

From: Tom McCormick <tommccormick@mac.com>
Sent: Sunday, January 08, 2017 5:33 PM
To: Countryman, Ryan; MacCready, Paul
Subject: Fwd: Follow-up on MDNS Comments

Begin forwarded message:

From: "Graham, Clayton" <ClaytonGraham@dwt.com>
Subject: RE: Follow-up on MDNS Comments
Date: January 4, 2017 at 9:40:59 AM PST
To: "bgtrimm@comcast.net" <bgtrimm@comcast.net>
Cc: "austen@townofwoodway.com" <austen@townofwoodway.com>, Eric Faison <eric@townofwoodway.com>, "Heidi K. S. Napolitano" <Heidi@townofwoodway.com>, Tom McCormick <tommccormick@mac.com>, Joe Bundrant <joeb@TridentSeafoods.com>

Thanks, Bill. I appreciate your confirmation last night, and I apologize for clogging everyone's inboxes as we awaited confirmation that the MDNS would be withdrawn.

As mentioned in our comments, we do not believe the optional DNS process (in which the decision is made and opened for comments simultaneously) is appropriate for an action like this, especially now that the Town knows that many interested parties (including our client, who is literally next to the road in question) would like to comment on the proposal, and would like to participate in this process in a meaningful way. Can the town issue a SEPA notice and await comments from our clients as well as the many other interested parties before it makes a decision?

This project has been going on for years and will likely be under review / appeals for several more, so accelerating the process by two weeks with the optional DNS process does not make a whole lot of sense to us. It does not seem fair to force the many interested parties to appeal the MDNS one day after submitting their comments. I'm sure the developer would like to make opposition more difficult and expensive, but the Town does not need to go along with this hard-nosed tactic. The Town's responsibility is to employ a process that will ensure adequate consideration of environmental impacts *before* a decision is made. *The optional DNS process will not allow this.* It gives the Town no opportunity to consider comments before it makes a decision, and virtually guarantees a land use appeal, which would be a massive waste of time and money for everyone involved—including the developer and the Town.

Wouldn't it make more sense to allow the parties to formulate their SEPA comments, give the Town an opportunity to consider them, then issue the Town's SEPA decision?

We appreciate your consideration, and are of course available to discuss at your convenience.

Regards,

Clayton

Clayton P. Graham | Davis Wright Tremaine LLP

1201 Third Avenue, Suite 2200 | Seattle, WA 98101

Tel: (206) 757-8052 | Fax: (206) 757-7052

Email: claytongraham@dwt.com | Website: <http://www.dwtrealpropertyreview.com/>

Bio: <http://www.dwt.com/people/claytonpgraham/>

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Shanghai | Washington, D.C.

From: bgtrimm@comcast.net [<mailto:bgtrimm@comcast.net>]

Sent: Wednesday, January 04, 2017 9:21 AM

To: Graham, Clayton

Subject: Re: Comments on MDNS issued Dec. 21, 2016

Clayton,

Thank you for your comments. The MDNS withdrawal was issued this morning and the Town will send it out to the mailing list as soon as possible. A copy is attached for your review.

Regards,

Bill

From: "Clayton Graham" <ClaytonGraham@dwt.com>

To: "Bill Trimm" <bill@townofwoodway.com>

Cc: austen@townofwoodway.com, eric@townofwoodway.com, heidi@townofwoodway.com, "Tom McCormick" <tommccormick@mac.com>, "Joe Bundrant" <joeb@TridentSeafoods.com>

Sent: Tuesday, January 3, 2017 5:22:30 PM

Subject: FW: Comments on MDNS issued Dec. 21, 2016

We agree with, and incorporate, Mr. McCormick's comments and objections on the MDNS as set forth below. If I may make a suggestion, it may save everyone a lot of "fire drill" time (submitting appeals and \$500 checks for appeal fees by tomorrow's deadline, etc.) if the Town could confirm its intention to withdraw the MDNS today, or early tomorrow by email. This would give our respective clients and others some breathing room to meaningfully participate in the Town's review of this proposed Comp. Plan amendment. While a summary, piecemeal approach may be what the developer prefers, I don't think it benefits anyone else involved. My .02 . . .

Regards,

Clayton

Clayton P. Graham | Davis Wright Tremaine LLP

1201 Third Avenue, Suite 2200 | Seattle, WA 98101

Tel: (206) 757-8052 | Fax: (206) 757-7052

Email: claytongraham@dwt.com | Website: <http://www.dwtrealpropertyreview.com/>

Bio: <http://www.dwt.com/people/claytonpgraham/>

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Shanghai | Washington, D.C.

From: Tom McCormick [<mailto:tommccormick@mac.com>]

Sent: Tuesday, January 03, 2017 5:00 PM

To: Bill Trimm

Cc: Eric Faison; Mayor Carla Nichols; Austen Wilcox; Bill Trimm; Debbie Tarry; Kendra Dedinsky; Julie Ainsworth-Taylor; Bill Willard; John John; Tom Mailhot; Jerry Patterson; Joe Bundrant; Graham, Clayton

Subject: Comments on MDNS issued Dec. 21, 2016

To Bill Trimm, Responsible SEPA Official for the Town of Woodway:

In addition to comments already submitted today by email, declaring the attached MDNS to be defective on its face, and asking that it be withdrawn, corrected, and then reissued, I now submit further comments below.

