

VIA EMAIL ONLY

August 23, 2017

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RE: This is Notice and a Demand to King County that it meet the following conditions related to the South Magnolia CSO Gravity Pipe Replacement Project it is has undertaken:

1. Prepare a SEPA compliant environmental checklist for the pipeline replacement project it has undertaken at Smith Cove and along the south bluff of Magnolia and do a complete analysis of the underlying conditions of the project area that it will affect, are affected by the project.
2. Delay the portion of the project that is located at the Smith Cove Park ballfield until the end of the Fall soccer season.
3. Produce a comprehensive project plan that addresses all aspects of the project, including but not limited to the scope of the project, the cost of the project, the risks of the project, the duration of the project, and all the engineering and construction plans, specifications, and concomitant details that a public works construction project must be predicated upon, and a comprehensive finance plan for the project.
4. Pay the City of Seattle sufficient compensation for the use of the Smith Cove Park property and pay to the Magnolia community \$450,000 in compensation for the loss of the use of the Smith Cove Park ballfields, for the delays, damage, and future impacts to the surrounding property, to the owners of property adjacent to the project and for the damage to and the loss of use of the public lands that has occurred as a result of the South Magnolia CSO project and will occur as a result of this pipeline replacement project. All funds paid hereunder shall be dedicated to improvements to the Smith Cove Park.
5. At its own expense promptly form a South Magnolia CSO Community Oversight Committee to ensure that King County and the ongoing South Magnolia pipeline replacement project addresses public concerns for safety, SEPA compliance, environmental impacts and mitigation, construction project planning, financing, project oversight, and for just compensation to the City and the community for the use and loss of use of the Smith Cove Park. The committee shall be

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comprised of 12 individuals who represent the stakeholder interests of Magnolia, including but not limited to those interests of residents, community businesses, parks and recreation, neighborhood, industry, social services and related interests, real estate, and the general welfare of Magnolia. No government officials will be appointed thereto. The committee shall also be responsible for oversight of any funds paid by King County pursuant to this demand, and for developing and making recommendations for improvements Smith Cove Park that will be paid for with those funds.

To The Above Officials and Parties,

The time has come to seriously question this ongoing project to replace the broken 24" gravity sewer diversion pipeline underneath the southern bluff of Magnolia, in terms of SEPA compliance, in terms of what the literal plans and costs are for the project, and in terms of the assorted ongoing impacts locally, and the ongoing occupation and degradation of the Smith Cove ballfield property.

This is a new construction project, separate from the original project - the South Magnolia Combined Sewer Overflow Control (SMCSO) project. That project included the construction of the Magnolia Wet Weather Storage Facility at Smith Cove and a related ancillary equipment facility, along with associated sewer/storm water lines. That project was subjected to nominal environmental review and SEPA compliance in 2010-2011; The SMCSO project's SEPA checklist was prepared May 9, 2011, the DNS was signed on May 16, 2011, and issued on May 23, 2011, now some six years ago. It was also permitted accordingly.

At the time, the published schedule for the SMCSO project was that "Proposed construction is anticipated to begin in 2013 and will last for approximately 2.5 years." The County's published record is that project was finished in spring 2015 and inspected in late December 2015 – basically on schedule.

Of note, King County front loaded the SMCSO project SEPA process to discourage any review of it including by legally framing the project in a way that any opposition to the project/DNS was outlawed. To quote the DNS for that project, "The Director of King County Department of Natural Resources and Parks, consistent with King County Public Rule 7-4-1, Section 6.2.14 and RCW 43.21C.240, has determined that the environmental impacts identified in the SEPA environmental checklist for the South Magnolia CSO Control Project will be adequately addressed by the development regulations and other applicable requirements of the City of Seattle and by all other applicable state and federal regulations referred to in the environmental checklist for the South Magnolia CSO Control Project. Therefore, no administrative appeal of issuance of the DNS will be allowed for the South Magnolia CSO Control Project."

Of further note, a critical report, the *South Magnolia Combined Sewer Overflow Control Facility Engineering Report*, which included many important details of the project, including that it had a detailed cost analysis section for the project as well as an extensive Project Risk Workshop section for it too. It was not released however until September of 2011 - long after the project was a done deal, long after the public processing of the public had transpired, and long after the SEPA process was closed to the public.

