

**From:** casperdenn@aol.com  
**To:** [Davis, Kris](#)  
**Subject:** From Denis Casper, RE: BSRE v. Snohomish County PDS  
**Date:** Wednesday, May 30, 2018 1:51:31 PM  
**Attachments:** [Hearing Examiner Memo II BSRE v Snohomish County 05.27.2018.doc](#)

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Dear Mr. Examiner:

Subsequent to observing the recent hearing on this matter, additional matters and argument surfaced which I kindly request that you use in your decision making. Thus, I've attached additional observations and argument in memo format for your review.

Thank you for allowing the record to remain open post the hearing for this purpose, and for your review.

Yours truly,

Denis Casper

MEMORANDUM

To: Mr. Peter Camp  
Hearing Examiner  
Snohomish County, via Hearing.Examiner@co.snohomish.wa.us

From: Denis Casper  
20235 Richmond Beach Dr. NW  
Shoreline, WA 98133

Date: 27 May 2018

Subj: Additional Written Comments Subsequent to BSRE's Presentation  
BSRE v. Snohomish County, Planning and Development Services

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As the record remains open, I write to provide additional observations on the above litigation before you of May 21-24, argument that I request that you will use in your decision making.

1). State Statute and County Code EIS Deadlines. As you are fully aware, since February 2011, Snohomish County has granted BSRE three separate permit application extensions so as to provide supporting documents for the application for purposes of preparation of an EIS. Even since the court decision resolving related litigation of Town of Woodway and Save Richmond Beach v. Snohomish County and BSRI Point Wells 322 P.3d 1219 (2014) 180 Wash.2d 165 on 10 April 2014, the applicant, BSRE, has had (4) years to provide the necessary supporting documents and studies to support the BSRE application. On 24 January 2018, Snohomish County PDS Director, Barbara Mock, denied BSRE further extensions. (See exhibit K-40, Barbara Mock to BSRE).

The Washington State legislature in 1971 enacted EIS rules which state in part that, "For even the most complex government decisions associated with a broad scope of possible environmental impacts, a lead agency shall aspire to prepare a **final** (bold emphasis supplied) environmental impact statement within twenty-four months of a threshold determination of a probable significant, adverse environmental impact. (See specific language provided from RCW 43.21C.0311 below). The legislative deliberators had specific reasons for this (24) month deadline. Those reasons are noted in the Finding---Intent note attached to this area of the statute. I've also attached this 'Finding---Intent' 'NOTE' as part of the statute citation below. The NOTE states that excessive delays in the environmental impact analysis adds uncertainty plus burdensome costs to those seeking to do business in Washington State. Therefore, it is the intent of the legislature to promote timely completion of state environmental policy processes.

State and local government are not cost neutral actors. If government burns excess time attempting to review, process and reprocess repeatedly updated or inadequate environmental submissions from applicants, not only is there uncertainty related to vested applications, but excessive and wasteful taxpayer money is expended. For, the lead agency again and again attempts to process and spend time reviewing inadequate supporting materials pursuant to the application sufficient for an EIS—in this case since at least 2014 when the litigation was resolved (earlier if we consider when the original BSRE application was vested in 2011). This is what has transpired with this application. Moreover, not only the county, but those parties who have concerns about the application must expend excess time, money and energy reviewing and re reviewing the application proposal that appears stuck in submission after resubmission, extension after extension, review after review. Snohomish County has granted (3) extensions over the years. (See exhibit K-40, Barbara Mock to BSRE).

The lead agency, Snohomish County, has leaned over backwards to accommodate the applicant BSRE. This is a complex application. However, in arguing complexity, BSRE as applicants are promoting forbearance to a self inflicted wound. BSRE knew well that the application was complex before they raced to the Snohomish PDS office in 2011 in order to apply under older vesting regulations. BSRE made that choice to vest before apparent preparation. Now that they have struggled with the complexity so as to arrive at the EIS acceptance transom, they cry 'complexity and forbearance for extension after extension' (my language). The fact is that BSRE has additionally repeatedly failed the test of reasonable diligence in submitting sufficiently qualitative studies and supporting documents necessary for the preparation of the EIS, and as such derives a fatal wound of their own making which does not lend positive argument nor sympathy for additional extensions. Any additional extensions must be denied.

