

King County Department of Local Services

Permitting Division

Issues and Potential Solutions — Peter Rimbos, GMVUAC

Case Study: Reserve Silica — Peter Rimbos, GMVUAC

Greg Wingard, GRC; Tim O'Brien, EPCA; and Michael Brathovde, Volunteer Land Steward for Forterra and Ravensdale Resident

Road Services Division

A Decade of Definition, Analysis, and Commitment — Susan Harvey, GMVUAC

Future Funding for Unincorporated Area Roads — Mike Birdsall, GMVUAC

GMVUAC Monthly Meeting

October 7, 2024

Rural Lands Protection Addressed at Every Level of Planning

WA State Growth Management Act (GMA)

- RCW 36.70A.11 Defines rural lands
- RCW 36.70A.020 Includes planning goals for rural lands
- RCW 36.70A.070 Defines the Rural element for Comprehensive plans.

PSRC VISION 2050 Multi-County Planning Policies (MPPs)

- RGS 13 *“... avoid ... conversion of rural land into commercial uses;”*
- RGS 14 *“Manage and reduce rural growth rates over time ...;”*
- DP-37 *“Ensure ... development ... is rural in character;”*
- PS-5 *“Do not provide urban services in rural areas.”*

KC Countywide Planning Policies (CPPs)

- DP-46 *“... Growth levels should not create pressure for conversion of nearby Rural or Natural Resource lands;”*
- DP-47 *“Limit growth in the Rural Area to prevent sprawl and the overburdening of rural services...;”*
- DP-52 *“... limit new nonresidential uses located in the Rural Area to those ... demonstrated to serve the Rural Area.”*

KCCP Chapter 3 – Policies (along with accompanying KC Code)

- Introd. *“... designating Rural Area lands to limit development and prevent sprawl, ... permitting land uses that are supportive of and compatible with ... rural character ... , ... indicating the population densities that are appropriate for the Rural Area.”*
... recogniz(ing) a profound difference between the nature and character of ... (the) rural (area) as compared to ... urban areas....”
- R-201 *“... maintain ... character of (the) Rural Area. ... development patterns that are considered rural, historical or traditional and do not encourage urban growth or create pressure for urban facilities and service. ... Traditional rural land uses of a size and scale that blend with historic rural development; and Rural uses that do not include primarily urban-serving facilities;”*
- R-202 *“The Rural Area geography ... shall include areas that are rural in character and that...have significant environmental constraints that make the area generally unsuitable for ... urban development;”*
- R-203 *The Rural Area geography is considered to be permanent ...;”*
- R-324 *“Nonresidential uses in the Rural Area shall be limited to those that: ... Require location in a Rural Area.”*

KC DLS-Permitting Division Enforcement Issues/Solutions

Issue—There appears to be an ingrained culture of ignoring Code and Policy:

Largely ignores Rule of Law on Rural lands (A, F, M, and RA zones).

“*Papers over*” violations by issuing *new* permits, generating revenue to keep Division’s Permitting section solvent, and thus creating an incentive to keep violating Code, Conditions, Policies, etc.

Doesn’t prioritize permits where past violations have caused greatest potential damage.

Abdicates monitoring responsibility by using a *Complaint* model, then doesn’t effectively followup, thus cementing a *Non-Enforcement* model—the will to uphold and enforce codes appears lacking in County leadership.

Treats person who files a complaint as a “*complainant*,” not a *customer*.

Solutions—Real progress can be made now *without* new legislation or huge budget increases:

Launch a new Executive-led initiative to address long-term, ingrained issues.

