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CP 16 #0400

cc: PMS GMA

RECEIVED BY  
ALL COMMISSIONERS

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October 28, 2014

VIA EMAIL

Carol Levanen, Ex. Secretary  
Clark County Citizens United, Inc.  
P.O. Box 2188  
Battle Ground, WA 98604

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OCT 29 2014

Board of Commissioners

RE: Comprehensive Growth Management Act Review

Dear Carol:

I understand you are meeting with Commissioner David Madore tomorrow. Per our discussion earlier today, this letter conveys a legal perspective on upcoming action by the Clark County Commissioners. Please feel free to share this with Commissioner Madore.

This upcoming review of the Comprehensive Growth Management Plan (GMP) is of great importance to Clark County and has obvious legal significance. The State Environmental Protection Act (SEPA) imposes certain requirements on this process. While the ultimate decision regarding the appropriate course resides with the Commissioners, it is incumbent upon the Clark County administrative staff to provide to the Commissioners with an appropriate Environmental Impact Statement (EIS). It is my belief that the staff has failed to meet this obligation to date, thus impairing the ability of the Commissioners to make an informed decision on all available options.

Under the terms of SEPA, the staff is to present a "reasonable number and range" of alternatives to the Commissioners for consideration. WAC 197-11-440. Currently, County administrative staff preparing decision documents for the Commissioners have offered a total of one rural rezoning alternative to the status quo,<sup>1</sup> in addition to one alternative that affects only the cities of La Center and Battle Ground. This effectively hamstringing the Commissioners in terms of their authority and decision options, is contrary to a good public process, and violates Washington law. The EIS process (by the terms of the Washington Administrative Code and the Revised Code of Washington) is supposed to provide both the Commissioners and the public with "sufficient information for a reasoned choice among alternatives." *Solid Waste Alternative Proponents v. Okanogan County*, 66 Wn. App. 439, 442 (1992); see also WAC 197-11-440(5). One choice hardly accomplishes this legislative and judicial intent.

<sup>1</sup> <http://www.clark.wa.gov/planning/2014update/alternatives.html>

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**I believe the most legally defensible position is for the Commissioners to task the County staff with preparing an analysis of a reasonable range of at least four significant alternatives to the status quo, for a total of five alternatives upon which to judge future growth options for Clark County. Absent such a reasonable range of alternatives, I believe the CCCU has a strong position to litigate further process by Clark County as contrary to the spirit and intent of SEPA and Washington case law under SEPA.**

**I understand CCCU is prepared to offer, at a minimum, two alternative approaches to add to the upcoming GMP review so as to provide a responsible range of options that reflects genuine urban growth expectations over the course of the next 20 years. Not only are these alternatives appropriate under the terms of SEPA and the spirit of the EIS process, they are simply helpful to the Commissioners and allow them to exercise their inherent and legally granted power to rule on issues of public importance such as this.**

**I believe CCCU should ask that the Commissioners insist that the new alternatives to be proposed by CCCU be thoroughly analyzed by the County administrative staff in a neutral manner alongside the existing alternative, and be presented to the Commissioners as part of their decision regarding amendment of the GMP.**

**Should you have any questions about the legal basis of this perspective, please do not hesitate to call on me at any time.**

Sincerely,



Zachary O. McIsaac

ZOM:tm