

Schroader, Kathy



From: David McDonald <david@mcdonaldpc.com>
Sent: Wednesday, December 02, 2015 8:36 AM
To: Stewart, Jeanne
Cc: Horne, Chris, Cook, Christine, Schroader, Kathy
Subject: Consultant Change at the \$5000 Board Time Today
Attachments: Cook&Horne-Ltr-151201.pdf, Cook&Horne-Ltr-SEPA&PP-151201.pdf, McCauley-Ltr-151201.pdf

For the Public Record on Comp Plan and SEPA indexes

Councilor Stewart:

Attached are the three letters that I sent to the county yesterday. I do not know if they would have been in your packet last night. They may assist you in framing questions for legal staff, planning staff and Thorpe consultants at Board Time today.

Of note, the County has *not* made a decision regarding whether or not it needs to restart the EIS process because of the passage of Councilor Madore's proposal on 11/24. It is my understanding that in order for the county to make an affirmative decision about the process, there has to be a specific request from an elected official to legal staff (see 1st full paragraph on page 2 of my letter to Mr. Horne and Ms. Cook entitled "Alleged Public Participation and SEPA Violations"). As far as I know, no specific request has been made and therefore, legal staff has not published a public determination regarding what impact, if any, the passage of Councilor Madore's Alternative #5 has on the current SEPA process. The public is currently in limbo regarding SEPA and GMA for this county's CP update and before the County engages in this discussion with a proposed new consultant, it would be helpful to know if the County needs to restart the SEPA process.

As background on consultant issue, ESA is our current consultant. The County has contracted with them on other EIS/SEPA related projects. They have spent over one year working with our CP SEPA update. They have prepared two *Preliminary* Draft SEIS documents (one of which had been provided before Alt #4 was added to the mix) plus the current *Draft* SEIS. The County has paid them almost \$150,000. However, even before issuing the *Draft* SEIS on August 4, and especially after issuing the Draft SEIS, e-mails in the public record and public testimony reveal that ESA became the scorn of Carol Levanen, Susan Rasmussen and Councilor Madore. However, the Planning Commission agreed with the findings in the DSEIS and voted against the original Alt #4, and Councilor Madore's new Alternative #5, in two separate 5-1 votes.

I think you would be well served by watching the staff presentation to the Planning Commission on 11/19 as Dr. Orjiako and Mr. Alvarez give a frank and honest assessment of what is now the Local Preferred Alternative. No similar presentation was made to the Councilors on 11/24.

Councilor Madore's Alternative #5 proposal dated November 18, 2015 did not have any policies at all regarding the consultant. Those policies (found in 2.1-2.6)--
http://www.clark.wa.gov/thegrid/documents/BOCCHearing_CompPlan_PreferedAlternative_CompPlanPolicy.pdf---were never mentioned in public, or in any document, until they were published to the Grid late Saturday night (11/21) by Councilor Madore.

If you look at the Staff Report dated 11/20, you will see that those policies are not mentioned, were not considered by the Planning Commission and were not proposed by staff---
http://www.clark_wa.gov/thegrid/documents/BOCCHearing_CompPlan_FinalPCrecommendations_111915.pdf.

When many of us read those policies (2.1-2.6), it was clear that Councilor Madore wanted to terminate ESA's contract. That belief was reinforced when he stated at the end of the 11/24 hearing that he wanted to make sure that the County had "the right source, a good source, a good time, a good timing and we have, and staff has the right ingredients to move forward with this process". At that point, many of us believed that the Councilor had secured another consultant which, as we found out last night he had. There is no evidence in the record that ESA is not "the right source, a good source, a good time, a good timing and we have, and staff has the right ingredients to move forward with this process"

Policy 2.2 states that "It shall be the policy of the Board to have the option to select an alternative consultant or resource to complete the FSEIS in the event of a cost overrun or delayed delivery date. There is no evidence that there has been a cost overrun or a delayed delivery date of which is in the public record