## **RCW 43.21C.0311**

### **Final environmental impact statements—Expeditious manner—Time limit—Reports.**

(1) A lead agency shall aspire to prepare a final environmental impact statement required by RCW [43.21C.030](#)(2) in as expeditious a manner as possible while not compromising the integrity of the analysis.

(a) For even the most complex government decisions associated with a broad scope of possible environmental impacts, a lead agency shall aspire to prepare a final environmental impact statement required by RCW [43.21C.030](#)(2) within twenty-four months of a threshold determination of a probable significant, adverse environmental impact.

NOTES:

**Finding—Intent—2017 c 289:** "The legislature finds that the analysis of environmental impacts required under the state environmental policy act adds value to government decision-making processes in Washington state and helps minimize the potential environmental harm coming from those government decisions. However, the legislature also recognizes that excessive delays in the environmental impact analysis process adds uncertainty and burdensome costs to those seeking to do business in the state of Washington. Therefore, it is the intent of the legislature to promote timely completion of state environmental policy act processes. In doing so, the legislature intends to restore balance between the need to carefully consider environmental impacts and the need to maintain the economic competitiveness of state businesses." [ 2017 c 289 § 1.]

But not only does the state require a maximum of (24) months before an application expires in the event that an EIS remains unfinished, the lead agency, in this case Snohomish County, has code requiring the applicant to meet deadlines. This deadline is contained in SCC Table 30.70.140(1) and (2), and which provide in part that "The suspension of the expiration period for an application shall not exceed 18 months unless approved by the director." (See exhibit K-40, Barbara Mock to BSRE). Since the end of litigation at 10 April 2014 as noted above when the applicant could reasonably be certain that there were no further legal obstacles to their vesting rights, BSRE has had 2 ½ pro forma periods of (18) month extensions equaling (48) months. And, of course, this fails to account for the (3) years between the vested application in 2011 and litigation resolution in 2014, when the applicant could have been diligently preparing their supporting application materials and studies. For, this EIS support preparation process had nothing to do with the vesting issue that was under litigation between 2011-2014. In the event BSRE lost the vesting issue, there would have been little lost by preparing their original submissions—as their vesting would simply have been covered by the new regulations as the project went forward. All supporting submissions could simply have been transferred to the new application under new vesting rules. Thus, BSRE's additional expensive and wasteful extensions are excessive, and inconsistent with both state statute and with county code as noted above.

2). Setting New Precedent Related to Snohomish County's Denial of a DEIS Time Extension. As I mentioned in my public comment, I just completed construction of a house approximately 500' from the entrance of Pt. Wells. Our family was able to move in last year. During construction and planning, I was told that I was not allowed to miss one deadline, or I would be required to reapply for a new permit vested under a newer code. There would be no extensions. Given the complexity of the BSRI proposal, I understand that an extension or two might be necessary. However, everyone should be treated equally. Snohomish County PDS has gone way beyond what was fair and equitable in treating everyone the same. I strongly posit that further time extensions for the DEIS would mean that equal treatment would not exist in this case—compared with all others prior to BSRE that had gone before them complying with the reasonable deadlines that the County had imposed. Setting a new extension precedent in this case would not be fair, equitable, and would be venturing into unknown legal territory.