Based on the additional comments below, we are asking that the MDNS be withdrawn and that the Town suspend all action on BSRE's proposed amendment to the Town's Comprehensive Plan, which would change the LOS on Richmond Beach Drive from LOS A to LOS C, until such time that a final EIS is issued by Snohomish County on BSRE's applications to develop Point Wells as an Urban Center. Note: while the MDNS refers to the proponent as being Gary Huff, Land Use Counsel for BSRE Point Wells, LP, in this email I will refer to the proponent simply as BSRE.

I. Standards for withdrawal of MDNS

In addition to withdrawing an MDNS on account of it being defective on its face, an MDNS may be withdrawn for the following reasons per WAC 197-11-340(3)(a):

“(3)(a) The lead agency shall withdraw a DNS if:

- (i) ... ;
- (ii) There is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; or
- (iii) The DNS was procured by misrepresentation or lack of material disclosure; if such DNS resulted from the actions of an applicant, any subsequent environmental checklist on the proposal shall be prepared directly by the lead agency or its consultant at the expense of the applicant.

Because the SEPA checklist submitted by BSRE contains misrepresentations or lacks of material disclosure (see the three items below), per WAC 197-11-340(3)(a), the Town must withdraw the MDNS

II. Misrepresentation or lack of material disclosure

A. Line A.7 asks, "Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal?" BSRE's answer: "Not applicable." This is a misrepresentation by the applicant, BSRE. It is clear that BSRE has "further activity related to or connected with this proposal." BSRE has pending applications with Snohomish County to develop Point Wells as an Urban Center, for which an EIS is required. Parties are still working on preparing the EIS which is expected to be hundreds of pages long. The Draft EIS will likely not be issued until late this year, or later. We expect that one of the lengthiest chapters in the EIS will be the chapter on traffic impacts, not just impacts on the Town and its roads but also impacts on the City of Shoreline and its roads, and other jurisdictions as well.

B. Line A.9 asks, "Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal?" BSRE's answer: "No." This is a misrepresentation by the applicant, BSRE. It is clear that BSRE has knowledge of its own applications that are pending with Snohomish County. See 1.a., above. Its Urban Center application with Snohomish County will directly affect Richmond Beach Drive by pouring thousands of average daily trips (ADTs) onto Richmond Beach Drive, in contrast to just a few hundred today.

C. Line B.14.b asks, "Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?" BSRE's answer: "The area affected by this proposal includes a street which is used by public transit, including buses." This is a misrepresentation by the applicant, BSRE. The nearest bus stop is about a half mile away.

III. New information that requires the withdrawal of MDNS

A. Line A.11 directs, "Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. ..." BSRE answered by saying that for the portion of Richmond Beach Drive NW within the Town's boundaries, LOS C shall apply. Then it added: "If this change is made, the daily peak-hour traffic volume on this segment of road once the entire Point Wells development has been completed is estimated to be as follows: AM inbound

trips: 314; AM outbound trips: 565; PM Inbound trips: 543; and PM Outbound trips: 369. The maximum delay forecasted in the PM peak hour would be 22.5 seconds, which falls under the LOS C.” If there are 543 PM Inbound trips plus 369 PM Outbound trips, that totals 912 two-directional peak PM trips. If we assume as I understand many traffic engineers do, that peak PM trips are approximately 8% of two-directional average daily trips (ADTs), BSRE’s peak PM numbers convert to about 11,400 ADTs.

New information not previously considered by the Town: In 2011, via an amendment to its Point Wells Subarea Plan, the City of Shoreline adopted a limit of 4,000 ADTs for Richmond Beach Drive, designating Richmond Beach Drive north of 199th NW “as a local street with a maximum capacity of 4,000 trips per day.” BSRE’s proposal would result in traffic that far exceeds the City’s 4,000 ADT limit. The MDNS must be withdrawn so the town can consider this new information, as it relates to environmental impacts. Note also the the City of Shoreline Council in 2015 adopted Resolution 377, expressing its strong support for the 4,000 ADT limit. <http://www.shorelinewa.gov/home/showdocument?id=22267> Further, late last year the City Council vote to reject a proposal to amend its Comprehensive Plan that could have allowed traffic exceeding 4,000 ADTs. City Council meeting, Dec. 12, 2016.