Policy 2.1 states: "The materials and information submitted for analysis by the FSEIS shall be wholly consistent with the Preferred Alternative and fully supportive of the policies selected by the Board of Clark County Councilors (Board)" As I said last night in my comments, that is basically saying to the consultant, "you can only consider what supports the alternative but you cannot independently evaluate it and we are not going to send you any data that contradicts the statements in the Resolution, Exhibits and policies" So, one could speculate that a firm of integrity, such as ESA, would say "We cannot do that as it would violate our professional ethical guidelines"

Also, as you can see by my letter to Mr. McCauley, we assert that the contractual vote last night, and the process that led to it, violates the Charter. I do not know legal staff's position, or Acting Manager McCauley's position, on that assertion

So, in closing, you may want to consider asking the following questions at Board time

Does the County need to restart the EIS/SEPA process?

Did Councilor Madore's bringing of this proposal violate the charter (§2.6)?

Why are we spending \$5000 on Thorpe when we have a consultant who has done all of the work to this point and staff has not requested we engage a new consultant?

When did Councilor Madore (or Mr. Silliman) begin searching for a new consultant and, for Mr. Thorpe, when was his firm first contacted and by whom?

Is staff satisfied with ESA work and, if they are, did they request to seek alternative consultants?

Thank you for your questions regarding the process in this matter and good luck with your Board time today

Sincerely,

David T. McDonald

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December 1, 2015

Christine Cook
Chris Horne
Office of the Clark County Prosecuting Attorney, Civil Division
1300 Franklin Street
Vancouver, Washington 98660

Via pdf and e-mail

For the public record—Request that Public Hearing for tonight on “Implementation of the Clark County Board of Councilors Comprehensive Plan Policy” be stricken until proper 15 notice is provided to the public under the County’s Type IV process rules.

Dear Ms. Cook and Mr. Horne:

After reviewing the documents approved by the Board last Tuesday, it is clear that Councilor Madore wants to switch consultants for the preparation of the FSEIS. Such a switch is not shocking given the fact that e-mails during the development of the Preliminary Draft SEIS and the Draft SEIS show that both he and CCCU (especially Ms. Rasmussen) actively contacted ESA’s offices in Washington and California¹.

I also note that there is an e-mail in the public record portal that directs Councilor Madore to not have direct contact with ESA. This directive was apparently given in response to the ESA staff e-mails to Clark County planning staff on September 30 and October 1, 2015 regarding contact by Councilor Madore and Ms. Rasmussen with ESA staff regarding findings in their Draft SEIS. I have listened to two voice mail messages that the Councilor left with ESA staff, one of which directed them to address the issue raised with them by Susan Rasmussen.

Given the findings by ESA regarding the significant impacts that would be

¹ This is my opinion but, given the statements in the record from the July 17, 2015 Board hearing during public comment with Carol Levanen, the e-mails and voice mails with the consultant, Ms. Rasmussen’s and Ms. Levanen’s consistent and vitriolic comments against ESA’s findings regarding Alternative #4 and the fact that Councilor Madore continues to allow CCCU in general and Ms. Rasmussen and Ms. Levanen specifically to be the single group determining what should be in his new Alternative #5, I believe my opinion is well grounded in facts that are in the record.

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caused by Councilor Madore's Alternative #4, I anticipate that the Councilor wants the county to retain a consultant he can control. My anticipation is evidenced by the fact that the resolution specifically limits the type of information that should be provided to the ESA². I hypothesize that, given the admonition to Councilor Madore that he should not contact ESA, he does not feel that he can control ESA, or they will not accept the restrictions on ESA's evaluation of the new Alternative #5 adopted by the Board (*see fn #2*). Therefore I expect that he will be suggesting a new consultant tonight at the hearing for the Board to hire, an action item that I do not believe is covered by the continuation of the 2.3 of the public hearing. *See* discussion of the agenda item *infra*.