It is worth pointing out here that the County should have finalized this report and made it available to the public during the time that the County was processing the public in order to gain its trust and approval for the South Magnolia CSO project, and eliminate any opposition to the project - well before the completion of the SEPA checklist and the issuance of the DNS for the project in May of 2011.

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The County may try to claim now that this report was unrelated to its public processing campaign and not required as part of the project review and SEPA process but only on a very technical basis – that the report was more related to the NPDES permitting for the West Point Treatment Plant. However, the report is the chapter and verse details about the South Magnolia CSO project, all 629 pages of details about it. Why was it not made available to the public as part of the public outreach process that the County claims it was so careful to engage in?

In King County's own words: The goal of public involvement and outreach was to inform interested citizens about the Combined Sewer Overflow Beach project in the South Magnolia basin and to provide opportunities for meaningful involvement in the CSO control planning process.

The public process objectives were to:

- Provide timely and clear information to stakeholders and the public about the purpose of the project and their opportunities to participate.
- Conduct a clear, systematic, and objective process for identifying and evaluating alternatives for CSO control and associated wastewater infrastructure (pump station, pipeline, etc.), and selecting preferred alternative(s) and site(s).
- Obtain input from stakeholders and the public on the alternatives and criteria before preferred alternative(s) and site(s) are selected by King County.

Please note, a look back at this project's public process record and the County's public processing plans make it clear that the County has been engaged in a very disciplined campaign of adherence to project talking points, to messaging, to public appearances, to public processing recordkeeping – the check-the-box kind, that appearance over substance is what was and has been paramount to the history of this project.

The public processing history shows the County focused on always being sure to get ahead of any project story, to convey its message by turns its sensitivity to public concerns, to ensure that the public believes that all the County is doing about serving the public's interests; and certainly, about a higher calling of saving the environment, not in detail but in general.

However, when one goes back and looks at the multiples of project updates, the regular issuance of talking point bulletins about the project, with a disciplined and restrained amount of information, the whole public processing endeavor has been a masterful strategic communications job of keeping the public away from critical environmental concerns, critical seismic, geological, hydrological concerns, away from any concerns (hard questions) about the ongoing and ultimate costs of the project, away from demanding from the County much in the way of any accountability for the original project. And for sure the public processing plan has contained, or constrained the public from demanding much in the way of accountability for the epic fail of the lynchpin for the entire CSO diversion system to work, the 3,200' long broken 24" gravity feed pipeline.

The County previously engaged in a calculated public processing process, crafted a SEPA checklist and issued a DNS that foreclosed any real inquiry into just what the implications of this project might be, whether it was all that well advised or as risk free as the County was framing it in public as. This was all followed by a continued processing of the public that has kept the public from becoming too well-informed, too familiar, too concerned, or too critical of what exactly has been going on with this project.

In the end though, certainly whatever conditions existed at the time of the 2011 SEPA review do not exist now. This includes but is not limited to the fact that any and all assessments at the time of the

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preparation of the SEPA review would now need to be validated, that the project was constructed in its entirety, that all of the projected environmental, construction, and human impacts of the CSO project covered by the DNS have transpired in one form or another - as have those that were not projected.

In the intervening period, the population and built environment of Seattle has been radically augmented or transformed, the local and national political environments and concomitant statutory and regulatory schemes have likewise evolved. The world of 2017 is not the world of 2011 and before when the original South Magnolia CSO project was conceived and carried out. Therefore, the conception that this new project is related to the old and accordingly is exempt from SEPA review is unsustainable. A new and thorough SEPA process must be undertaken.

The failure of one of the main infrastructure components of the CSO facility, a year after its completion, and now the need to entirely replace the key component of the CSO system is not covered by the prior DNS. The DNS of 2011 was specific in that regard, "7. Do you have any plans for future additions, expansions, or further activity related to or connected with this proposal? If yes, explain." The response and the record for the 2011 DNS is that the County claimed that there would be no "future additions, expansions, or further activity" related to the original project. On that basis alone that DNS does not cover the present project.

The project description in the 2011 DNS was also clear – "11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description).

