



BRICKLIN & NEWMAN LLP
lawyers working for the environment

Reply to: Seattle Office

April 30, 2018

King County Council
516 Third Avenue, Room 1200
Seattle, WA 98104

Re: Ordinance 18611, Moratorium on Industrial Development in Close Proximity to
the Cedar River

Dear Council Members:

I am writing on behalf of Citizens to Stop SR 169 Asphalt Plant with respect to the King County Council's moratorium on the acceptance of applications for development of rural industrial uses in close proximity to the Cedar River that was adopted in Ordinance 18611. We respectfully request that the Council extend the moratorium for an additional six months as authorized by RCW 36.70A.390.

I have heard that claims have been made by the Council members that the County's "hands are tied" regarding the construction and operation of a new Asphalt Facility on property now owned by Lakeside Industries (18825 SE Renton-Maple Valley Road - SR 169) because the property is zoned Industrial and an asphalt facility is a permitted use on that site under the County's Zoning Code. That couldn't be further from the truth. The King County Council is a legislative body that is empowered to dictate policy via amendments to the code and to the Comprehensive Plan - your hands are not tied. You have the power to extend the moratorium and you have the power to adopt new policy to protect the public health and welfare in the next six months. If the Council disregards this unique opportunity and instead passively allows the moratorium to expire, the Council will be sending a clear message to multiple stakeholders, rural residents, and entities such as King County Water District 90 - "your concerns don't matter to us."

A. Citizens to Stop SR 169 Asphalt Plant is an enormous community of residents who will be severely and adversely impacted by the new proposed industrial use.

Citizens to Stop SR 169 Asphalt Plant is a group of concerned citizens that primarily reside along the SR 169 corridor. They include not only unincorporated area residents, but also expand into the incorporated areas of Renton, Maple Valley and others. Lakeside Industries intends to build an asphalt plant in the Maple Valley Heights neighborhood. The site is directly on SR 169 and literally a stone's throw away from the Cedar River. There can be no dispute that an asphalt plant at this location would have devastating impacts to both the environment and the rural Maple Valley Heights community.

B. The importance of extending the moratorium cannot be overstated.

The King County Council is currently faced with a critical decision that must be made immediately. The Council must decide whether the moratorium in Ordinance 18611 should be allowed to expire on May 13, 2018 or whether the moratorium should be extended for an additional six months. This decision will have significant consequences to public health, the community, and the environment in King County.

As I illustrate below, the answer to that question is obvious - there can be no doubt that, based on all of the information that has been provided to the Council to date, the moratorium should be extended for an additional six months as authorized by RCW 36.70A.390.

The importance of extending the moratorium cannot be overstated. Allowing the moratorium to expire on May 14, 2018 could have irreversible, devastating, and costly consequences. If the moratorium expires, the Council would be essentially inviting Lakeside Industries to lock in vested rights by filing a building permit for the asphalt plant proposal under the laws and regulations that are currently in effect. If the Council later decides to adopt any new amendments to the Comprehensive Plan or the King County Code to protect the community, those changes would be moot with respect to the Lakeside Industries proposal for an asphalt plant if it is allowed to vest to the laws in effect now. If the Council allows the moratorium to expire, the Council would be giving up an opportunity to adopt much needed legislation or comprehensive plan amendments to address the specific public health and environmental issues that are presented by the Lakeside Industries proposal.

On the other hand, if the County Council extends the moratorium for an additional six months, the Council is simply buying more time. The Council would not be locking in any decisions on the Lakeside Industries project one way or the other. With an extension, the Council simply gives itself more time to review materials, supplement analysis, and develop appropriate policy and legislation if necessary - be it broad or narrow - that would protect the public health and environment and that would be appropriate for this rural area.

C. Allowing the moratorium to expire would also constitute a dismissal and disregard of issues presented by King County residents, Water District No. 90, and others.

If the County Council allows the moratorium to lapse, the Council would be essentially disregarding and dismissing the interests of multiple stakeholders, members of the public, and entities that have expressed serious concerns and presented valid issues associated with this proposal.

That an extension is warranted is evidenced by the recent comments submitted by the Cedar River Council on April 17, 2018, the comments submitted by the Greater Maple Valley Unincorporated Area Council (GMVUAC) on February 28, 2018, the letter from King County Water District No. 90 to Councilmember Dunn (March 14, 2018), and multitude of other letters and phone calls from the public. These constituents are imploring the Council to demonstrate respect for the public health concerns and the rural community in Maple Valley. Their information deserves a closer look and demands more time for review.

It is no small thing that the King County Water District No. 90 passed a resolution strongly objecting to industrial uses in the wellfield discharge area. The resolution requests that King County permanently ban or otherwise limit industrial use along the Cedar River and requests that the County Council take action.

Passively allowing the moratorium expire on May 13, 2018 would amount to the Council telling the Water District, the residents, and other stakeholders that their concerns simply don't matter and the Council doesn't have any interest in looking closely at these issues.

D. A decision to allow the moratorium to expire would be premature because the information and analysis that was provided by DPER to the Council is inadequate, incorrect, and incomplete.

A decision to allow the moratorium to expire would be premature because the information that the County Council has from the King County Department of Permitting and Environmental Review (DPER) at this time is inadequate, incorrect, and incomplete. More work needs to be done before final decisions are made by the Council.