In the event that such a request is made, I trust that the County will follow its code and send the matter out for an RFP. I believe such an RFP process is required under RCW 36.32.250 and CCC 2.37.010³ as this would neither be a performance based

² **Policy 1:** The Board selects as policy, Exhibit B and choice B of Exhibit A to be used as the specifications and criteria to be used in the FSEIS analysis. The October 8, 2015 subject matter expert letter from the Clark County Technical Advisory Committee on Septic Systems is to be included in the FSEIS to correct related out of date information published in the DSEIS.

Policy 2: The Board adopts the following policies and processes related to the Comp Plan:

2.1 The materials and information submitted for analysis by the FSEIS *shall be wholly consistent with the Preferred Alternative and fully supportive of the policies selected by the Board of Clark County Councilors* (Board).

2.2 It shall be the policy of the Board to have the option to select an alternative consultant or resource to complete the FSEIS in the event of a cost overrun or delayed delivery date.

2.3 The Board policy is hereby adopted to complete the FSEIS as scheduled by February 1, 2016.

2.4 It shall be the policy of the Board to review the FSEIS, to specify any corrections deemed necessary, and to approve the FSEIS in a public hearing before the FSEIS is considered final and submitted to state

³ **2.37.010 Contracts less than twenty-five thousand dollars (\$25,000).**

SHARE

Contracts, leases and purchases involving less than twenty-five thousand dollars (\$25,000) but more than five thousand dollars (\$5,000) may be made by Clark County without advertising or competitive bids, as provided by RCW 36.32.250 as amended by

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contract under RCW 39.35.020(4) nor a small works roster process under RCW 39.04.155.

More importantly, and in further support of the above, I reviewed the agenda item this morning and I noted that the description regarding the hearing has markedly changed from yesterday to include the following language:

Authorization to engage a third party for an amount to be less than \$5,000 to provide guidance to and propose a path forward to the Board on Wednesday. Wednesday's proposal includes potential contracts to complete the Comp Plan Update, the FSEIS, the Transportation components (Capital Facilities Plan, and Capital Facilities Financial Plan), SEPA process and other steps necessary to complete the necessary tasks. Follow through on other Comp Plan policies.

Staff Contact: Oliver Orjiako (360) 397-2280, ext. 4112; Gordy Euler (360) 397-2280, ext. 4968

According to CVTV, Councilor Madore stated that the "Motion would be to "move item 2.3 to Tuesday's agenda". Item 2.3 states the following:

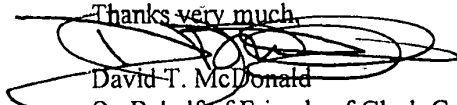
the laws of Washington, Chapter 267 First Extraordinary Session, 2007, provided:

- (1) That bids be solicited from as many suppliers as practicable;
- (2) That a record be kept of all bids and made available for public inspection by telephone, e-mail or fax;
- (3) Repealed by Ord. 2014-01-08;
- (4) That supplies be purchased, whenever possible, in quantities for a period of at least three (3) months but not to exceed one (1) year;
- (5) That supplies used throughout the county be standardized as far as possible, and stored for general use by all departments, which shall be charged for them when withdrawn. (Sec. 1, Res No. 1977-09-12; amended by Sec. 1 of Ord. 2014-01-08)

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2.3 The Board policy is hereby adopted to complete the FSEIS as scheduled by February 1, 2016.

Of note is that Item 2.2⁴ was not continued to the public hearing scheduled for tonight and there was nothing in Item 2.3 that mentions Authorization to engage a third party or discuss potential contracts. These items are not covered by the notice and should be withdrawn and or stricken.

~~Thanks very much~~

David T. McDonald
On Behalf of Friends of Clark County

⁴ 2.2 It shall be the policy of the Board to have the option to select an alternative consultant or resource to complete the FSEIS in the event of a cost overrun or delayed delivery date.