"The proposed South Magnolia CSO Control Facility will be integrated with the existing SMTS system and consist of an approximately 1.8 million gallon (MG), rectangular, below-grade, cast in place, CSO storage tank with an ancillary equipment facility, and 2,700 linear feet (LF) of 24-inch diameter gravity sewer (see Figure 1). A force main will connect from the storage tank to the existing SMTS to discharge flows

"Gravity Sewer and MAGCSO Structure

"The existing MAGCSO structure, located at approximately 6100 32nd Avenue West will be modified to include a diversion structure to convey flows to the gravity sewer and storage tank when flows exceed the capacity of the SMTS.

"The 24-inch gravity sewer will convey flows from the modified MAGCSO structure to the storage tank.

"The gravity sewer will be installed using trenchless methods and cut and cover (trenching) construction methods and will be between 6 feet and 150 feet below ground surface (bgs). The section of the pipeline constructed using trenchless methods will be installed by drilling generally beneath Magnolia Boulevard and West Galer Street. Entry and exit portals will be required at each end of the this section. Construction of the entry and exit portals and pipeline segments leading to the portals will use cut and cover construction methods. The pipeline alignment will generally following existing street rights of way. The gravity sewer will require easements at the east and west ends of the alignment."

All the above project elements were completed. Nowhere in the 2011 DNS is there mention of a 2nd gravity sewer line being installed. Again, the prior DNS does not cover the present project.

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Since the time of completion of the CSO project a whole new project has emerged, taken on a life of its own, extensive construction and construction related activity in the project area has occurred, without any SEPA checklist being prepared and without any DNS or even DS being declared.

Instead the County has proceeded to engage in extensive amounts of project planning, engineering, construction, geological and hydrological testing, and ground stabilization activity throughout the south slope of Magnolia, as well as impacted traffic, the residents, and many day-to-day activities in the area as a result of its actions. Again, there was no environmental review (or publicly disclosed financial review) of all of this activity that has informed any of the decisions that are being made to undertake these activities, this new project - one of the purposes of environmental review, and the decisions that have now been made – to continue with this major infrastructure project.

A sample of the many post-CSO project completion new project construction activities and events that have taken place without any compliance with SEPA is as follows:

“...the County pumped storm water out of the pipe and noticed a lot of debris, bricks, concrete and rocks...300 feet into cleaning the pipe, pipe shards came out. At this time, the County thinks a smaller break occurred in one location.

“Crews noticed two anomalies deeper below the surface just west of Thorndyke Avenue West on West Galer Street needing further investigation. These anomalies could have indicated where the pipe break occurred. To identify the areas of soil loss, crews drilled borings 40 feet apart between the two anomalies, inserting a cement-like grout to fill all areas of soil loss.

“A California-based company was hired to clean out the pipe. They were able to clean past the break but groundwater pressure inserted more soils into the pipe before a full inspection could occur. As a result, the County was unable to get a clear picture of the pipe break.”

11-30-2016

- Installing sensors and cable in the right of way of W. Galer Street. Between NW 28th Street and Magnolia Way West. The sensors will help evaluate potential soil loss in the area along the pipeline. The contractor will drill 1-inch diameter holes in the right of way and extend cable along the southern curb. The equipment will be installed by Saturday, Dec. 3. The holes will be filled after the cable is no longer needed.



- King County expects to begin work to stabilize the area and determine the exact location of the pipe break on Wednesday,

12-06-2016

- Starting Wednesday, Dec. 7, County contractors will use a small drill rig to drill holes approximately 130 feet deep in the W. Galer St. right of way to confirm the exact location of the pipe break.

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- Crews will pump grout into any areas of soil loss discovered along the pipe.
- About 500 feet of the W. Galer St. eastbound traffic lane, sidewalk and bike lane will close to through traffic during work hours.
- Steel plates will cover any active drill sites after hours. Some plates may extend into the bike lane.
- Equipment staged in the Magnolia Park parking lot
- Trucks and equipment parked along Thorndyke Ave. W. and 28th Ave. W.

01-03-2017

- In December 2016, County contractors drilled holes along the W. Galer St. right of way to confirm the exact location of the pipe break.
- Crews filled areas of soil loss discovered along the pipe with grout to stabilize the area.
- More stabilization work in W. Galer St. will occur after King County cleans out and inspects the damaged pipe.

