

Countryman, Ryan

From: Tom McCormick <tommccormick@mac.com>
Sent: Wednesday, July 08, 2015 3:54 PM
To: Countryman, Ryan
Cc: Richard Schipanski; Gretchen Brunner; White, Clay; Rowe, Tom; Tom Mailhot
Subject: Missing information in Chapter 2 of the Point Wells Preliminary DEIS

Ryan,

I respectfully request that the Point Wells Preliminary DEIS be revised to include additional information, as provided at the end of this email.

The section in Chapter 2 of the Preliminary DEIS entitled, "*Growth Management Hearings Board & Related Challenges/Decisions (2009 – 2014)*" is incomplete. Pages 2-5 to 2-6 (see attached snippet) fail to discuss BSRE's April 11, 2011, petition to the GMHB seeking review of the adoption by the City of Shoreline of Ordinance 596 on Feb. 14, 2011, which modified the City's Comprehensive Plan by imposing a maximum 4,000 average daily trip limit (ADT limit) on Richmond Beach Drive, the only road that connects to BSRE's Point Wells property. (BSRE's petition to the GMHB, filed over four years ago, is still pending. So far, the GMHB has granted 17 settlement extensions, the most recent one on April 29, 2015.)

Unless the GMHB invalidates the 4,000 ADT limit, or the City Council votes to increase or remove the 4,000 ADT limit, the traffic limit on Richmond Beach Drive will continue to be 4,000 ADTs. This reality needs to be discussed in the DEIS. If the proposed Point Wells development were to cause the 4,000 ADT limit to be exceeded, that would be a significant environmental impact.

Despite what BSRE may wish to believe, the 4,000 ADT limit is not a temporary limit. See BSRE's Memorandum in Opposition to Motion to Intervene in BSRE's GMHB Petition regarding the 4,000 ADT limit (GMHB Case No. 11-3-0007, Jan. 30, 2015), where BSRE erroneously states: "By its express terms, Ordinance No. 596 was intended to be temporary in effect." But the Comprehensive Plan, as amended by Ordinance No. 596, does not say that:

"[T]he City designates [Richmond Beach Drive] as a local street with a maximum capacity of 4,000 vehicle trips per day. Unless and until 1) Snohomish County and/or the owner of the Point Wells Urban Center can provide to the City the Transportation Corridor Study and Mitigation Plan called for in Policy PW-9, and 2) sources of financing for necessary mitigation are committed, the City should not consider reclassifying this road segment."

The 4,000 ADT limit discussed in the above language is not a temporary limit. Nowhere in the above language does it say that the 4,000 ADT limit is a temporary limit. The above language is quite clear. It establishes a 4,000 ADT limit. While the above language mentions several conditions that must be met before the City Council will even entertain the possibility of reclassifying Richmond Beach Drive or increasing or removing the 4,000 ADT limit, the above language cannot and does not require the City Council to vote in favor of increasing or removing the 4,000 ADT limit.

As noted above, unless the GMHB invalidates the 4,000 ADT limit, or the City Council votes to increase or remove the 4,000 ADT limit, the traffic limit on Richmond Beach Drive will continue to be 4,000 ADTs. It cannot be assumed that the GMHB will invalidate the 4,000 ADT limit. Further, it cannot be assumed that the City Council will vote to increase or remove the 4,000 ADT limit. It's hard to predict what might happen when the issue is presented to Shoreline's City Council, particularly considering that, of Shoreline's seven Council members: two Council members have recused themselves regarding Point Wells matters; one Council member who is up for reelection this year has decided not to run for reelection and his seat is being contested by two candidates; another Council member who is up

for reelection this year is being challenged by two other candidates; and another Council member (who is not up for reelection) is running for a Statewide office and if he wins, his seat on the Council will need to be filled by someone else.

Here's a summary of the information that I am asking to have included in the DEIS:

1. The City of Shoreline adopted Ordinance 596 on Feb. 14, 2011, which modified the City's Comprehensive Plan by imposing a maximum 4,000 average daily trip limit (ADT limit) on Richmond Beach Drive, the only road that connects to BSRE's Point Wells property. Prior to Feb. 14, 2011, Shoreline's Comprehensive Plan contained a 8,250 ADT limit for traffic entering and exiting Point Wells.
2. On April 11, 2011, BSRE filed a petition with the GMHB challenging Shoreline's adoption of the 4,000 ADT limit. (BSRE must have been concerned enough about the 4,000 ADT limit, and the very real possibility that Snohomish County would be compelled to honor it, that it petitioned the GMHB to invalidate it.) BSRE's petition is still pending. So far, the GMHB has granted 17 settlement extensions, the most recent one on April 29, 2015. It is noteworthy that BSRE never filed a petition with the GMHB challenging Shoreline's adoption of the 8,250 ADT limit that preceded the 4,000 ADT limit.
3. Unless the City Council votes to increase or remove the 4,000 ADT limit, or the GMHB invalidates the limit, the traffic limit on Richmond Beach Drive will continue to be 4,000 ADTs, far less than Shoreline's prior 8,250 ADT limit. It cannot be assumed that the City Council will vote to increase or remove the 4,000 ADT limit, or that the GMHB will invalidate the 4,000 ADT limit.
4. In addition to challenging the 4,000 ADT limit at the GMHB, BSRE has asserted that the short plat application that it submitted on Feb. 14, 2011, just hours before Shoreline adopted the 4,000 ADT limit, vested BSRE to the rules in effect prior to Feb. 14, 2011, presumed including the prior version of Shoreline's Comprehensive Plan and its 8,250 ADT limit for traffic entering and exiting Point Wells. But other interested parties of record contend that BSRE did not attain such vested status as of Feb. 14, 2011 (it only vested to certain specific short plat and zoning rules); rather, pursuant to SCC 30.34A.170(6), the earliest date that BSRE might have vested is March 4, 2011, the date that it submitted its Urban Center development application. (SCC 30.34A.170(6) (2011 version) provides that, "A complete application for urban center approval meeting the requirements of this section [(SCC 30.34A.170 — Submittal requirements)] is deemed to have vested to the zoning code, development standards and regulations as of the date of submittal.")
5. If March 4, 2011, is the correct vesting date for rules other than certain specific short plat and zoning rules (see above), then, even if the GMHB invalidates the 4,000 ADT limit (a valid limit on March 4, 2011), BSRE's development application will nonetheless be subject to the 4,000 ADT limit — BSRE will be bound by the 4,000 ADT limit. See *Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 322 P.3d 1219 (2014)(rules in effect on vesting date apply even if those rules are later invalidated by the GMHB).
6. Finally, interested parties of record assert that the 4,000 ADT limit must be honored by Snohomish County in the permitting process. That would have the effect of substantially limiting the size of the proposed Point Wells development. (BSRE must have been concerned enough about the 4,000 ADT limit, and the very real possibility that Snohomish County would be compelled to honor it, that it petitioned the GMHB to invalidate it.)

Thank you.

Tom McCormick

Growth Management Hearings Board & Related Challenges/Decisions (2009 – 2014)

In November 2009 and July, 2010, City of Shoreline, Town of Woodway, and Save Richmond Beach filed separate petitions to the Central Puget Sound Growth Management Hearings Board (GMHB) challenging the County's adoption of Ordinances 09-038, 09-051, 09-079, and 09-080. The cases were consolidated into one appeal challenging all four County ordinances. [City of Shoreline, Town of Woodway and Save Richmond Beach, et al., v. Snohomish County and BSRE Point Wells, LLP Consolidated Case Nos. 09-3-0013c and 13-3-0011c.](#)

In February and March 2011, BSRE [Point Wells, LP \(BSRE\)](#) submitted the following applications for the Point Wells Project: Urban Center Site Plan Approval, Shoreline Substantial Development Permit, Land Disturbing Activity (Grading) Permit, Building Permit, and Short Subdivision Approval (File No. 11-101457 LU). The County determined that these applications were complete.

The Shoreline, Woodway, and Save Richmond Beach [cases-petitions](#) were heard by the GMHB [as one consolidated matter](#). In May, 2011, the GMHB determined that Ordinances 09-038 and 09-051 (changing the Comprehensive Plan designation of the site to UC and the zoning classification of the site to PCB) were invalid, and remanded these ordinances, as well as Ordinances 09-079, and 09-080 (amending the County's UC development regulations, creating a UC zone, and rezoning the site to UC) to the County for corrective action. The GMHB indicated that Ordinances 09-038 and 09-051 did not meet GMA requirements and were not guided by planning goals in RCW 36.70A.020. The GMHB also found that the 2009 Comprehensive Plan Amendment SEIS did not comply with SEPA requirements in that a less dense alternative should also have been analyzed. Because the SEPA review for Ordinances 09-079 and 09-080 relied on the [prior-insufficient-workSEPA review for Ordinances 09-038 and 09-051 which it determined should have included the review of a less dense alternative](#), the GMHB determined that SEPA review for Ordinances 09-079 and 09-080 was also deficient.

In September 2011, Woodway and Save Richmond Beach sought a declaratory ruling from King County Superior Court that BSRE's UC applications did not vest under the County's Urban Center development regulations due to SEPA noncompliance. The Superior Court was also asked to prohibit the County from processing BSRE's applications until such time as the SEPA deficiencies were corrected.

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In November 2011, the King County Superior Court ruled that BSRE's applications were not vested and that Snohomish County should be prohibited from further processing BSRE's UC applications until the County took action to correct the SEPA deficiencies identified in the GMHB's decision. [Town of Woodway and Save Richmond Beach v. Snohomish County and BSRE Point Wells, LP, King County Superior Court No. 11-2-31315-8.](#)

In August 2012, the County issued the *Addendum to the Final Docket XIII Comprehensive Plan Amendment SEIS*. The Addendum was prepared to supplement the 2009 Comprehensive Plan Amendment SEIS and meet the specific requirements of the GMHB decision. The Addendum provided programmatic analysis of the impacts of an additional less dense non-project alternative in compliance with a proposed change of the Comprehensive Plan designation of the site from UC to Urban Village (UV); amendments to the General Policy Plan; a zoning reclassification of the site from UC to PCB; and, amendments to County development regulations.

In January 2013, Division I of the Washington State Court of Appeals overturned the King County Superior Court ruling regarding the vested status of BSRE's applications and voided the injunction regarding the County's further processing of the BSRE applications. With the Court of Appeals decision, the vested status of BSRE's applications for the Point Wells was confirmed and the County could renew its processing of the applications under the County's UC zoning and other applicable development regulations in effect in 2011. [Town of](#)