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December 1, 2015

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Via pdf and e-mail

For the public record—Alleged Public Participation and SEPA Violations

Dear Ms. Cook and Mr. Horne:

Please accept these comments in addition to the ones in my previous letters regarding the ongoing violations of the Public Participation prong of the Comprehensive Plan update and the concomitant SEPA process. The change in agenda item for tonight's alleged "continuation" of the November 24, 2015 public hearing is yet another violation of the public process resolution previously passed by the County Councilor Madore's "transparency" is more akin to aluminum foil than cellophane these days. If he has been in contact with any consultant other than ESA prior to the November 24, 2015 hearing then he should have announced that fact at the time of the hearing. Failure to have done so violates, once again, involving the public and, at least arguably is in violation of the Charter's provisions separating executive and legislative actions.

In addition, I cannot reiterate enough that the new Alternative #5 is not a modification of Alternative #4 but rather is a completely new configuration based on brand new assumptions and exclusions being placed solely into the rural VBLM model. Although Councilor Madore states that these are GIS generated numbers, and thus attempts to give them the veneer of legitimacy, GIS has repeatedly stated that all they did was what Councilor Madore directed them to do with regard to the model.

Therefore, the only vetting of these new policies and assumptions by county staff are the ones presented in the red and green lined versions of Councilor Madore's proposals dated 11/3/2015 and 11/4/2015, the staff report dated November 1, 2015, the staff report dated November 19, 2015 and the presentation by staff to the PC on November 19, 2015. The public record e-mails, and Councilor Madore's own actions in being the sole creator of all of the documents and resolutions presented at the 11/24/2015 hearing (and not made available to the public until the Sunday before the Tuesday

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morning hearing) make it abundantly clear that Councilor Madore is creating his own Comprehensive Plan outside of the public process provisions that have been adopted.

As to the SEPA process, this is to confirm that the legal staff has not yet made a determination as to whether or not the passed resolution and concomitant exhibits requires that the county engage in a new SEPA alternative or, at a bare minimum, reopen the SEPA process for additional scoping and comment on the new Alternative #5 that was passed on November 24, 2015 by the Council. I am assuming that is because the pertinent question has not been presented to legal staff by either a member of the council, the Acting County Manager or the Responsible SEPA official. I assume that if a council member, the Acting County Manager or the Responsible SEPA official made a specific request for a legal opinion on that issue, then legal staff would evaluate the question and provide a public response so the public would know what the County's position is on the SEPA issue.

However, pending that determination, we assert that the adoption of the resolution and the concomitant policies requires a new SEPA process or, at a minimum a new 45 day comment and scoping period and encourage the County to restart the SEPA process.

1. **Does the passage of the new Alternative #5, at a minimum, reopen the SEPA comment period?** FOCC asserts that it does but we have no indication of that process from the November 24, 2015 hearing. In addition, the resolution and concomitantly adopted policies *de facto* reopens the SEPA comment period because the adoption supplemented the SEPA record with one document from the Technical Advisory Committee but none of the other parts of the record that are contrary to the assertions in that letter.
2. **Does the passage of the new Alternative #5 require a whole new EIS process-Part 1?** FOCC asserts that it does because WAC 197-11-600(3)(b)(i) and (ii) applies as staff comments in the staff reports dated November 1, 2015 and November 19, 2015, as well as the red/green lined versions of the November 3, 2015 and November 4, 2015 versions of the proposal, show that the assumptions are at best "inaccurate" and therefore would create additional significant impacts. In addition, staff conducted an

initial evaluation of the assumptions¹ and presented that evidence to the PC. Staff's conclusions, and the statements of Dr. Orjiako, clearly showed that there was no factual or legal support for Councilor Madore's assertions/assumptions/policies. If staff is correct, and there is nothing in the record to show that they are not correct, then the County is stating that only ½ of what will be the actual growth will be planned for under the CFP and, therefore, the impacts on the county will be exponentially worse than any set forth in the DSEIS.