Use *existing* Code Enforcement tools in KC Code, e.g.:

KC TITLE 23.01.010B: “*It is the intention of the county to pursue code compliance actively and vigorously in order to protect the health, safety and welfare of the general public....*”

KC TITLE 23.01.020: “*...While warnings and voluntary compliance are desirable as a first step, enforcement and civil penalties should be used for remedial purposes as needed to assure and effect code compliance. Abatement or remediation should be pursued when appropriate and feasible....*”

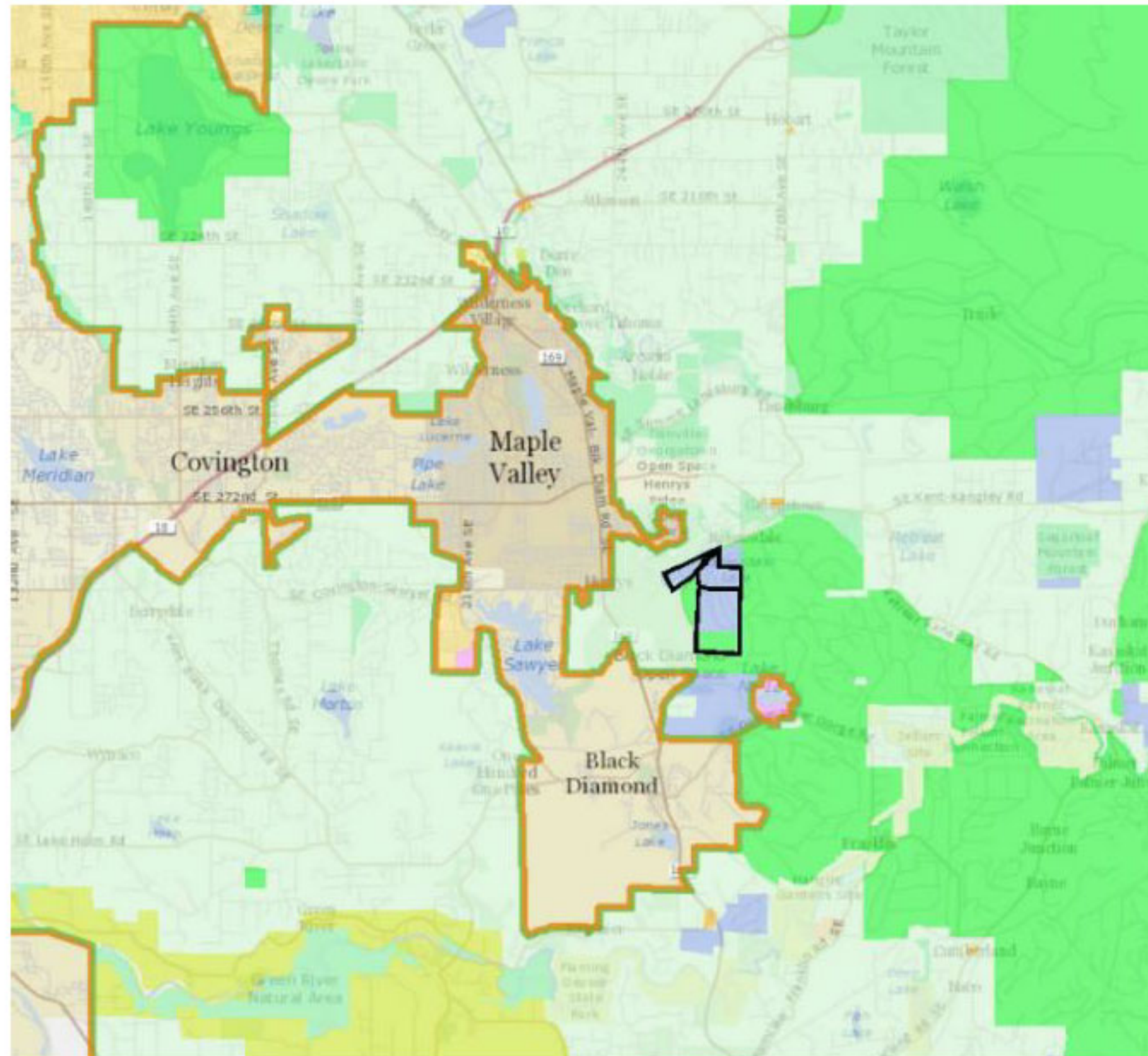
This leads to our Case Study subject of **Reserve Silica**, which, for nearly two decades, has been conducting “*reclamation*” under the auspices of a Grading Permit with no terms or conditions — an abject failure of KC’s responsibilities.

