

Schroader, Kathy



From: David McDonald <david@mcdonaldpc.com>
Sent: Tuesday, December 01, 2015 12:15 PM
To: Schroader, Kathy
Subject: For the Records--CP Update and SEPA Process
Attachments: Cook&Horne-Ltr-SEPA&PP-151201.pdf

Kathy

Please file this e-mail and attachment in both the Comprehensive plan update record/index and the SEPA record/index.

Thank you for your diligent work in keeping the records.

Best Regards,

David

Begin forwarded message.

From: David McDonald <david@mcdonaldpc.com>
Subject: SEPA Process
Date: December 1, 2015 12:11:48 PM PST
To: Chris Horne <chris.horne@clark.wa.gov>, Christine Cook <christine.cook@clark.wa.gov>
Cc: Oliver Orjiako <Oliver.Orjiako@clark.wa.gov>, Gordon Euler <Gordon.Euler@clark.wa.gov>

Chris & Chris

Attached please find my letter this date on the Public Process and SEPA issues on the Comprehensive Plan update, specifically as to Councilor Madore's new Alternative #5 adopted by the Board on Tuesday, November 24, 2015. I will send to Ms Schroader by separate e-mail to be placed in both the Comprehensive Plan update and in the SEPA comments. I understand that SEPA comment period closed on 9/17/15 but, until there is a determination by the County regarding these matters, I am requesting all of these documents be inserted into the SEPA process index record, especially since this portion of the Board's adoption appears to want to "scrub" any countervailing evidence to the Councilor Madore's new Alternative from being provided to what is looking like will be a new consultant hand picked by him:

"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)"

The job of an environmental documents is to evaluate all possibilities that can potentially produce significant environmental impacts. It would be impossible for any consultant with any professional integrity to review a

"scrubbed" record and, as such, I think that this provision is specifically instructs County staff and the consultant to violate the law.

I would be happy to discuss these issues with you at any time

Sincerely,

David T McDonald

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FRIENDS OF CLARK COUNTY
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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—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