3. **Does the passage of the new Alternative #5 require a whole new EIS process-Part 2?** FOCC asserts that it does because 197-11-600(3)(c) says that (3) Any agency acting on the same proposal shall use an environmental document unchanged, except in the following cases:
(c) For EISs, the agency concludes that its written comments on the DEIS warrant additional discussion for purposes of its action than that found in the lead agency's FEIS (in which case the agency may prepare a supplemental EIS at its own expense). Here, the lead agency, and the responsible SEPA official have already stated that the new Alternative #5 needs much more discussion. How can the County not require a new Supplemental?
4. **The county cannot use the previous 2007 EIS or the current DSEIS without adhering to WAC 197-11-600(4)(d)** because neither the 2007 EIS or the current SEIS does any evaluation of the the new assumptions/policies/criteria utilized by Councilor Madore in his creation of the new Alternative #5. Therefore the County must request a new SEIS to supplement the current DSEIS process because “ (i) Substantial changes so that the proposal is likely to have significant adverse environmental impacts” and “(ii) New information (all of staff's work) indicating a proposal's probable significant environmental impacts”. both apply.

Again, we protest the fact that this very important plan update is being handled like a forced march, ostensibly because at least one councilor, believes he needs to achieve his personal agenda before yielding the gavel to the incoming chair in January.

¹ Councilor Madore says that they are policies but they are basic planning assumptions that traditionally have been, as they were earlier in this process, adopted by resolution and based upon sound planning data.

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I will again emphasize that despite my efforts, and the accuracy and legitimacy of the issues that I have raised in my various submissions for the record, I believe that there has been insufficient time to fully evaluate the proposal Resolution and proposal especially since it was not even fully produced to the public until November 20, 2015. I personally have spent almost 4 and ½ hours this morning evaluating the newest proposal, the newest agenda and the SEPA process. At bottom, the truth is that as of now, no one in the public knows what is going to happen tonight and there has been no formal indications by the County as to how they are going to address the continuing alleged violations of the charter, the violations of the public process and violations of SEPA by Councilor Madore's actions in solely creating, proposing and then passing what he is now calling the Local Preferred Alternative.

I look forward to any formal response.

Thanks very much,

David F. McDonald

On Behalf of Friends of Clark County

December 1, 2015

Mark McCauley
Clark County Acting County Manager
1300 Franklin Street
Vancouver, Washington 98660

Via pdf and e-mail

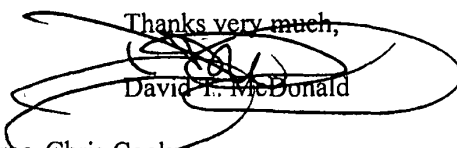
Mr. McCauley:

I have read, and re-read, the agenda document for tonight on the Comprehensive Plan Policy Update. I have made my arguments to Mr. Horne but I want to formalize them in writing to you. As stated the Charter specifically separates executive functions and responsibilities from legislative functions and responsibilities. First, I believe that given the "Title" of the Agenda item "Public Hearing: Implementation of the Clark County Board of Councilor's Councilor's Comprehensive Plan Policy" the agenda item listed has not been properly noticed as a Type IV hearing.

Moreover, it is my understanding that Councilor Madore is the one who designed this Agenda item, not staff. FOCC asserts that, under the provisions of the Charter, even if this is not considered a Type IV process requiring the 15 day notice, Councilor Madore lacks authority to initiate this action. The planning process for the Comprehensive Plan update and concomitant actions would fall to the head of the Planning Department, Dr. Orjiako. If he has authorized this change of contract then I would appreciate having the document where he so authorized. Otherwise, it appears to be a blatant directive from Councilor Madore to the executive branch to engage in new contracts in violation of the Charter.

Therefore, for those reasons, we asked that the item be pulled from the agenda.

Thanks very much,


David E. McDonald

CC: Dr. Oliver Orjiako, Chris Horne, Chris Cook