

**Eastin, Darryl**

From: Eastin, Darryl
Sent: Friday, August 12, 2011 1:50 PM
To: 'Gary Huff'; Killingstad, David
Cc: Douglas A. Luetjen; Steve Ohlenkamp; MWells@ppcla.com; Olson, Erik; Rowe, Tom
Subject: RE: questions re Point Wells review process

Hi Gary,

Thanks for your e-mail. David Killingstad, Erik Olson, Tom Rowe and I met this Monday to discuss the urban center process questions in your e-mail below.

Question #1: Under the development agreement route, the Examiner is to conduct a hearing on proposed Development Agreement. Will this hearing also serve as the SEPA hearing pursuant to the above regulations (SCC 30.61.140(1) & WAC 197-11-535(2)? If so, must this hearing be held during the comment period on the (draft) EIS?

Public hearings on environment impacts pursuant to WAC 197-11-535(2) occur as a result of three different circumstances. The first circumstance under (2)(a) is when the lead agency determines that a hearing would assist it in implementing the purpose and policies of SEPA for a proposal. For example, such a hearing could occur as part of the EIS scoping process and/or to receive comments on a draft EIS. As you noted, SCC 30.61.140(1) requires the hearing examiner to preside at the hearing. I have been involved in one such hearing. At the hearing the examiner role was to maintain an orderly meeting and ensure that everyone had an opportunity to make oral comments and/or submit written comments on a DEIS. The second circumstance under (2)(b) is when 50 or more persons residing within the jurisdiction of the lead agency request a hearing on a DEIS. The third is when two or more agencies with jurisdiction request a hearing on a DEIS. The open record hearing with the Hearing Examiner on the development agreement would occur after any public hearings under 197-11-535(2) to receive comments on environmental impacts or comments on a DEIS.

Question #2: Must the FEIS be published before the Council reviews the Examiner's recommendation?

Yes. Any public hearings per 197-11-535(2) would be held prior to issuing and publishing the FEIS and before the Council reviews the Hearing Examiner's recommendation on the development agreement.

Question #3: How do you reconcile the above code provision (SCC 30.61.140(1) and WAC and also conduct a post-FEIS hearing with the requirement that there be only one open record hearing?

WAC 197-11-535(7) states that, "... A public hearing under this section (197-11-535) need not be an open record hearing as defined in RCW 36.70B.020(3) [Local project review – definitions]." RCW 36.70B.020(3) defines an "open record hearing" as a hearing that creates the local government's record and may be held prior to a local government's decision on a project permit. A SEPA public hearing held to get comments on EIS scoping or a DEIS has a different purpose than the open record hearing with the Hearing Examiner on the development agreement. Therefore, a SEPA hearing [WAC 197-11-535(2)] does not conflict with the limit of only one open record hearing pursuant to RCW 36.70B.050.

At the conclusion of the meeting on Monday, we thought it would be helpful to provide the following simplified outline of the development agreement path. This outline reflects our recent discussions to address urban center process questions raised by yourself and others.

1. Applicant submits an Urban Center (UC) application (A Shoreline Permit application is required if project is located within a Shoreline environment)
2. Applicant meets with nearby city and/or town to initiate negotiation a municipal agreement
3. PDS begins review of UC and Shoreline applications

4. PDS begins SEPA review (Depending on project an EIS may be required)
5. A municipal agreement is successfully negotiated with city and/or town
6. A Final EIS is issued if project requires an EIS
7. PDS completes review of UC and Shoreline applications
8. PDS drafts a development agreement that is acceptable to the applicant
9. PDS makes recommendation on development agreement to Hearing Examiner
10. Hearing Examiner holds an open record hearing on development agreement and makes a recommendation to the County Council
11. Council holds a closed record hearing and issues a decision on development agreement
12. Development agreement is recorded

Please let me know if you any additional questions.

Darryl
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From: Gary Huff [mailto:GHuff@karrtuttle.com]
Sent: Friday, July 29, 2011 10:13 AM
To: Eastin, Darryl; Killingstad, David
Cc: Douglas A. Luetjen; Steve Ohlenkamp; MWells@ppcla.com
Subject: RE: questions re Point Wells review process

Darryl and David—Thanks for your response. Unfortunately, my question was not as clearly worded as I had thought. My question regarding a hearing on the EIS was not intended to address an *appeal* of the adequacy of the EIS. My concern had to do with the type and timing of the public hearing contemplated by SCC 30.61.140(1) which provides:

Whenever a public hearing on the environmental impact of a proposed project action is required pursuant to WAC 197-11-535(2), and the county is the lead agency for the proposal, the hearing examiner shall preside at the hearing, and representatives from departments with jurisdiction shall attend.

