June 19, 2014

Dow Constantine
King County Chinook Building
401 5th Ave. Suite 800
Seattle, WA 98104

Kathy Lambert
516 Third Avenue, 12th Floor
Seattle, WA 98104

Dear Mr. Constantine and Ms. Lambert:

We are writing to request that you suspend all review and authorizations for the proposed Gunshy Manor development,[1] including but not limited to the short plats, pending an investigation into:

(1) whether unpermitted destruction of aquatic resources on the subject property, including the filling of wetlands and moving and channelizing of one or more tributaries to Evans Creek, has occurred over the last four years in violation of the federal Clean Water Act and other environmental laws;

(2) whether the county engaged in a pattern and practice of failing to (a) respond to citizen tips and complaints regarding the potential unpermitted destruction of those aquatic resources, including moving and channelizing one or more tributaries to Evans Creek, (b) investigate or (c) take enforcement action over a period of four or more years;

(3) whether county officials violated privacy laws by sharing emails and telephone inquiries from residents who contacted the county for information about the proposed development with the project proponent; and

(4) the integrity of the county regulatory process, which has further been called into question because of statements a county official charged with protecting the county's historical resources made in an email endorsing the project proponent.

The proposed development would be located on approximately 160 acres of land (1) on the east side of 196th Avenue NE, Redmond 98053, which is a 100 year old registered national historic landmark known as "Red Brick Road" and (2) directly adjacent to the Evans Creek Natural Area, a 38 acre nature preserve in the Bear Creek Basin. See Figure 1. The county has determined that both Evans Creek and its tributaries support "Chinook Salmon as well as

[1] The subject property consists of King County tax parcels: 0825069012, 0825069055, 0825069013, 0825069029, 0825069102. See thegunshymanor.com; http://www.youtube.com/watch?v=jJKV7PwXoJw

substantial populations of Coho and Sockeye Salmon" and protected bird species. Chinook Salmon are listed as threatened under the federal Endangered Species Act. Additionally, the county provides protection to Great Blue Heron, Red Tailed Hawk and Vaux's Swift – bird species known to live in the proposed development area. Destruction of aquatic resources and the degradation of habitat of a listed endangered or threatened species are illegal under the federal Clean Water Act and Endangered Species Act, which provide serious civil and criminal penalties, including restoration and fines. See Evans Creek Natural Area website: http://www.kingcounty.gov/environment/waterandland/natural-lands/ecological/evans-creek.aspx.

If the county fails to protect these aquatic resources – on a large tract of critical salmon habitat that is immediately adjacent to the Evans Creek Natural Area and adjacent to Red Brick Road, a registered national historic landmark – the elected officials in this county will be sending a strong message to both the regulated community and voters that no environmental or historic resource, no matter how precious, is worthy of protection.

**Destruction of Aquatic Resources**

Aerial photographs appear to demonstrate that (1) a significant acreage of federally protected and county-designated wetlands adjacent to Evans Creek have been filled, (2) a tributary to Evans Creek was moved and channelized, and (3) the habitat of a listed endangered or threatened species – Chinook Salmon -- has been degraded. For example, the aerial photograph in Figure 2 depicts an undisturbed wetland area and meandering tributary to Evans Creek on tax parcel 0825069012 in 2009. In sharp contrast, the aerial photograph in Figure 3 shows a filled wetland, extensive road construction, and a channelized tributary on the same parcel in 2012. An entire tributary was moved. Finally, Figures 4, 5 and 6 show that the earthwork and tributary alteration occurred in areas that both the federal government and King County have determined to be wetlands. During a community meeting on May 28, 2014, the owner publicly stated that he did not require a permit for any of the filling activity. If this work was performed without a permit, the county's failure to take enforcement action would be inexcusable, particularly because residents downstream of the fill activity reported that flooding has dramatically increased over the last three years, which coincides with the earth moving activity, and is now threatening their homes. See Figures 8, 9, 10, 11 and 12. There are also serious concerns that the past fill activity, together with the proposed development, will dramatically reduce waste water disposal capacity to existing residents.