02-16-2017 Meeting

- Feb. 21, crews will drill five holes near West Galer Street and Thorndyke Avenue West. Crews will have one drill rig and will insert grout in areas of soil loss, if areas of soil loss are found. During this drilling, vibration monitors will be posted on the closest house to monitor vibrations. The County knows that homeowners felt vibrations on the first borings but one drill rig seemed to cause more vibrations than the others. The County removed the more disruptive drill rig from the project. Depending on what the pipe break looks like, solutions could range from replacing the pipe completely to internal repair of the pipe. The County will look at all options and come to the community prior to making a decision. The top priority is fixing the pipe with the least amount of impact to surrounding neighbors.

02-17-2017

- King County contractors will resume drilling and grouting activities on Tuesday Feb. 21 to fill any areas of soil loss along the County's damaged sewer pipe...This work will continue into mid-March [does not end until late May]
- Crews will fill any areas of soil loss discovered while drilling with grout.

06-01-2017

- The restoration work includes: • Repairs to sidewalks and any impacted driveways • Replanting landscaping and planter strips

This month we are informed that the County has undertaken the project. There is no ambivalence about that. The County's record is clear, it is in the process of mobilizing – despite close to zero knowledge of what went wrong, and certainly without benefit of any SEPA compliance:

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August 2017 King County Project update:

- On Aug. 21, King County's contractor will begin staging equipment for prep work to replace the 3,200-foot pipe connecting the existing sewer system to a storage tank in Smith Cove Park.
- Equipment and material will arrive at Smith Cove Park to be stored on the athletic field west of 23rd Avenue West.
- Work activities in the Smith Cove Park athletic field this fall:
- Fence off the work area to make room for ground freezing equipment and a horizontal directional drill (HDD) rig
- Dig down about 20 feet to remove a portion of the pipe in the field to gain access to the broken pipe section beneath W. Galer St.
- Freeze soils near the park end of the pipe to clean the pipe out safely
- Use the HDD rig to clean out the pipe - pressure inside the pipe will be maintained to ensure the area around the break is not disturbed
- Athletic field closed
- Increased noise and construction activity
- Crews and equipment staged on the Magnolia Wet Weather Storage Facility site and working in the athletic field
- Some short-term closure of park facilities near work area
- Some brief traffic delays on 23rd Ave. W.
- Traffic control personnel and signs to help traffic and trail users pass by the work area

Noting again – the County is proceeding with this project in a seemingly ad hoc fashion – something that is a bit startling that a project of this magnitude would be undertaken, resources committed, but no final plan has been completed, that has been publicly reviewed, made SEPA compliant, and for which there is an underlying engineering and construction plan for the same. As King County commits many millions more for this pipeline replacement project, and as King County and its contractors mobilize equipment, materials, and a workforce for the pipeline replacement project the County states:

- A plan to repair the broken pipe will be developed once the exact location of the break is confirmed.
- The pipe must be cleaned out and assessed before the County begins replacement work.
- The athletic field will remain closed through the fall so the clean out and assessment can occur.

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- We will provide more information about the pipe replacement work and schedule later this year.

Most troubling, in addition to the lack of environmental review of this ongoing pipeline failure matter, is the all too obvious lack of knowledge by the County and its experts about what went wrong, when, and how to fix the problem. Those questions have been asked but the answers basically are not particularly detailed or reassuring.

As per the County's published response to those questions it is clear in the project record as of August 2017 that there are more unknowns than knowns about this second CSO pipeline project the County is undertaking:

"We do not think there was a geological event. After the pipe was installed, we put cameras in to inspect it. It looked good. This is brand new, thick pipe that has been used in the industry for 10 years. At this time, we do not have a clear answer for why it broke.

"We are looking more into fixing the pipe at this point but will look into that as well. This is not unlike West Point Treatment Plant where public safety is our number one priority. The second priority is evaluating a solution for the fix. *After we fix it*, we will spend a considerable amount of time with everyone involved in construction to determine what went wrong and that will take some time. It has failed within a year and clearly the pipe is in a difficult place to maintain. [Emphasis added]

