January 25, 2018

SENT VIA U.S. MAIL

Greg Snow, Director
Community Development Department
Pend Oreille County
P.O. Box 5066
Newport, Washington 99156

RE: HiTest Application for Newport Silicon Smelter

Dear Director Snow,

Our clinic represents the Spokane Riverkeeper, who has ongoing concerns with the proposed Newport Silicon Smelter to be operated by the Canadian firm, HiTest. The Planning Commission is aware the land sold to HiTest will be used for a silicon smelter. All of the evaluation of the land use change must be performed not with an abstract idea concerning a conditional industrial use, but with the specifics of what are known about the smelter. The Planning Commission will need to consider the burning of hundreds of tons of coal and charcoal, the crushing of thousands of tons of quartz, the use and disposal of millions of gallons of local water near the Pend Oreille River and aquifer recharge zones. The risks of the smelter are clear, not abstract. What is not clear are HiTest’s intentions and plans, which seems to change by the day.

1. Zoning and Land Use Concerns

We would reiterate the concerns raised in a letter to the Commission by Norman A. Semanko on behalf of the Citizens Against the Newport Silicon Smelter (“CANSS”). The major concern here is the county appears to be aggressively pursuing an expedited process. Rushing through this critical process raise serious due process concerns. There are statutes, rules, and regulations established to prevent hasty decision making, even if the Governor and Department of Commerce have given the smelter “statewide significance.”

It is clear HiTest will have to apply for a rezoning of the property from “Public Lands” to a Class 4 with a conditional use permit. This is a significant and drastic change. Please confirm that this rezoning is before the County Commission, and it has been considered and approved but the Planning Commission.

Because the project is of “statewide significance” it is important that all interested parties have access to the relevant information and the ability to be heard. To ensure both of these things happen, we would

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ask the County Commission make all information regarding this matter available to the public. This means the information should be available in print form for citizen review at the County Commission hearing and on the County Commission website. It also means that the information should be made available unfiltered, voices both for and against the Silicon smelter should be available for review to the citizens of Pend Oreille County without bias or prejudice. We also reiterate the CANSS request that any hearings be held in one central location in Newport and that notice for those hearing be posted physically and on the Commission website with the other smelter materials.

The process for the zoning review must be individualized. State and county regulations require that any dramatic rezoning, that departs from the comprehensive plan, must be given individualized review. This is especially true of lands that are currently designated as “rural.” The Planning Commission would have to perform an individualized review of each parcel being considered. Consolidating the smelter parcels with other parcels would be expeditious, but it would also be outside the parameters established by the Growth Management Act and county regulations.

2. Environmental and Climate Concerns

There are two major concerns we have with the smelter and our local environment. First, there is no clear answer on how much water the smelter will require or how it will dispose of the water it uses. Second, the proposed means of determining how the smelter will impact local air quality are woefully deficient.

3. Water

There is a vast discrepancy in how much water HiTest will need to use for this facility. Initially, the public was told that the smelter would only need around 300 gallons of water per day. This number was suspiciously low for an installation that would have between 100 and 200 employees. Toilets alone would use more water than this. The county then released an estimate of around 8,000 gallons per day. Because the proposed site is outside of city water, the site would require wells. 8,000 gallons per day would be beyond the state maximum of 5,000 gallons per day for permit exempt wells. In an email dated January 12, 2018, Newport City Manager informed Jim May of HiTest that the city will not be able to provide HiTest with 240,000 gallons of water per day, nor would the City of Newport be able to handle the waste water coming off the HiTest property without a substantial refit of the waste water treatment facility. The Pend Oreille River is upstream from some of the largest irrigation projects in the nation. These projects are nearly fully appropriated. The chances of HiTest securing a water right to use this much water consistently with a priority date of 2018 are slim indeed. This is just the domestic in state concerns. The Pend Oreille is also upstream from Tribes with government-to-government guarantees of clean water. There is also an international agreement with Canada that could be impacted by a large appropriation. Any rezoning consideration will have to take this substantial amount of water use and discharge into account before the conditional use is granted.

There are also some significant effluent concerns regarding the use of this much water. The smelter would be a single point emitter. Because the smelter is very near navigable water, any discharge of effluent would require a permit from the Department of Ecology that would have to go through the notice and comment period. As mentioned above, the City of Newport will not be able to handle such a
large amount of effluent without a new permit. The smelter will require a new permit under the Clean Water Act before it can discharge such large amounts of waste water.

4. Air Quality

Initially, we were told the smelter would be completely emission-less. After some skeptical push back we were informed that the smelter would emit hundreds of thousands of tons of greenhouse gasses, 760 tons sulfur dioxide and 700 tons of nitrogen oxide. After these revelations, the County chose to move the proposed location of the smelter from Usk, just off the Kalispel Reservation, to outside the town of Newport. However, moving the smelter does not decrease the risk to anyone residing in Pend Orielle County or downwind from it.

Our most pressing concern right now is that rather than using accurate data collected from the region, the County, and HiTest are proposing that climate “models” be used instead. This is very suspicious. We live in an area of dynamic changes in air quality. While we are blessed with many clear days in the late fall and spring, summer and winter air quality can be of great concern. In the summer, local air quality is often compromised by smoke from forest fires raging in the area. How would the chemicals emitted from the stacks at a silicon smelter react with wildfire smoke? There is no evidence this is or can be reliably accounted for in a model.

In the winter, there is still significant amounts of pine smoke in the air from local chimneys. There are also two major weather patterns in the winter. First, how will the model account for the inevitable yearly inversions on the valley floor that Newport is situated on? These phenomenon occurs yearly, and can last for weeks. Second, this is an area that tends to have high humidity and fog in the colder months. One of the specific concerns around sulfur dioxide is the potential to create acid rain. It is not unreasonable to worry the smelter could turn our romantic fogs into corrosive clouds that damage or bodies and our property.

Without more accurate data to base the NAAQS for air quality permits there is simply no way to begin addressing these concerns. Using modeling may be expeditious, but it is not in the best interests of any person who may need to breathe in the Newport area.

Sincerely,

UNIVERSITY LEGAL ASSISTANCE

[Signature]
Watt Tanner
Law Clerk

WT/rke/vly

[Signature]
Rick Eichstaedt
Program Director, Attorney at Law