3). Safety related to the Retaining Wall System Specific to the Secondary Access Road (Update). I observed the testimony related to the secondary access road as well as the proposal for a retaining wall protection system due to instability of the slope above Pt. Wells. For example, exhibit A-37, Fig. 22A depicts the retaining wall below the road. However, there is no retaining wall system shown which would protect pedestrians, cyclists and motorists on the secondary access road above the wall in the event of a landslide 'slip' as shown in 37-A, Fig 22A. Assuming that the below development can be protected with the proposed retaining wall, there is nothing shown that will protect people on the road above the retaining wall in the event of a slip. Moreover, in any retaining wall system, in order for a road to go bottom to top, there must be some kind of breach in the wall in order to open up space for the road to proceed further up the slope. Either one has a full protective retaining wall with no road breach; or, one has a partial retaining wall with a breach for cycle lanes, motorist lanes, sidewalks, and other associated amenity strips. Even assuming that (2) walls can be engineered ([2] walls are not proposed), one to protect motorists, pedestrians, cyclists, etc, and the other constructed to protect the down slope buildings and improvements, the retaining wall(s) does not provide full protection below due to the breach.

A-22, Fig. 22A shows the secondary access road starting at the base of the slope to the north, and then switching to a southeasterly direction gaining altitude. That switchback curl has no protection from a geologic slip that could move southwesterly from property owned by others on the east side of the BNSF R/R tracks but northerly from the road and rail tracks. BSRE has not shown how this issue can be resolved in their pre hearing submissions sufficient to support the application for EIS preparation.

4). Additional Retaining Wall(s) on the Property of Others Due to Light Rail Train Station. It is my understanding, based upon testimony by BSRE, that should a light rail station be required in Phase I to exceed (90)' maximum height, BSRE intends to build it north of the development. Part of that northern property is owned by others (City of Woodway). Thus, a protective retaining wall would have to be built on land currently owned by others due to testimony related to the instability of the uplands slope. (See exhibits B-5 C-000, B-7 A-050, B-7 A0A56 noting the cross hatching critical landslide areas). From my observations, neither detailed plans to protect the rail station with a retaining wall, nor documentation that acquisition of the land necessary to build these protective retaining walls, has been submitted for approval by Snohomish County as of the date of this hearing.

5). Building Heights in Excess of the Maximum of 90 feet. It is my understanding that the original Urban Center zoning designation allowed building heights up to a maximum of 90 feet. Additional height above 90 feet was allowed under certain conditions. (See below for the applicable quote from the Snohomish County code). One of those conditions was when the project is located within one-eighth mile of a high capacity transit station, major transit corridor, or transit center. None of these transit conditions exist within one-eighth mile of this site. BSRE has attempted to argue that there was some discussion back in the 2009-2014 time frame that Sound Transit rail had placed a station at the Point Wells in their future potential possibilities planning documents.

While some discussion of a Pt. Wells rail station as a potential future possibility did occur by Sound Transit in long range publications during 2009-2014, nothing concrete materialized from those 'potential/possibles' ideas. In fact, the latest Sound Transit future planning publications no longer mention a potential Pt. Wells station. Further, via 8 May 2018 email from Kamuron Gurol of Sound Transit to Ryan Countryman of Snohomish County (see exhibit H-30), Mr. Gurol stated that, "**Sound Transit staff are not aware of additional recent contact between BSRE and the agency since the Long Range Plan FEIS.** The ST3 package approved by voters in 2016 does not include a station at Point Wells. **To construct a station there (or any other additional location along that corridor) would require an additional easement from Burlington Northern Railroad, something that likely would be very challenging to obtain** (bold emphasis supplied). BSRE would need to negotiate agreements with both Sound Transit and with Burlington Northern Santa Fe (BNSF) railway who control the tracks that Sound Transit uses. No such agreements or even written understandings exist. Thus, any additional building heights above the 90 feet maximum, whether applied for via normal application or via variance, must be rejected due to the lack of any Sound Transit specific plans for a transit site at or near Pt. Wells; due to no BSRE plans submitted to build a station at Pt. Wells; and due to the fact that BSRE has not even had discussions with Sound Transit for many years—despite knowing that this was a requirement for additional building heights above 90 feet. Nor is there any evidence of an understanding leading to an agreement, with BNSF, despite (7) years since BSRE's original application

#### **30.34A.040 Building height.**

(1) The maximum building height in the UC zone shall be 90 feet. A building height increase up to an additional 35 feet may be approved under SCC 30.34A.180 when the project is located within one-eighth mile of a high capacity transit station, major transit corridor or transit center.