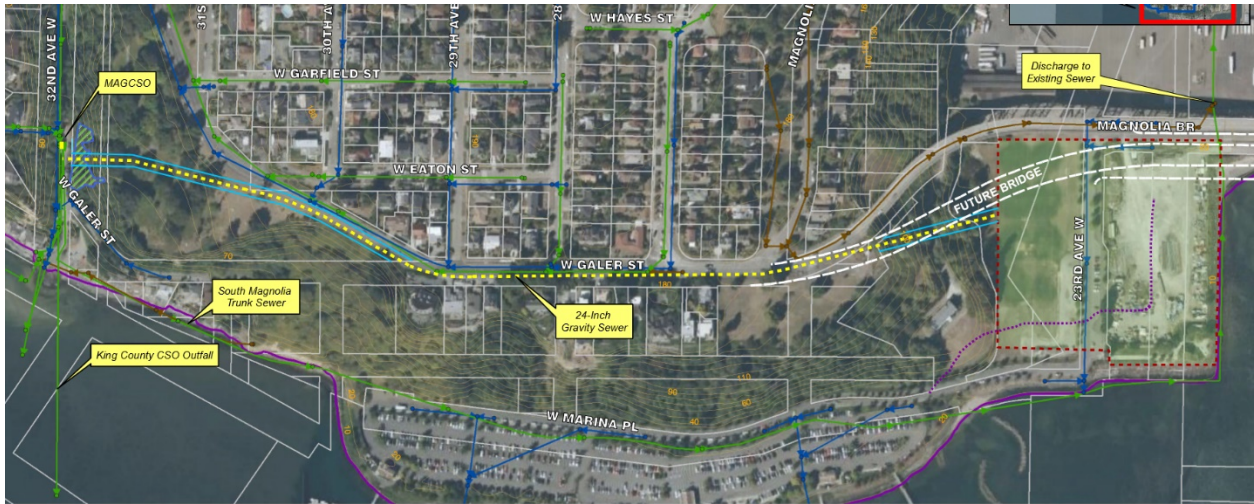
"How big does a soil void have to be to become a problem for the homeowners above? Any size can be a problem unless it is filled. There are no current issues for homeowners. We are working to fill the voids so that they do not become problems for homeowners. Do you feel that the voids have been filled or are you still looking into the issue? We put in 150 cubic yards of grout to fill in the voids. Based on what was taken out, we think it is about 150 to 200 cubic yards of soil lost. When we go back to drill again, we will verify that there are no additional areas of soil loss.

"How can we trust that it will not break again? We have done multiple pipes underground before and they have been fine. We will find out why this one broke. We will be looking at several different solutions. If we need to change materials and use a different kind of pipe material, we will do that."

Further informing the need that this project should be subjected to a rigorous environmental review process is the fact that it is entirely taking place in a critical areas location that has a well-documented history and status of being seismically vulnerable and geologically unstable. That is rather obvious given the rush response the County engaged in once it had determined that this moderately sized tunnel/pipeline had a breach in it. The construction area is part of a known and potential slide area, has steep slopes (40%), and a history of slides, including a major one in 1996.

<http://www.ecy.wa.gov/programs/sea/landslides/show/bridge.html>





CITY OF SEATTLE CRITICAL AREAS MAP



Critical Areas by Ordinance

- Streams
 - Open Channel
 - Culverted
- Wildlife Habitat
- Known Slide Area
- Wetland
- Riparian Corridor
- Potential Slide Area
- Landfill (Historical)
 - Abandoned Landfill
 - 1000' Methane Buffer
- Peat Settlement-Prone Areas
 - Category 1
 - Category 2
- Flood-Prone
 - Flood-prone - 1996 FIRM
 - Flood-prone - other sources
 - Overlap areas
- Steep Slope (40%)
- Potential Liquefaction Area

MISUSE AND ABUSE OF SMITH COVE PARK BALLFIELDS

Finally, the other ongoing disruption of community life in the pipeline replacement project area is that the Smith Cove ballfields have been shuttered for the better part of three and a half/four years now – as one, a direct consequence of the CSO projects, and two, as a direct result of Seattle Parks Department neglect.

In 2003 King County supplied over \$3,000,000 in CFL funds to the City of Seattle to facilitate the City purchasing that property from the U.S. government. A condition of that purchase was that the City of Seattle would ensure that the newly purchased Smith Cove land was improved for use as a ballfield – and then most importantly – be open to the public for that use!

