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September 7, 2018

SNOHOMISH COUNTY COUNCIL

EXHIBIT # S.2A

FILE 11-101457 LU et al

Via Email (hard copy via USPS): contact.council@snoco.org

Attn: Council Clerk
Snohomish County Council
M/S 609
Robert J. Drewel Building, 8th Floor
3000 Rockefeller Avenue
Everett, WA 98201

Re: Written Argument of Joe Bundrant in Support of Hearing Examiner's Amended Decision
Reference: File No's. 11-101457 LU/VAR, 11-101461 SM, 11-101464 RC, 11-101008
LDA, & 11-101007 SP

Dear Councilmembers:

This letter presents written comments on behalf of this firm's clients, Mary and Joseph Bundrant, on the appeal of the Hearing Examiner's amended decision dated August 3, 2018, relating to the above-referenced development applications for the Point Wells development proposal (referred to here as the "Amended Decision"). Our client is a party of record in this proceeding,¹ and is therefore entitled to present written argument in this appeal,² though we do not plan to present oral argument at the appeal hearing scheduled for Wednesday, October 3, 2018.

We respectfully urge the Council to affirm the Amended Decision in its entirety for the reasons set forth in our clients' prior comments on this matter, which are incorporated here by reference and include our March 15, 2018 submission to the Snohomish County Design Review Board, and our clients' SEPA and other comments on the Point Wells proposal. Our recent written comments on the proposal are attached to this letter for reference, and raise number of respects in which the subject proposal violates the letter and intent of the County code and related permitting requirements. At no point before or since has the applicant adequately addressed any of those concerns, so we wish to reiterate them here.

For the reasons explained in the attached comment letters, the Council should affirm the Hearing Examiner and reject the appeal of the Amended Decision. We also support the Hearing

¹ See Party of Records Register, attached to Amended Decision.

² Snohomish County Code ("SCC") 30.72.110(3).

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**Exhibit S-2A Written Argument from Clayton Graham US mail
Sep 10 2018
PFN: 11-101457 LU**

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Examiner's grounds for denial that exceed the scope of our attached comments, though we are not providing additional argument on these issues.

Respectfully submitted this 7th day of September, 2018.

A handwritten signature in black ink, appearing to read "Clayton P. Graham". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

Clayton P. Graham
Davis Wright Tremaine LLP

Enclosure: DRB, SEPA, and Other Written Comments on the Subject Proposal



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March 15, 2018

Via Email: Paul.MacCready@snoco.org

Paul MacCready
Project Manager, Point Wells Development
Snohomish County Design Review Board
3000 Rockefeller Avenue
Everett, WA 98201

Re: Point Wells Development Public Comments
Reference: File No: 11 101457 LU, et. al.

Dear Mr. MacCready:

This letter provides comments on behalf of our clients, Mary and Joseph Bundrant, on the Point Wells development proposal currently being evaluated by the Snohomish County design review board in the meeting scheduled for March 15, 2018. As longtime members of this community, and as immediate neighbors to the project (as you may know, the Bundrants' mailing address is 20530 Richmond Beach Drive, Shoreline, Washington 98177, though their property is located in the Town of Woodway), we and our clients have grave concerns about the developer's (BSRE) plans for this site.

Our concerns generally relate to the haphazard fashion in which this proposal has been advanced over several years, as the proposed development (given its size and lack of thoughtful design) seems certain to interfere with the Bundrants' and other neighbors' use and enjoyment of their property, and degrade the value and utility of surrounding streets and properties during and after its construction. In addition, many elements of the proposal still seem fundamentally incompatible with the character and needs of the area and the local community. This letter summarizes some, but not all, of these defects, as well as the basis for our clients' objections to the construction of this proposal across the street from their home. The two major problems with the development, as proposed, are as follows:

- 1. The proposal is clearly inconsistent with the design standards that the Board is charged with enforcing.**

Specifically:

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(A) The purported transit-oriented design features touted by applicant are both insufficient and not slated for substantial installation until *after* multiple project phases would be completed, which in turn precludes most or all of the proposed building heights exceeding 90 feet; and

(B) *Even if* the project's on-site recreation and pedestrian circulation features are deemed substantively sufficient after full build-out, the scheduled phasing for these design features is impermissible.¹

2. **BSRE has denied the Board the opportunity for meaningful review of the proposal's compliance with applicable standards.**

BSRE has done so by failing to update its superficial and cursory project proposal documents, even after the documents' many shortcomings were clearly enumerated by the Snohomish County Departments of Planning & Development Services and Public Works in their Review Completion Letter dated October 6, 2017 (the "2017 Review Completion Letter") as well as other third-party comments.