Further, it should be noted that if BSRE was serious about pursuing a rail transit station at Pt. Wells, parking for neighborhood commuters not of Pt. Wells residencies, who might wish to park and use this Pt. Wells stop, remains unidentified. In reading through BSRE's application materials, I could not discover any parking planning for extra Pt. Wells commuters. This deficiency alone must be sufficient grounds to deny the additional building heights that BSRE is applying for.

6). View Blockages Related to BSRE's Variance Request. It is my understanding that a requirement of the Urban Center zoning designation, in part related to building heights, requires a variance and discussion of view blockages that may arise from the proposal. In exhibit K-37 Variance Request dated 04/24/2018 labeled "Building height and setback", BSRE makes several arguments. Under Point 3, the text reads in part, "This zone directly east of Urban Plaza is void of neighboring structures (the next neighbor is ~750 further east)." Under Point 4, the text reads in part, "The location of this particular part of the development is in a key position and builds strong connections to surrounding neighborhoods. The building massing is equally distributed and appropriate for this area."

There are several inaccuracies and fact deficiencies in the above Variance Request statements. "This zone directly east of Urban Plaza is void of neighboring structures". BSRE in this variance request offers a discussion of areas east of Urban Plaza. Yet, BSRE in their variance request does not address those neighbors to the south of this proposed development at all. Our family home is, as stated above, approximately 500' from the entrance to the proposed Pt. Wells development. (See exhibit K-37, Variance Request, 'Model 1' photo, where our house is the reddish colored roof on the right side of the photo, just behind the railway tracks). The impacted southern, and not eastern structures, are not addressed. The variance further states, "(the next neighbor is ~750 further east)." The next neighbor is not 750' further east. There are (5) Woodway houses which are on Richmond Beach Dr. NW, and which are much closer than 750'—(2) of which will border directly on the proposed development. These can be seen under the red #1 pointers in the variance request Model 1 photo. At least (1) of these is to the east.

Save for a tree, and double decked rail cars which park for extended time periods in front of our house blocking our views as they await Sound Transit, BNSF and Amtrak to pass (BNSF track narrows from double track to single just north of Pt. Wells requiring BNSF freighter trains to wait until Sound Transit and Amtrak clear this track segment before proceeding), our house has westerly views. To the north, we presently enjoy views of all of Pt. Wells, and the Sound beyond as well as south Whidby Island, Kitsap peninsula and shoreline, including the Olympic Mountains. Our house's top floor window tops are constructed at 59' above licensed surveyed sea level. Thus, our views will be significantly impacted by this development's additional height variance request. But in addition, our neighbor adjacent to the south of us looks across our roofline for their northerly views affording them the same view benefits that we enjoy. They also will be negatively impacted by this development's additional height variance request. And yet in no part of the variance request are the views of any of the homes to the south addressed.

Under Point 4, the text reads in part, “The location of this particular part of the development is in a key position and builds strong connections to surrounding neighborhoods. The building massing is equally distributed and appropriate for this area.” The “builds strong connections to surrounding neighborhoods” statement is subjective on its face, and I would argue exactly the opposite as stated. This is a residential neighborhood, far from any significant commercial centers or commercial road arterials. It is not possible for the massing of this project to “build strong connections to surrounding neighborhoods”. Further subjectivity is demonstrated in, “the building massing is equally distributed and appropriate for this area”. It is, and has been, easily demonstrated that this is not an ‘appropriate’ project for this area

This variance request must be rejected because there has been no discussion of the views related to the houses to the south, because the excess height of the proposal’s towers are subjectively not appropriate nor connected to the surrounding neighborhoods, and because the proposal itself is inconsistent with the character of the neighborhood which finds the BSRE argument related to connectivity and appropriateness inaccurate on its face.