CASE STUDY:

Reserve Silica—Unincorporated Area (near Ravensdale)

Maps of Docket Area (parcels outlined in black)

Vicinity:



Location: ~4 mi from MV Fire Station.

Total footprint: 377 ac.

Old Coal & Sand mine; mining completed in 2007.

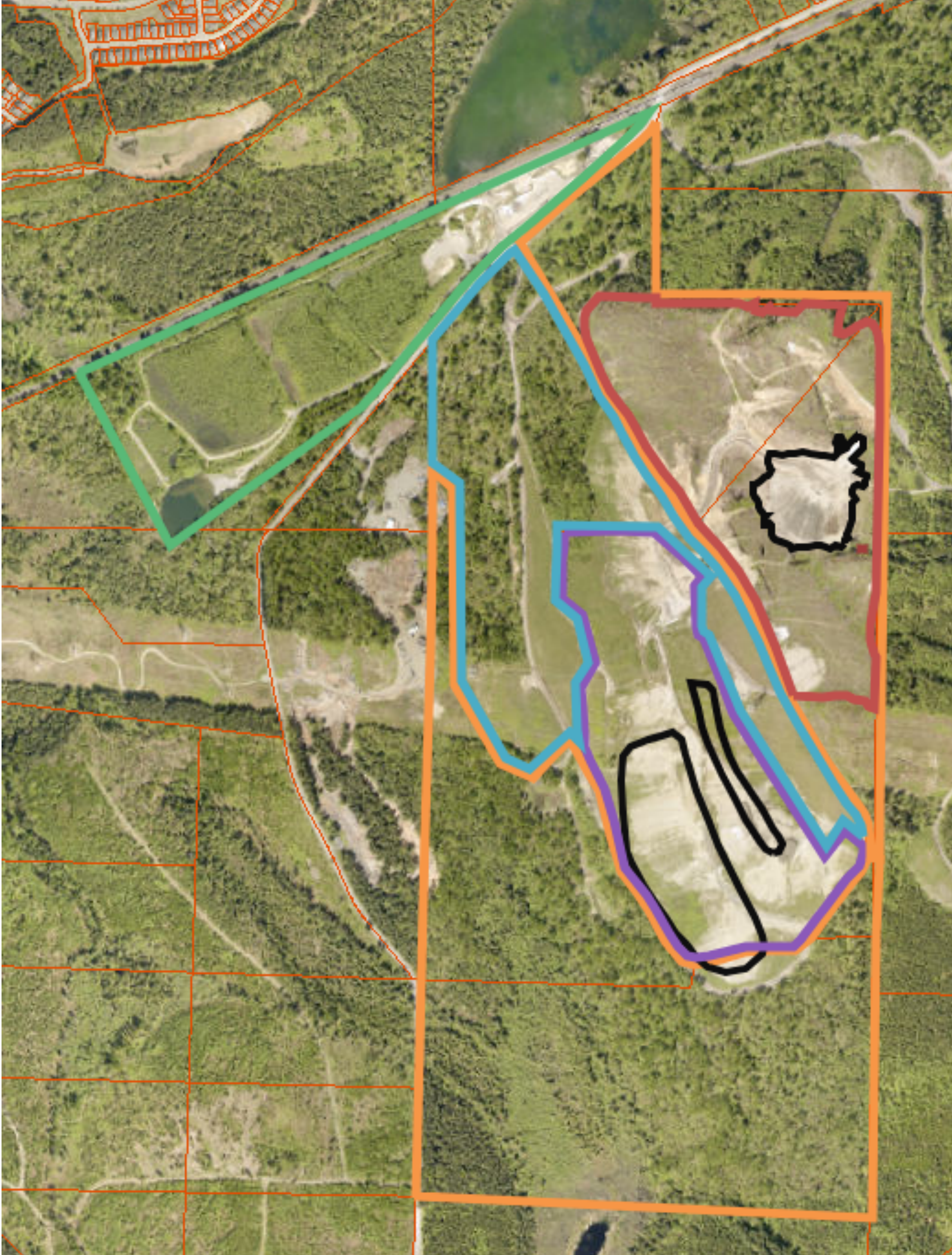
Partially filled with ~ 350,000 tons of caustic Cement Kiln Dust between 1979 and 1989.