B. BSRE’s proposal is obviously related to its pending applications with Snohomish County to develop Point Wells as an Urban Center (see II.A., above), for which an EIS is required. Parties are still working on preparing the EIS which is expected to be hundreds of pages long. The Draft EIS will likely not be issued until late this year, or later. We expect that one of the lengthiest chapters in the EIS will be the chapter on traffic impacts, not just impacts on the Town and its roads but also impacts on the City of Shoreline and its roads, and other jurisdictions as well. In light of this new information which BSRE should have disclosed in its checklist but did not, the MDNS must be withdrawn. Further, we are asking that the Town suspend all action on BSRE’s proposed amendment to the Town’s Comprehensive Plan, which would change the LOS on Richmond Beach Drive from LOS A to LOS C, until such time that a final EIS is issued by Snohomish County on BSRE’s applications to develop Point Wells as an Urban Center. Because BSRE’s proposed non-project LOS revision is inextricably intertwined with its Snohomish County project applications to develop Point Wells, it would violate state law to consider BSRE’s proposal until the final EIS is issued and any appeals exhausted..BSRE must not be allowed to segment or piecemeal its approach to seeking approvals from affected jurisdiction. Cumulative impacts of all related proposals or applications must be considered.

C. Snohomish County will likely require a full public access road to Point Wells as a condition to approving BSRE’s applications to develop Point Wells as an Urban Center. Having a second road will impact the Town in many ways. For

instance, it may increase the amount of traffic that the Town might have on Richmond Beach Drive over and above the estimates given by BSRE. These are the sorts of issues that must be fully analyzed in the EIS. No action should be taken by the Town on BSRE's proposal until a final EIS is issued and any appeals exhausted.

IV. Conclusion

This email is very hurried and not proofed. I had expected that the Town would have withdrawn the MDNS by now, due to the defects I pointed out in earlier emails. Since I didn't see the withdrawal notice, I scrambled to crank out this email. I hope it doesn't contain too many typos or mistakes.

Thank you.

Tom McCormick

On Jan 3, 2017, at 2:18 PM, Tom McCormick
<tommccormick@mac.com> wrote:

To Bill Trimm, Responsible SEPA Official for the Town of
Woodway:

I have just learned that the Town sent its MDNS to the Department of Ecology on Dec. 21, but it failed to attach the SEPA checklist as required by law. See WAC 197-11-340(b) and (d), reproduced below:

(b) The responsible official shall send the DNS **and environmental checklist** to agencies with jurisdiction, the department of ecology, and affected tribes, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal, and shall give notice under WAC 197-11-510.

(c) ...

(d) **The date of issue for the DNS is the date the DNS is sent to the department of ecology** and agencies with jurisdiction and is made publicly available.

As the attached PDF reveals, after receiving the Town's MDNS on Dec. 21, Fran Sant, the Department of Ecology's SEPA Technical Assistance/Rule Coordinator, advised the Town on Dec. 21 as follows:

"This is an incomplete submittal and cannot be posted to the SEPA register without the SEPA checklist. Please provide me the SEPA checklist."

The Town sent the SEPA checklist to the Department of Ecology the next day, on Dec. 22, 2016. So in the eyes of the the Department of Ecology, the Town's MDNS was not a complete submittal until Dec. 22. Thus, under state law, Dec. 22 is considered the MDNS Issue Date.

So we now have yet another reason why the Town's MDNS is defective: it states inaccurately that the Issue Date is Dec. 21, when in fact the Issue Date is Dec. 22, the date that the Town submittal to the Department of Ecology was considered by the Department to be a complete submittal.

Please withdraw the the Town's MDNS ASAP today and reissue it to accurately inform the public and agencies of their rights and deadlines for submitting comments and appealing.

Thank you.

Tom McCormick

On Jan 3, 2017, at 1:26 PM, Tom McCormick
<tommccormick@mac.com> wrote:

To Bill Trimm, Responsible SEPA Official for
the Town of Woodway:

The attached MDNS issued Dec. 21, 2016, is defective on its face, and accordingly, the MDNS must be withdrawn and reissued to comply with the requirement that all notices must provide accurate notice to the public and agencies of their rights.

As shown on the attached snippet,, the MDNS says that:

"In accordance with the provisions of WMC, you may appeal this determination to the Town Clerk at Town Hall, 23920 113th. Place West ,Woodway, Washington, no later than 15 days from the date issued above. To be considered, an appeal of this MDNS must be filed prior to 5:00 p.m., January 4, 2017 by submitting a written statement requesting an appeal, together with appropriate fees."

The above text sets two conflicting deadlines as to when the public must appeal. Thus, the MDNS does not accurately inform the public of its appeal rights, which makes the MDNS defective on its face.

The two conflicting dates:

- (1) At one place, the MDNS says the public must appeal no later than 15 days from the Dec. 21 MDNS Issue Date, which means the deadline is Jan. 5, 2017.
- (2) At another place, the MDNS says the public must appeal by 5:00 p.m. tomorrow, January 4, 2017.

Because the public has been misinformed as to the appeal deadline, the MDNS is defective on its face, and accordingly, the MDNS must be withdrawn and reissued to comply with the requirement that all notices must provide accurate notice to the public and agencies of their rights.

Please reply ASAP today to this email advising me that the defective MDNS will be withdrawn and reissued. TIME IS OF THE ESSENCE.

Thank you.

Tom McCormick

===

<PastedGraphic-1.png>

<12-21-2016 MDNS.pdf>

<SKMBT_C364e17010311440.pdf>