To conclude and summarize:

- 1). The lead agency’s (Snohomish County) denial of further extensions of permitting time for this project must be upheld. BSRE has had (9) years since the start of the project, and (7) years since original application, and (4) years since resolution of vesting litigation (which was not actual bar as BSRE could have used the same supporting documents and studies for either vesting application), and (3) extensions from Snohomish County to provide the necessary studies and documents to support their application leading to an EIS. This is despite state statute requiring a (24) month deadline and county code requiring an (18) month deadline. BSRE knew all of this at the outset of the project. The facts that BSRE failed to be sufficiently diligent, and missed all these deadlines, are self inflicted fatal wounds. BSRE’s appeal from Snohomish County’s denial of additional time extensions for application submissions leading to an EIS, must be denied. The lead agency, Snohomish County’s denial of more extension time must be upheld and affirmed.
- 2). Allowing a further extension of time to provide supporting studies and documentation leading to an EIS will be inconsistent with all those applicants who have gone before, and who will apply in the future—even applicants in this same neighborhood. A new precedent must not be set. Snohomish County PDS’s denial of more extension time must be upheld and affirmed.
- 3). The geologic hazard protection proposal to construct a retaining wall down slope from the secondary access road, is deficient. BSRE proposes nothing to protect pedestrians, cyclists and motorists above the retaining wall. Further, assuming a second wall above the road is proposed to protect pedestrians, cyclists and motorists, any road going up or down a slope with a retaining wall will require a breach in that wall(s) which retains a level of unprotection. Since BSRE has not demonstrated how to make the hazard zones safe for all, the Pt. Wells BSRE project should be denied, so that further tax and private dollars and time are not wasted.



4). Should BSRE provide an actual specific proposal to construct a rail transit station to the north of the Pt. Wells property, additional property from others would be required in order to construct a further retaining wall to protect the rail transit station from up slope geologic slips. Since BSRE has not demonstrated how to make any rail transit station protected from landslide hazards, BSRE's variance request for additional building heights above 90' must be denied.

5). BSRE has provided no evidence to satisfy the 90' building height condition of having the project located within one-eighth mile of a high capacity transit station, major transit corridor, or transit center. BSRE has had (9) years to build a relationship with Sound Transit sufficient to present evidence that a Sound Transit station is shovel ready. On the contrary, Sound Transit denies any even contacts of late with BSRE. Further, BSRE's proposal has not provided any detailed plans for commuter parking on the site for those who wish to park and commute. Since no concrete plans for parking nor a Sound Transit Station exist, BSRE's variance request for additional building heights above 90' must be denied.

6). BSRE's variance request for additional building heights above 90' does not address view blockages from houses to the south of the project. BSRE's variance request is inaccurate and misleading. Thus, BSRE's variance request for additional building heights above 90' must be denied.

Not only must BSRE's extension request for more time be denied as noted above, but the proposal as a whole is totally inconsistent with other urban centers in Snohomish County in location to commercial links, and in scale. Moreover, the proposal is additionally totally inconsistent with the character of the neighborhood as well as reasonable links with road transportation. There are too many significant impacts that cannot be resolved.

The lead agency, Snohomish County PDS has denied BSRE any additional time extensions. No more extensions must be granted. Respectfully, it is requested that this denial of no more extensions ruling by Shohomish County PDS be affirmed.

The lead agency, Snohomish County PDS has recommended that this project be denied as originally applied for. It is a proposal totally inconsistent with the neighborhood for this site. The impacts are too significant. No amount of fudging, mitigation and work around attempts will be ultimately successful. Tax payer and private money is being wasted chasing a project that is unapprovable consistent with code. Respectfully, it is requested that Snohomish County PDS's determination to deny this project, as it cannot be constructed absent violating Snohomish County land use codes, be also affirmed.

Thank you.