Since 2016 under an *Agreed Order* under State Model Toxics Control Act under authority of State Dept. of Ecology.

Dumped ~3,300 truckloads (~50,000 cu yd) of imported fill on illegal ~60-ac clearcut including ~500 cu yd of contaminated ASARCO wastes.

Per KC Code, reclamation to restore ground to pre-mining topography and forestry land use.

Reserve Silica Property Layout



Green – Plant Site/Settling Ponds (under MTCA cleanup by RS) - 53 ac

Blue – CKD-related sites (under MTCA cleanup directed by DOE) - 67 ac

Purple – Inert Waste Sites – 52 ac (two included **Black** areas are the 17 ac of Upper & Lower pits with fill not yet completed as of 2014)

Orange – to be reserved for Forestry – 206 ac (includes 60-ac unpermitted clearcut)

Red – unpermitted clearcut within orange – 60 ac (includes 13-ac unpermitted dumping (black) - other dumping visible on imagery)

2023 Imagery



April 2023

Clearcut

In late 2021/early 2022, Reserve Silica clearcut ~60-ac of mature timber in the NE corner of its property—without permits. This area had never been surface-mined, and the Reclamation Plan had called for this to be retained in Forest. When confronted, Reserve Silica claimed this was being converted from Forestry to a “*non-forest land use.*”

This photo is taken mid-way along the east border of the clearcut, looking NW. The clearcut continues over the horizon to the left of the visible trees (on Erickson’s property). The clearcut continues southward, off the left of the photo, for a distance almost equal to the distance from the photo point to the remaining timber on the horizon.



April 2023

Unpermitted Dumping on Unpermitted Clearcut

Same general photo point as previous, but looking SW.

There was ~50,000 cu yd (~3,300 truckloads) of unpermitted dumping on the clearcut site (covering ~13 ac of the ~60-ac clearcut). The natural contour under most of this fill was gently-sloped to flat.

This fill would include ~500 cu yd (33 truckloads) of ASARCO-contaminated fill about a month after photo was taken.



Summer 2024

Unpermitted Road Upgrades on Unpermitted Clearcut

Major road improvements have occurred to the main road through the clearcut during 2024. The purpose of this substantial road upgrade is unclear, given this area was to be retained as forest.

Reserve Silica – Major Reclamation Concerns & Recommendations

- Imported far more fill material than is permitted under the KC Clearing & Grading Permit.

SHUT DOWN (immediately) all fill import operations until licensed survey results demonstrate and quantify any additional volumes needed to comply with reclamation needs, and Reserve Silica develops and DLS-P accepts plan/timeline for completing mine reclamation.

REQUIRE regular reporting of dumped volumes thereafter.

Reserve Silica—Major Reclamation Concerns & Recommendations (cont'd)

- Violated the essence of the KC Clearing & Grading Permit and Reclamation Plan.

BAN (immediately) further dumping on clearcut site.

REQUIRE removal/abandonment of new roads constructed/upgraded.

REQUIRE topsoiling and forest tree planting of clearcut site (*“filled”* and unfilled).

ASSESS financial penalties and required mitigation.

Reserve Silica – Major Reclamation Concerns & Recommendations (cont'd)

- DLS-P allowed major operating expansions beyond the KC C&G permit and reclamation plan, without any public notification, review or comment.

RE-EMPHASIZE mandate to complete filling Upper & Lower sand mining pits (17-ac) to pre-mining topography; reclaim back to forestry.