The history however is that the City improved the property but then did not open it for public use. In 2006 when the City was both not opening the Smith Cove park property for public use and contemplating handing it over to the Port of Seattle, at the behest of the *Magnolia Neighborhood Planning Council* then-King County Councilmember Larry Phillips wrote to the then-City of Seattle Mayor Greg Nickels and reminded him of the deal between the County and the City. In his letter to the mayor Larry noted – “King County contributed \$3 Million for the purchase of the property, roughly half the cost of acquisition, with the condition that the property be used for public shoreline access and athletic fields for youth. Should the property be transferred to the Port of Seattle for development, I am convinced the State Auditor would find that King County’s conditions had not been met, and that the county’s funding contribution would need to be returned. Such a finding could prompt legal action to accomplish this outcome.”

The Smith Cove Park was promptly opened by the City after that. But moreover – the same legal facts are true today – the City is not meeting the conditions for the property – a functional park open to the public; and ironically, King County is likewise a party to violating those conditions.

It is also noted that it is not just King County that is violating the conditions of the Smith Cove park land deal, the City of Seattle Parks Department likewise is culpable in this aspect of the situation. The Smith Cove park land has fallen on hard times. In recent years the park has been closed because the County was using the property as a staging ground for the SMCSO project. However, both before and after that project it has been used as a dumping ground by the Seattle Parks Department for old equipment, materials, and Parks Department detritus for which there are no words for. Of note, see photos showing all of the Parks Department equipment that has gone to rust and ruin at: https://1drv.ms/a/s!AgveSP-gMLen43b6aB7jBITnu_Df



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Less than a year ago In November 17, 2016 Councilmember Jeanne Kohl-Welles spearheaded a successful effort to obtain and increase funding for several priority programs for her constituents in Council District Four. Of approximately \$1.2M directed to District Four organizations and facilities for recreation and amateur sports, Smith Cove Park was allocated \$250,000 for field renovations. Unfortunately – in the intervening months there is no evidence that any of that money made its way to its intended purposes. The park has remained fenced off, unused, and unkempt. Where is that money?

What was true in 2006 is still true eleven years later - the Smith Cove Park ballfield property is supposed to be open for the public's use. Instead it is now being commandeered by the County again, with no compensation to the City or the community for its occupation. There is no discernible plan in place for the return of the park land to public use, how the land will be restored, who is paying for that restoration, and no schedule for when the property will be returned to the public's use.

This whole matter is untenable, its handling, its lack of structure, scope, plans, its lack of value to the community.

For all the above reasons, this is notice to and a demand that King County consider the above matters and issues and meet the following conditions:

1. Prepare a SEPA compliant environmental checklist for the pipeline replacement project it has undertaken at Smith Cove and along the south bluff of Magnolia and do a complete analysis of the underlying conditions of the project area that will affect, are affected by the project.
2. Delay the portion of the project that is located at the Smith Cove Park ballfield until the end of the Fall soccer season.
3. Produce a comprehensive project plan that addresses all aspects of the project, including but not limited to the scope of the project, the cost of the project, the risks of the project, the duration of the project, and all the engineering and construction plans, specifications, and concomitant details that a public works construction project must be predicated upon.
4. Pay the City of Seattle sufficient compensation for the use of the Smith Cove Park property and pay to the Magnolia community \$250,000 in compensation for the loss of the use of the Smith Cove Park ballfields, for the delays, damage, and future impacts to the surrounding property, to the owners of property adjacent to the project and for the loss of use of the public lands that has occurred as a result of the South Magnolia CSO project and will occur as a result of this pipeline replacement project.
5. Promptly form a South Magnolia CSO Community Oversight Committee to ensure that the ongoing South Magnolia pipeline replacement project addresses public concerns for safety, SEPA compliance, environmental impacts and mitigation, construction project planning, financing, project oversight, and for just compensation to the City and the community for the use and loss of use of the Smith Cove Park. The committee shall be comprised of 12 individuals who represent the stakeholder interests of Magnolia, including but not limited those interests of residents, community businesses, parks and recreation, neighborhood, industry, social services and related interests, real estate, and the general welfare of Magnolia. No government officials will be appointed thereto. The committee shall also be responsible for oversight of any funds paid by King County pursuant to this demand, and for developing and making recommendations for improvements to Smith Cove Park that will be paid for with those funds.



Elizabeth A. Campbell, MPA

Individually, and as Director of Magnolia Neighborhood Planning Council