

Countryman, Ryan

From: Tom McCormick <tommccormick@mac.com>
Sent: Wednesday, March 09, 2016 1:07 PM
To: Countryman, Ryan
Cc: Tom Mailhot; Jerry Patterson; Mock, Barb
Subject: Right to receive all Public Records regarding Point Wells

Ryan,

I recently received a copy of the email that Mr. Huff sent to you on Dec. 7, 2015.

Mr. Huff's Dec. 7 email (below) is another attempt by him to deny opponents of the Point Wells project their rightful access to public records. (For his earlier failed attempt, see Mr. Huff's Feb. 9, 2015, email to you and David Killingstad, including his proposed "Public Records Protocol," which the County rejected; also see my March 18, 2015 email to you.)

Contrary to what Mr. Huff suggests in his Dec. 7 email, there is nothing new in the AG's Open Government Resource Manual published in October 2015—the manual at Chapter 2.2(A)(1) merely summarizes old court decisions from 1978 to 2004. In any event, contrary to what Mr. Huff suggests, the Manual strongly supports full disclosure of all preliminary drafts of the DEIS, and all studies that may be referenced or included in the DEIS, and all factual, descriptive, summary and explanatory materials that may become part of the DEIS.

We expect that the County will ignore or reject this latest attempt by Mr. Huff to restrict the public's rightful access to all public records relating to Point Wells. We are grateful for having received public records in the past relating to the preparation of the DEIS. And going forward, we of course expect to receive copies of all preliminary drafts of the DEIS, and all studies that may be referenced or included in the DEIS, and all factual, descriptive, summary and explanatory materials that may become part of the DEIS.

Mr. Huff's email refers to "the unending public record requests, and the harm resulting from the inappropriate use of such materials by our opponents." His words are troubling.

— Using the words, "the unending public record requests," Mr. Huff seems to be implying that it's not right for me (or others) to submit recurring records requests which seek to inform the public about all matters pertaining to Point Wells. While Mr. Huff might wish to restrict the public from exercising the rights that Washington law confers, we must all remember that ours is a government of laws and not of men.

— Mr. Huff's comment about "the inappropriate use of such materials by our opponents," is a reckless, libelous comment. There has been no such inappropriate use. Could you please ask Mr. Huff to retract his allegation, or provide evidence that there has been some inappropriate use. Mr. Huff may not like it when documents furnished pursuant to public records requests are shared with others, or when I or others comment on matters that are revealed in the documents — but his distaste for such appropriate uses does not make the uses inappropriate.

While Mr. Huff may prefer to keep us in the dark regarding what's happening with Point Wells, Washington state law does not let him or the County do that.

Public records in our state are sacred documents. The Public Records Act declares:

"The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know

and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. **This chapter shall be liberally construed and its exemptions narrowly construed** to promote this public policy and to assure that the public interest will be fully protected. ..." RCW 42.56.030. (emphasis added.)

The Act further provides:

"Courts shall take into account the policy of [the Act] that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others." RCW 42.56.550(3).

No one can be allowed to interfere with the public's right to remain informed about the proposed Point Wells development.

As expressed above, we expect that the County will ignore or reject this latest attempt by Mr. Huff to restrict the public's rightful access to all public records relating to Point Wells. We look forward to receiving copies of all preliminary drafts of the DEIS and any portions of the DEIS, and all studies that may be referenced or included in the DEIS, and all factual, descriptive, summary and explanatory materials that may become part of the DEIS.

Thank you.

Tom McCormick

*"A small development at Point Wells
with a second public access road,
or no development at all."*

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Begin forwarded message:

From: Gary Huff <GHuff@karrtuttle.com>
Subject: Attorney General's new Open Government Resource Manual
Date: December 7, 2015 at 4:01:11 PM PST
To: Countryman, Ryan </O=SNOHOMISH/OU=County/cn=Recipients/cn=scdrmc>
Cc: Douglas A. Luetjen <dluetjen@karrtuttle.com>

Ryan—As we've discussed, the Attorney General's Open Government Resource Manual was published on October 1, 2015. The purpose of the publication is described by Attorney General Ferguson as follows:

This manual modernizes the prior online manual to reflect the past several years' developments in the state's Public Records Act and Open Public Meetings Act, and court decisions interpreting those laws. The manual includes summaries of and links to relevant statutes, court decisions, formal Attorney General Opinions, and Public Records Act Model Rules.

The manual was produced by my office with the assistance of attorneys representing media and requesters, and local and state government organizations . . .

The following is a link to Chapter 2 of the Manual which discusses the various exemptions to the Public Records Act:

<http://www.atg.wa.gov/Open-Government-Resource-Manual/Chapter-2>

The Deliberative Process and Drafts exemption which is set forth in RCW 42.56.280 is discussed at Chapter 2.2(A)(1). This discussion is directly applicable to the various drafts of studies and particularly of draft DEIS chapters which incorporate and discuss those studies which by definition include “preliminary drafts or recommendations, notes and intra-agency communications which may be withheld if they pertain to the agency’s deliberative process and show the exchange of opinions within an agency before it reaches a decision or takes an action.”

The preparation of a DEIS certainly pertains to the County’s deliberative process. The various reviews, suggestions and drafts no doubt reflect an exchange of opinions before the recommendation is made and action is taken on the application.

Our shared experience regarding the preparation of the Point Wells DEIS and the unending public record requests, and the harm resulting from the inappropriate use of such materials by our opponents, underscores the rationale and justification for this exemption. We request that PDS and your attorneys revisit this matter in light of the newly published Resource Manual and hereafter protect such covered documents and drafts from disclosure prior to the publication of the DEIS.

Gary Huff

Karr Tuttle Campbell

Land Use Counsel for BSRE Point Wells, LP

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