In addition, there is no credible basis to support an argument that the discharges of fill material into wetlands or alteration to stream channels were exempt from permitting as an agricultural activity. The roads did not exist for the many decades the property was used for agricultural operations and coincide temporally with the development of Gunshy Manor and geographically with the proposed development map in Figure 1. There is simply no basis to

support any conclusion other than the discharges were to support a new use – the Gunshy Manor development – and do not qualify for a Clean Water Act § 404(f) exemption or any other agricultural exemption. In United States v. Johnson, 891 F2d 287 (Table), 30 ERC 1550 (4th Cir. 1989), the United States Court of Appeals for the Fourth Circuit denied a defendant's attempt to assert that he qualified for a § 404(f) exemption after sporadically developing his wetland property over a ten-year period. The defendant began draining and road- building activities, stopped for ten years, and then resumed the actions in order to develop the property for a "hunting club" and "complete residential development." The court held he was not protected under § 404's "[n]arrow exemptions," because the activities were "not a normal part of ongoing and continuous agricultural or forestry operations, but rather preparations for putting the property to new uses."

Courts have consistently construed the Clean Water Act § 404(f) exemptions in agricultural conversion cases strictly. For example, in United States v. Huebner, the Seventh Circuit held that expanding cultivation of a wetland crop to adjacent wetlands did not qualify for the § 404(f) exemption, because it required draining the surrounding area and brought the wetland into a new use. In United States v. Akers, the Ninth Circuit denied a normal farming exemption to a defendant who converted his wetlands to upland crop production, even though the wetlands had been farmed since 1897. The court there rejected the defendant's argument that it was a change within a farming use, holding that the substantiality of the impact on the wetland, not the historical use, is controlling and determines whether the activity is re-captured under Clean Water Act § 404(f)(2).

We request that you direct the county to investigate these activities now and aggressively enforce all applicable environmental laws before moving forward with any further review, approval or permitting for the proposed development.

**Potential Violation of Privacy Laws and Bias**

Serious concerns about the county's objectivity regarding this proposed project have arisen for several additional reasons and have created a perception in the community that the county may be acting as a project proponent rather than as an independent regulatory body protecting the public interests. First, on May 29, 2014 two residents contacted Julie Koler and Todd Scott in the Historic Preservation Program, Department of Natural Resources and Parks, for additional information regarding a "Certificate of Appropriateness" (COA) that was issued without public notice or comment in November 2013 and appears to allow primary access to the proposed development on historic Red Brick Road.[2] That same evening, the project proponent approached one of the residents with full knowledge of that communication. This creates a

[2] Primary access to the development could on Union Hill Road, but would require the project proponent to acquire a small strip of property along the road to satisfy line-of sight requirements. If the County was concerned about preserving Red Brick Road, this should be required.

perception of favoritism and betrays the public trust that the county has acted fairly and is upholding its duties to follow the law and preserve its valuable historic resources.

Second, statements by a county employee endorsing the character of the project proponent create a serious perception of bias. In an email dated May 22nd, 2014, Julie Koler stated that the project proponent "wants the best for the area as much as anyone" and that "he is a good neighbor." She goes on to predict with confidence that he will fully cooperate with the county. Making such statements suggests bias and favoritism by county employees for an applicant and undermines the regulatory process. County employees are supposed to objectively evaluate permits and planned development. When employees of county agencies make such statements, it demonstrates a conflict of interest exists, creates questions about the ability of King County officials to objectively assess evidence during permitting/review and creates an environment of potential conflict between residents and the county officials who are supposed to protect citizen interests.

Third, the county agency responsible for protecting our historical resources for future generations granted a Type II certificate of appropriateness, allowing primary access to the proposed development on historic Red Brick Road, using a regulatory process that entirely avoided public notice and comment. The county should have issued a Type III certificate, which required more stringent review and public comment, because the proposal will cause irreversible harm to a landmark property. In addition, it appears that the certificate was granted (1) without a geotechnical study that is critical to assessing the irreversible degradation increased residential and commercial traffic to and from the development would cause to the historic landmark and (2) based upon an outdated traffic study that predates major improvements, including a newly constructed roundabout at Union Hill Road, that have dramatically increased traffic and speeds on Red Brick Road. The county's own documents concerning increased traffic after the roundabout even suggests closing the Red Brick Road as potential mitigation to increased traffic. The community never had an opportunity to raise concerns or submit data because the county excluded the community by avoiding public notice and comment.