As the County Council stated in Ordinance 18611, a close look at the situation is warranted. The properties along SR 169 that are zoned industrial are in close proximity, and in one case within the shoreline jurisdiction of, the Cedar River. Not only is the Cedar River a source of drinking water for 1.4 million people in the greater Seattle area, but the Cedar River provides aquatic habitat for chinook salmon, coho salmon, sockeye salmon, kokanee, winter steelhead, bull trout, and coastal cutthroat. Furthermore, residential properties surrounding these industrial parcels rely on groundwater for potable water resources.

Based on these and other issues presented in Section 1 of Ordinance 18611, the County Council recognized a need to establish a moratorium on acceptance of applications for development of rural industrial uses in close proximity to the Cedar River for a six-month period in order to investigate whether additional regulation is necessary. The Ordinance stated:

(b) During the moratorium, the Executive shall study the rural industrial uses permitted in close proximity to the Cedar River, and:
...

(2) Evaluation of whether the land use designation and zoning for identified rural industrial land use parcels is still appropriate and consistent with applicable laws, regulations, and adopted policies and adequately addresses the impacts and concerns identified in Section 1 of this Ordinance;

(3) Evaluation of whether the permitted uses in the industrial zone adequately address the impacts and concerns identified in Section 1 of this Ordinance; and

- (4) Identification of development regulation or map changes, or both, that would address the impacts and concerns identified in Section 1 of this Ordinance.

Ordinance 18611.

DPER's Cedar River Sites Industrial Moratorium Study in response to Ordinance 18611 did not adequately evaluate these issues, and in fact, produced a misleading report.

Significant information was completely omitted from the DPER report. As mentioned above, the King County Water District No. 90 passed a resolution strongly objecting to industrial uses in the wellfield discharge area. In a letter to DPER dated April 11, 2018, Councilmember Dunn noted that the study prepared by DPER and transmitted to the Council did not adequately address the concerns raised by the Water District's letter and resolution, including the potential impacts of contamination from this type of use on the District's wellfield. Councilmember Dunn requested that DPER respond to concerns raised by the King County Water District No. 90 and provide a supplemental study to the Council that specifically addresses their concerns. Considering that this letter from Councilmember Dunn was written just two weeks ago, I presume that DPER has not yet prepared its supplemental study and transmitted it to the Council yet. It's clear that the stakeholders, members of the public, and entities that have expressed serious concerns and presented valid issues associated with this proposal have not had a chance to review that study and respond to it. As Council member Dunn implied in his letter, an extension to the moratorium is appropriate to ensure that this issue receives proper review

The DPER's report did not contain a meaningful analysis of the issues presented and that omission led to incorrect conclusions. For example, the DPER report simply recited Comprehensive Plan policies and did not actually discuss whether the land use designation and zoning on the industrial sites is still appropriate and consistent with those Comprehensive Plan Policies. DPER's report also just simply stated that industrial use is a permitted use on the site with no analysis of whether that is still appropriate. In sharp contrast to the DPER report, the Greater Maple Valley Unincorporated Area Council (GMVUAC) comments that were provided to the County Council (and DPER) provided a far more accurate, thorough and relevant evaluation of these issues. GMVUAC demonstrated in no uncertain terms that the land use designation and zoning is *not* still appropriate and consistent with all of those policies. *See* Letter from GMVUAC to King County Council (Feb. 28, 2018); GMVUAC Public Comment on Grading Permit Application and SEPA Checklist for Asphalt Facility (Dec. 5, 2017); GMVUAC Written Testimony to King County Council for Public Hearing on Ordinance 18611 (Jan. 8, 2018). GMVUAC also proved that it's plainly evident that the industrial use *should not continue* to be a permitted use at the Lakeside Industries site. *Id.*

As GMVUAC explains in its letters, among other things, the construction and operation of a new asphalt facility on the SR 169 site is expressly prohibited by The 2016 King County Comprehensive Plan Policy R-513. Furthermore, as GMVUAC explains, the current zoning on that site constitutes spot zoning that is inconsistent with the overall goals and policies expressed by King County for this rural area.

Similarly, the DPER discussion on critical areas and environmental regulation and shoreline designation, critical aquifer recharge areas and the like contain generalities about the limitations that those provisions contain, but very little meaningful analysis of the specific issues presented in Section 1 of Ordinance 18611 and whether those limitations, in a specific sense, will adequately address those concerns. While there are some references to review of the site with respect to the critical aquifer recharge area and the critical areas, it is stated that those reviews are “very preliminary.” This discussion does not rise to the level requested by the County Council for determination of whether amendments to the Code would be necessary in this situation. GMVUAC, once again, dove into these issues and has demonstrated that the current code is inadequate to address the impacts of intensive industrial uses in the rural areas. *See* Letter from GMVUAC to King County Council (Feb. 28, 2018) at 3-4.

E Conclusion

In sum, and for the reasons stated above, there can be no doubt the Council should extend the moratorium for an additional six months as authorized by RCW 36.70A.390. We hope you agree. Thank you for consideration of my input on this important issue.

Very truly yours,

BRICKLIN & NEWMAN, LLP



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