PROVIDE no permissions to utilize other portions for profit-generating disposal of unwanted fill, nor for any other non-forestry land use.

ADMINISTRATIVE ACTIONS:

DEVELOP automated Party of Record notification system (e.g., WA DNR)

POST permit-related records to DLS-P website

ACKNOWLEDGE receipt of Public Comments/Complaints; post to website

PROVIDE response to Public submissions upon request

Reserve Silica – Major Reclamation Concerns & Recommendations (cont'd)

- DLS-P enforcement of KC C&G Permit has been virtually non-existent, only motivating even more violations.

DEVELOP comprehensive Resolution Plan, including restrictions, permit revisions, financial penalties and required mitigation measures to address unpermitted clearcut, dumping, ASARCO dumping, and fill overfilling.

SEEK change to KC Council funding mandate for DLS-P, Permitting Section, to one not solely based on permit fees (include budget funding and penalty fees).

CHANGE DLS-P internal culture to where public comment and complaint-filers are viewed as valid and worthwhile part of the regulatory process – the people of KC are the ultimate “*customers.*”

PROVIDE Staff for DLS-P, Code Enforcement Section, to where it can effectively regulate large, industrial, profit-oriented operators; including productively using the public comment/complaint process as an integral part of that regulatory mandate.

Reserve Silica—Enforcement ?

Federal, state and county potential enforcement components:

Federal — Environmental Protection Agency (EPA), as waste was dug up from a Superfund site, in violations of specific deed restrictions to prevent that from happening. As a result, EPA can fine or take other action against the company that owned and transported the waste as well as RS who accepted the waste and disposed of it.

State — Dept. of Ecology (DOE), can issue fines or take other actions against the same parties, and have additional potential options related to RS that EPA can't pursue.

King County — DLS-P, as well as Public Health Seattle-KC, have a wide range of enforcement options, as they are the primary permitting authority related to RS specifically. It is clear RS violated permits related to both the permitting arm of KC, as well as the public health arm who has primary jurisdiction over landfill matters in KC.

Neither EPA nor the King County have provided specific information as to timelines for making enforcement determinations.

We characterize DLS-P's position on enforcement here as approaching negligence. It appears from available records, including its communications with Reserve Silica, its intent was to shove this under the rug. Without due diligence from nearby stewards in Ravensdale, who had legal access to a viewpoint, the Public would not have known this was going on until EPA and DOE stepped in.

We remain extremely disturbed with lack of any kind of transparency by KC despite many communications.

Reserve Silica—Proposed Resolution Plan

We believe DLS-P needs to:

- I. Identify all the *issues and potential violations*.
- II. Identify *any and all guilty parties*.
- III. Develop a comprehensive *Resolution Plan*.
- IV. Require identified guilty parties to *rectify any and all violations*.
- V. Assess appropriate *finer* accordingly.
- VI. Convene a Public Meeting to *inform* the community.

Why has DLS-P ignored in-person witness/photographic evidence of potential violations and did not act until contacted by EPA and DOE—resulting in a *black-eye* for KC?

Why do our many, many questions remain unanswered—the Public deserves the right to know?

Where is the equity when large commercial, industrial operators avoid enforcement, while residential owners often do not?

APPENDIX

Major Reclamation Concerns
GMVUAC / KC DLS-P Communications
Other ???

Reserve Silica—Major Concerns on Reclamation

- Already imported far more fill material than is permitted under the KC Clearing & Grading Permit.
- Knowingly violated the essence of the KC C&G Permit and Reclamation Plan.
- DLS-P allowed major operating expansions beyond the KC C&G permit and reclamation plan, without any public notification, review or comment.
- Enforcement of the KC C&G Permit by DLS-P has been virtually non-existent, which only motivates even more violations.