We request that you investigate whether employees of the Historic Preservation Program, Department of Natural Resources and Parks, forwarded emails or information about inquiries from residents to the project proponent and violated privacy laws. We further request that you investigate whether bias existed and revoke and remand the certificate of appropriateness back to the agency for further consideration and public input if you determine there was bias.

**Safety Concerns**

The proposed development poses several safety concerns for both current and future residents of and visitors to the Red Brick Road neighborhood. It does not appear that these risks have been studied adequately by appropriate experts or government officials.

**Landslide Risk**

Approximately 20 of the 25 homes in the proposed development would lie in a county-defined "landslide hazard area." See Figure 7. The county describes the identified area as "subject to severe landslide risk identified in the Sensitive Areas Ordinance."[3] Additionally, three existing properties in the affluent Gunshy Ridge neighborhood are in the same hazard area at the top of the dangerous slope. Although there has been little historic landslide activity in the hazard area, the slope and supporting soil have never been disturbed in a way as will be required for the construction of the development. The disruption from the development, combined with the known combination of steep slopes, impermeable soils and groundwater seepage at the site may be a recipe for disaster for at least 23 households.

**Traffic Concerns**

The county's prior efforts to preserve Red Brick Road have resulted in a peaceful and family-friendly corridor for local residents and citizens who visit the Evans Creek Natural Area and registered national historic landmark. The preservation measures of limiting traffic to local-access only and vehicles under five tons has had a secondary effect of protecting local residents and visitors using the roadway on foot. The road does not have sidewalks, which would destroy the rural and historical quality of the registered national historic landmark, and, as a result, all pedestrian and non-motorized use (including frequent use by bicycles and equestrians) is forced onto the roadway. The proposed development however, will significantly increase the traffic and risk to non-motorized uses.

The north side of the Red Brick Road currently services 15 single family properties. The proposed development will add 25 homes to the area and more than double the number of homes using the north side of the road for primary access. Additionally, the current roadway width does not meet any of the width criteria for rural local access roadways defined in the King County Road Design and Construction Standards. Adding homes and potentially increasing the roadway classification to "sub-collector" (as defined by homes served) would be unsafe, given the inability to improve the road to modern safety standards.[4] Families pushing baby strollers, children riding bikes, runners and any other forms of non-motorized recreation including residents with horses, will be faced with an increased onslaught of traffic on this narrow roadway and face an increased risk of accidents. Motorists also face increased risk as traffic increases on a road that is too narrow.

---

[3] http://www.kingcounty.gov/environment/waterandland/flooding/flood-control-zone-district/local-hazard-mitigation-plan-update/hazard-maps.aspx#landslide

[4] 2007 King County Road Design and Construction Standards

**Request**

We request your personal involvement and leadership to (1) immediately investigate the potentially unpermitted destruction of wetlands and streams and aggressively prosecute any violations before moving forward with any further review, approval or permitting for the proposed development; (2) investigate whether employees of the Historic Preservation Program, Department of Natural Resources and Parks forwarded emails or information about inquiries from residents to the project proponent and violated privacy laws, and take appropriate disciplinary and enforcement action if it occurred; (3) investigate whether the regulatory process used to issue a Type II COA was flawed by bias and the COA should be revoked and remanded to the agency for further consideration with public notice and comment, and (4) appoint an ombudsman to protect the public interest. The community looks forward to your response.

Best regards,

Citizens of King County (see attached signatures)

cc:

Michael Szerlog, Manager
U.S. Environmental Protection Agency
Aquatic Resource Unit
1200 Sixth Avenue, Suite 900
Mailstop ETPA-083
6th Avenue, Suite 900
Seattle, WA 98101

Chan Pongkhamsing
CWA 404 Enforcement Coordinator
Aquatic Resources Unit
Ecosystems, Tribal, and Public Affairs Office
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, ETPA-083
Seattle, Washington 98101

Matthew Bennett
Regulatory Branch Section Chief
United States Army Corps of Engineers
P.O. Box 3755
Seattle, WA 98124-3755

Mary Sue Wilson
Senior Assistant Attorney General
Washington State Office of the Attorney General
P.O. Box 40117
Olympia, WA 98504-0117

Erik C. Stockdale, Section Manager
Shorelands & Environmental Assistance
Washington State Department of Ecology
Northwest Regional Office
3190 160th Ave. SE
Bellevue, WA 98008-5452