Under this WAC provision, the public hearing is to occur no earlier than 15 days and no later than 50 days from the publication of the draft EIS.

Under the development agreement route, the Examiner is to conduct a hearing on proposed Development Agreement. I assume, then, that this hearing will also serve as the SEPA hearing pursuant to the above regulations. If so, then I assume that this hearing must be held during the comment period on the EIS (somewhere between 15 and 50 days following publication of the DEIS). If that's the case, then I also assume the FEIS must be published before the Council reviews the Examiner's recommendation. My "question" was really intended to seek confirmation that these assumptions are correct. Based on your response to Question 2 below, we obviously interpret this differently. I'm not sure how we reconcile the above code provision and WAC and also conduct a post-FEIS hearing with the requirement that there be only one open record hearing?

This gets trickier still under a Type 2 review where the Examiner supposedly makes the County's "final decision" (even though that decision is also appealable to the Council). Since a final decision shouldn't be made for at least 7 days following the issuance of the FEIS, then it seems as though the Examiner must conduct the hearing and then the FEIS must be issued at least 7 days before the Examiner issues his/her decision. Does that make sense to you?

Sorry for the confusion.

Gary

From: Eastin, Darryl [mailto:Darryl.Eastin@co.snohomish.wa.us]
Sent: Thursday, July 28, 2011 2:37 PM
To: Gary Huff
Cc: Killingstad, David
Subject: RE: questions re Point Wells review process

Gary,

Thanks for your e-mail. David Killingstad, Tom Rowe, Erik Olson, Jay Larson and I met on Monday and discussed the questions you raised about the urban center review process.

Just a couple of clarifications before responding to the questions. The Development Agreement path for review and approval of an urban center project is not actually a Type 1 Permit review process. County code chapter 30.75 SCC that covers Development Agreements specifies that such agreements are reviewed following the procedures established in Chapters 30.70 (General Provisions) and 30.72 (Type 2 Permits and Decisions) SCC with several exceptions. The most significant exception to the Type 2 review process (30.72 SCC) is that the Hearing Examiner makes a recommendation on development agreement applications to the County Council instead of issuing a decision. The other clarification concerns appeals on the adequacy of an EIS. County code section SCC 30.61.300 (SEPA appeals) limits EIS appeals to challenges on the adequacy of the final EIS and not the draft EIS.

Question #1: Does the Hearing Examiner hearing on the proposed development agreement cover the hearing on the adequacy of the EIS , if adequacy is challenged?

No, because the project requires a Shoreline permit, if the adequacy of the FEIS is challenged, the challenge would be heard by the Shoreline Hearings Board (SHB) along with the PDS staff recommendation on the Shoreline permit application pursuant to SCC 30.61.300(10).

Question #2: Would the hearing on the development agreement (and urban center application) be held during the comment period on the DEIS?

The hearing on the development agreement and urban center application would need to be held after the FEIS is issued because any recommendation by PDS staff on the development agreement and application must be based on a final EIS.

Question #3: Would the FEIS be published before the Council reviews the Examiner's recommendation?

This is correct. See response to Questions #2 and #4.

Question #4: When and by whom would the hearing on the adequacy of the FEIS have been conducted?

Because the project requires a Shoreline permit, if the adequacy of the FEIS is challenged, the challenge would be heard by the Shoreline Hearings Board (SHB) along with the PDS staff recommendation on the Shoreline permit application pursuant to SCC 30.61.300(10). The timing of the FEIS challenge hearing would be up to the SHB.

I hope the above address your urban center process questions. Please let me know if you have any additional questions.

Darryl

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From: Gary Huff [<mailto:GHuff@karrtuttle.com>]
Sent: Monday, July 18, 2011 10:20 AM
To: Eastin, Darryl; Killingstad, David
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Subject: questions re Point Wells review process

Darryl and David—I'm trying to put together a best guess estimate of the timing and steps involved in the review of our urban center application. In working on this, it became obvious to me that I'm still unsure as to how the process will play out. For example, we know there is supposed to be only one open record hearing. Under the Type 1 process, the Examiner's hearing is to take comment on a proposed Development Agreement. I assume this hearing must then also cover the adequacy of the DEIS. If so, then must this hearing be held during the comment period on the EIS? If that's the case, then I assume the FEIS must be published before the Council reviews the Examiner's recommendation. Do you agree?

Under a Type 2 review, the Examiner supposedly makes the County's "final decision" even though that decision is also appealable to the Council. Since the Examiner makes what is ostensibly the County's final decision, must the FSEIS have already been published? If so, then when and by whom would the public hearing on the adequacy of the impact statement have been conducted?

Any help you could provide would certainly be appreciated. Thanks.


Gary

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