Reserve Silica—Additional Fill Materials

- Mining completed in 2007.
- Permitted reclamation — Fill remaining mine pits (17-ac) to pre-mining topography, topsoil, and replant to forest.
- In early 2016, Reserve Silica projected filling would be complete by end 2016.
- DLS-P (DPER at the time) raised issue of site filling in 2018, 2019 — apparently never addressed.
- Very active filling operations continue to this day!
- Substantial portions show imported fill stockpiled far above pre-mining topography in violation of permit.
- DLS-P stated they rely on owner/operator to monitor fill volumes vs. permitted volume
- DLS-P stated it would require owners to have a survey conducted of on-site stockpiled volume vs. permitted fill needs — we have yet to see any such survey results.

Reserve Silica—Violation of C&G Permit & Reclamation Plan

- Clearcut ~60-ac of mature timber on unmined lands; Dumped ~3,300 truckloads of imported fill on clearcut land.
 - Lied to WA DNR about not having obtained a Forest Practices Act harvest permit for the clearcut.
 - Lied to DLS-P to get an expedited after-the-fact C&G permit update it could use to deflect DNR.
 - Lied to WA DNR permit allowed clearcut w/o a DNR permit, because it was changing land use from Forestry.
- Dumped ~50,000 cu yd of fill on clearcut incl. ~500 cu yd of contaminated ASARCO wastes in May 2023.
 - Site never approved for any dumping
 - Lied ASARCO waste was dumped — WA DOE refuted, but later concluded less danger leaving in-place.
 - DOE now lists site as a permanent “*Confirmed ... Contaminated Site*” subject to required continued monitoring.
 - Fill surface on portions ~30 ft above the natural contours specified to be retained by Reclamation Plan.
 - Clearcut site has not been replanted, 3 yr after harvest; Road building/upgrading (and dumping?) continues.

DLS-P Allowed Major Expansions Beyond C&G Permit and Reclamation Plan

- DLS-P may not have been aware of major expansions as it no longer conducts KC Code-required Periodic Reviews.
 - DLS-P concluded that no specific Permit Conditions for this KC C&G Permit remain in its files.
 - DLS-P only has “Interim” Reclamation Plan (May 2014) — unanimously *invalidated* by KC Council in Dec. 2016.
 - Were files removed when long-time DLS-P inspector left to work as General Manager for Reserve Silica ?
 - With extensive turnover and absence of key records, did DLS-P rely on former DLS-P Inspector to determine what was permissible on the site ?
- No Public Notice For: Potential site overfilling. Clearcutting ~60-ac. Dumping on clearcut site. Proposal to convert land use of clearcut site to construct an “*asphalt/concrete processing facility.*” Most of our questions unanswered.

DLS-P Enforcement Virtually Non-Existent

- Lack of DLS-P enforcement may be due, in part, to missing records, lack of background on the project history, and insufficient resources to adequately research this history.
- But no DLS-P enforcement action occurred even after being informed of these violations.
 - It took EPA/DOE intervention in response to ASARCO dumping before any enforcement investigation was even initiated
- Available DLS-P records clearly demonstrate that Reserve, particularly Reserve's General Manager, Fred White, was fully aware of the unpermitted nature of the clearcut, clearcut dumping (prior to ASARCO), and even the potential project overfilling before any of these actions were initiated
- Public resources and community interests have been compromised as a result of these intentional violations
 - 60-acres of mature timber that were to be a keystone of the reclaimed future forest are gone – the area has still not even been replanted
 - With the illegal dumping, and DOE's direction to leave this material in-place, the contour of the dumping area is now substantially above the target reclaimed topography
 - Runoff from this illegal fill, including the ASARCO-contaminated wastes, flows off-site and directly into fish-bearing waters of the State (Buck Lake), and must be continually monitored

DLS-P Enforcement Virtually Non-Existent (continued)