Patrick McGraner
Wetlands Specialist
Department of Ecology
Northwest Regional Office
3190160th Ave. SE
Bellevue, WA 98008

Phil Anderson, Director
Washington Department of Fish and Wildlife
600 Capitol Way N.
Olympia, WA 98501-1091

Ralph T. Affieri
Name
SCRA1957@AOL.COM
Email
5924-196th Ave. NE
Address Redmond, WA 98053

Susan C. Affieri
Name
SCRA1957@AOL.COM
Email
5924-196th AVE. NE
Address Redmond, WA 98053

Giuseppe Leporace
Name
OliviaLeporace@hotmail.com
Email
5633 196th Ave NE
Address Redmond WA 98053

OLIVIA LEPORACE
Name
OLIVIALEPORACE@HOTMAIL.COM
Email
5633 196th Ave NE
Address Redmond WA 98053

Marilla B. Parks
Name
mariellap@pulsair.com
Email
7517 196th Ave NE
Address Redmond, WA 98053

Richard E. Parks
Name
RICHARD E. PARKS
Email
DICKP@PULSAR.COM
7517 196th Ave NE
Address Redmond WA 98053

ENAYAT S. AZIZ
Name
eaziz@aziznw.com
Email
7440 196th AVE NE
Address Redmond, WA 98053

Name
jondreher@gmail.com
Email
7504 196th Ave NE Redmond, WA 98053
Address

Ella Elman
Name
eelwoman@gmail.com
Email
19711 NE 58th PL
Address Redmond WA 98053

Veronica Dreher
Name
VMETZNER@GMAIL.COM
Email
7504 196th AVE NE
Address REDMOND, WA 98053

Max Feingold
Name
mfeingol@outlook.com
Email
19711 NE 58th PL
Address Redmond WA 98053

Mark O'Roberts
Name
54marty@gmail.com
Email
19821 NE 61st PL
Address Redmond WA 98053

Marla Lindell
Name
cardiacrepsgattle@gmail.com
Email
19821 NE 61st Pl Redmond, WA 98053
Address

Aaron M. Butcher
Name
AButcher@live.com
Email
19736 NE 61st Pl Redmond 98053
Address

Iola Stetson
Name
istetson@msn.com
Email
6011-196th Ave NE Redmond 98053
Address

Vicki Boardman
Name
vlboardman@gmail.com
Email
6807 214th Ave NE, Redmond 98053
Address

Brenda Swanson
Name
b.swanson@comcast.net
Email
21517 NE 143rd Pl Woodinville 98077
Address

Christine Cherkis
Name
cdcherkis@hotmail.com
Email
21811 NE 87th Pl. Redmond 98053
Address

Steve Rusak
Name
Fiverusaks@hotmail.com
Email
7520 196th Ave. NE Redmond WA 98053
Address

Angela K Butcher
Name
angela@aaronbutcher.com
Email
19736 NE 61st Place Redmond 98053
Address

Kelly Williams
Name
KellyKristinewilliams@gmail.com
Email
1708-126th AVE SE Bellevue 98005
Address

Julie Roos
Name
bjroos@yahoo.com
Email
8825 255th Ave ne Redmond 98053
Address

Jennie Bergstrom
Name
jenniebergstrom2@gmail.com
Email
413 130th PL. SE. Bellevue, WA 98005
Address

Pamela Rusak
Name
fiverusaks@hotmail.com
Email
7520 196th Ave NE. Redmond, WA 98053
Address

MICHAEL R. PHAIR
Name
NONE
Email
19719 NE 58th PL
Address

Cristine Smith by [illegible]
Name
cristine.smith2@frontier.com
Email
7601 196th Ave NE
Address

JACOB A HUDSON
Name
JACOBHUDSON@MSN.COM
Email
5616 196TH AVE NE
Address

Name
Email
Address

Name
Email
Address

Name
Email
Address

Patricia A. Miller BT
Name
Email
19719 NE 58th PL
Address

Woody Cox by [illegible]
Name
woodycox71@gmail.com
Email
7601 196th Ave NE
Address

Name
Email
Address

Name
Email
Address

Name
Email
Address

Name
Email
Address

Name
Email
Address