained, but it is unclear if the monitoring has continued. Please confirm whether such baseline information was obtained by DNR, and whether monitoring has continued and is being reported to DNR.

***DNR understands that groundwater monitoring has occurred in the past, but has not occurred continuously during mining and backfill. Per the Aspect consulting report, groundwater monitoring results were to be reported to Rich Passage, LLC, not DNR. DNR does not have regulatory authority over groundwater at surface mines (usage or contamination, both are regulated by Ecology) per RCW 78.44.050<sup>1</sup>: Please contact Ecology directly for input regarding groundwater monitoring.***

It is DNR's understanding that Ecology has hired and assigned an inspector for Kitsap County who should be able to provide responses to concerns regarding stormwater discharge and infiltration on the site under the sand and gravel general permit. DNR will continue to inspect the site for compliance with RCW 78.44 and the approved reclamation plan.

If you have any questions please feel free to contact me by calling 360-902-1433.

Sincerely,



Rian Skov  
Surface Mine Reclamation Program  
Washington Geological Survey

Enclosures: (0)

c: File #70-013120

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<sup>1</sup> "...This chapter shall not alter or preempt any provisions of the state water allocation and use laws (chapters [90.03](#) and [90.44](#) RCW), the state water pollution control laws (chapter [90.48](#) RCW), the state fish and wildlife laws (Title [77](#) RCW), state noise laws or air quality laws (Title [70](#) RCW), shoreline management (chapter [90.58](#) RCW), the state environmental policy act (chapter [43.21C](#) RCW), state growth management (chapter [36.70A](#) RCW), state drinking water laws (chapters [43.20](#) and [70.119A](#) RCW), or any other state statutes."



May 22, 2020

Rian Skov LG, LEG  
Chief Reclamation Geologist  
Washington Geological Survey  
Washington Department of Natural Resources  
1111 Washington St. SE  
Mail Stop 47007  
Olympia, WA 98504-7007  
(sent via email: [rian.skov@dnr.wa.gov](mailto:rian.skov@dnr.wa.gov))

**Re: SEPA conditions, DNR Permit No. 70-013120, Liden Land Development & Excavation, Inc.**

Dear Mr. Skov;

Thank you and DNR staff for participating in the telephone conference on February 25, 2020, with the Mayor and City staff regarding the "Triangle Property" on Bainbridge Island, currently operated by Liden Land Development and Excavation, Inc. As part of the follow-up related to that meeting, the City indicated that it would be providing to DNR a list of SEPA conditions about which the City is concerned from a compliance perspective. The following is that list. The City's follow-up in this regard has been delayed due to the COVID-19 emergency situation, which has taken a priority over other City business.

The list and descriptions below are based on the Mitigated Determination of Nonsignificance ("MDNS") that the City published on April 16, 2008. As part of that SEPA determination, the City conditioned the permit on compliance with several conditions, including SEPA mitigating Condition No. 1 which states:

*All construction activities shall be in accordance with the approved SWPPP and grading plans, and the recommendations of the geotechnical evaluation by Aspect Consultants date stamped September 14, 2007 and the supplemental information date stamped January 4, 2008, March 19, 2008, and March 28, 2008.*

As a general matter regarding what the City is requesting, the cited reports in the MDNS reflect a set of recommendations by Aspect Consultants that was refined through the report process. The City requests confirmation from DNR regarding which of the original SEPA conditions contained within the report recommendations that DNR believes apply to the current operations.



Additionally and more specifically, the following report recommendations are of primary interest to the City at this time:

1. **Perimeter Berm:** Maintain a slightly raised berm around the external boundary to maintain all stormwater flow on site and allow direct infiltration of the natural soil zones that border the fill area. (Aspect, September 2007.)

Note and City Request: A key issue relates to avoidance of encroachment into the dedicated infiltration areas, as noted by DNR in its March 13, 2020 letter to Liden Land Development & Excavation. Please confirm whether DNR believes that the site operator has avoided and is continuing to avoid encroachment into the dedicated infiltration areas.

2. **Fill material inspection:** Twice weekly inspection of borrow pit during weeks the backfill material is being placed. This includes inspection for visible organic material greater than 6 inches in length or that comprises more than 2 percent of the volume. (Aspect, January 2008.)

Note and City Request: The City appreciates that DNR has provided the City with a copy of the site operator's Clean Soils Acceptance Policy. Please confirm whether DNR considers the above condition as still applicable.

3. **Stormwater Management:** The stormwater management plan was summarized in the March 19, 2008 report entitled, *Stormwater Drainage and Infiltration Plan*. The report contains a 10-step plan to manage drainage and infiltration on site. (Aspect, January 2008 and March 2008.)

Note and City Request: Please confirm whether DNR believes that the 10-step drainage and infiltration plan has been enforced by DNR, and whether the plan is being monitored and complied with currently.

4. **Groundwater Monitoring:** Groundwater sampling pre-and post-replacement of backfill material. (Aspect, January 2008 and September 2008.)

Note and City Request: The groundwater monitoring plan first proposed in the January 2008 report is further addressed in the September 4, 2008 report entitled, *Additional Hydrogeologic Information requirements Specified in SM-8A*. The plan includes proposed monitoring of two nearby wells (p. 11), including sampling on a quarterly basis during mining and backfill, and on a biannual basis for one year following project completion. It appears that baseline information was obtained, but it is unclear if the monitoring has continued. Please confirm whether such



baseline information was obtained by DNR, and whether monitoring has continued and is being reported to DNR.

The City is seeking DNR's feedback and responses regarding the above mitigation measures. Should you have any questions about what is above described, please contact Planning Manager David Greetham at 206.780.3765 or [dgreetham@bainbridgewa.gov](mailto:dgreetham@bainbridgewa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Morgan Smith', is written over a light blue horizontal line.

Morgan Smith, City Manager

Cc: Heather Wright, Planning Director  
David Greetham, Planning Manager  
Chris Wierzbicki, Public Works Director  
Joe Levan, City Attorney