- Reserve has benefited financially from these clearly-intentional violations
 - Our estimate is that the net timber harvest revenues and fill tipping fees realized by Reserve is likely on the order of \$1 million or more
 - County Code would justify penalizing Reserve for the full amount of this ill-gotten gain
 - To date, it appears no financial penalties have been assessed by DLS-P; and no timeline for assessing any penalties or mitigation has been communicated
- For large, industrial, profit-oriented owners like Reserve, the prospect of potentially incurring a slap-on-the-wrist penalty, against the potential for realizing millions of dollars of net revenues by violating poorly-defined (or missing) Permit Conditions, is a no-brainer business decision
- DLS-P is reportedly preparing to issue a new C&G Permit to Reserve
 - To date, the community has been given zero opportunity to provide input on this new permit
 - We have received no confirmation that we will have an opportunity to comment before the new permit is issued
- The current DLS-P system for filing complaints on commercial operations is cumbersome and ineffective
 - no effective follow-up – *“We have limited CE Officers to cover the entire KC Unincorporated Area.”*
 - DLS-P views operators as “customers”, complaint filers as “complainers”
 - DLS-P’s typical response to proven violations is to either ignore, or to issue a revised permit and collecting new permit fees

Reserve Silica—GMVUAC / KC DLS-P Communications

Early 2023 — Due to concerns about *potential* unpermitted on-site activities, incl. a ~60-ac clearcut, GMVUAC began dialogue w/DLS-P.

April 17, 2023 — GMVUAC letter (**Clearcut**) submitted to KC which included photographic evidence of potential violations.

April 30, 2023 — GMVUAC letter (**Questions**) submitted to KC.

May 3-18, 2023 — 33 truckloads of ASARCO-site lead/arsenic contaminated soil dumped; covered w/~20-ft of soil on ~60-ac clearcut *

August 23, 2023 — DLS-P issues an **Emergency Authorization** after major issue found on the site. A construction site within the area around the former Asarco smelter in Tacoma, a Federal Superfund site, generated ~33 dump truck loads of dirt contaminated with Arsenic and Lead and deposited it on-site between May 3 & 18, 2023, covered it with ~20 ft of soil, and graded it. Site is not authorized to receive such contaminated fill, which is required to be disposed of at a special landfill.

September 17, 2023 — GMVUAC was notified by DLS-P about the Environmental Emergency.

October 18, 2023 — GMVUAC **Letter** submitted to KC Council providing both a full **History** of the RS Corp and its predecessor companies and a **Recent (2021-2023) History**.

October 27, 2023 — South KC Subset of Joint Team Letter to DLS-P, as a followup (our interpretation) to a virtual meeting held on October 23, 2023, between DLS (John Taylor, Mark Rowe, Tom Campbell, and Ty Peterson) and Peter Rimbos (GMVUAC), Greg Wingard (GRC), Tim O'Brien (EPCA), Michael Brathovde (local Ravensdale resident) to discuss RS.

December 22, 2023 — DLS-P Letter to South KC Subset of Joint Rural Area Team in response to the October 23, 2023, letter below. However, it did not provide any response to the five items in section A. of that letter: **FILL DEPOSITED ON CLEARCUT, GRADE AND FILL PERMIT, PERMIT COVERAGE, RESPONSIBILITY AND AUTHORITY**, and **CLEARCUT**.

December 27, 2023 — South KC Subset of Joint Team E-Mail to DLS-P—This was both an acknowledgment of receipt of DLS-P responses containing in its December 22, 2023, letter below and a list of outstanding questions still left unanswered including: Address Section A of the October 27, 2023, letter and Verify the accuracy of the statements immediately preceding each of the Questions in Section B of the October 27, 2023, letter.

January 9, 2024 — Records Center Response to January 2, 2024, GMVUAC PRR.

July 23, 2024 — Virtual Meeting with Mark Rowe and Thomas Campbell. What violations? No answers.

August 17, 2024 — Off-site monitoring from the adjacent Erickson site shows a ~40-ft-wide road transecting the clearcut area.

* Dumping of contaminated materials was brought to KC's attention by the State Dept. of Ecology. If DLS-P had properly followed up the two April 2023 letters above, it might have headed off this debacle. This is a major embarrassment for DLS-P.