Accordingly, we respectfully urge the Board to recommend that the proposal be rejected outright as inconsistent with the applicable design standards. At a minimum, the Board should (1) require that all noncompliant aspects of the proposal be remedied before the project applications can be considered further; and (2) advise the Hearing Examiner that in many aspects of the project proposal, the Board has had no opportunity for meaningful review, and is thus unable to recommend approval of the proposal on that basis (let alone consider how the project design could be made consistent with the design standards).

For the Board's reference, the following sections of this letter discuss the numerous aspects of the project proposal that are clearly noncompliant with applicable design standards. The Board should—and in our view, must—require that these issues be remedied if the project is to be further processed by the County.

I. SELECTED NON-COMPLIANT ASPECTS OF PROJECT PROPOSAL

Under the Snohomish County Code (the "Code" or "SCC"), the Design Review Board is charged with making written recommendations that "synthesize community input on design

¹ The text of SCC 30.34A.190 as of applicant's vesting ("Public Space and Amenities") dictates that required on-site recreation and pedestrian circulation design features "must be installed with completion of the first building or first phase of the development, if the overall development is to be phased."

concerns [and] ensure fair and consistent application of the design standards of this chapter [SCC 30.34A].” *See, e.g.,* SCC 30.34A.180(2)(b)(i)-(ii) (2011).²

Presumably, such recommendations serve the broader purpose of informing the hearing examiner’s subsequent inquiry into whether the development incorporates design “elements such as superior pedestrian- and transit-oriented architecture,” and that “[b]uildings and site features are arranged, designed, and oriented to facilitate pedestrian access . . . and to provide transit linkages.” SCC 30.34A(2)(b)(iv); (vi) (2011).

However, due to the project’s proposed phasing, the proposed “pedestrian- and transit-oriented architecture” is not “superior” or even sufficient to satisfy 30.34A’s design requirements; and that the proposal unequivocally does not facilitate pedestrian access or provide transit linkages until later phases of the development. This is inconsistent with the Code’s requirements.

A. The Purported Transit-Oriented Design is Insufficient, and Would Not Be Substantially Installed Until After the Project Is Partially Built.

Access to transit is critical to BSRE’s proposal, both as a practical matter and because the ordinary height limit in the urban center zone is 90 feet, with an additional 90 feet that could be approved, but only for a development with access to a “high-capacity transit route or station[.]” SCC 30.34A.040 (2011). BSRE “assumes full use of” that bonus height, meaning that the entire plan depends upon a finding that Point Wells actually has access to a high-capacity transit route or station. However, it is doubtful that the development can meet this requirement even at full build-out, and impossible at the time the first overheight buildings would be constructed during Phase I of the proposal.

First, the application materials lack sufficient detail to determine whether or not the proposal meets this make-or-break requirement even after full build-out. *See* 2017 Review Completion Letter at 32-33. It does not appear that BSRE has submitted any supplemental materials responsive to the concerns in the 2017 Review Completion Letter on this point, nor the various documents referenced therein—despite the warning that BSRE “must revise” its materials to resolve the question of high capacity transit route access. At a minimum, the DRB should recommend that on the basis of BSRE’s application materials, the County cannot support, and the Hearing Examiner cannot grant permits for, buildings exceeding 90 feet in height anywhere in the project.

² While it appears that the County is processing the approvals for the project under the requirements the 2011 Code, the current proposal is wholly inconsistent with any iteration of the County’s design review requirements.

SCC 30.34A.085 (2011) sets out minimum requirements for transit access that apply to *all* business and residential buildings within an urban center. Of the three options, (1) and (2) require new or existing stops or stations on “high capacity transit routes” within 1/2 mile, and option (3) allows developers to meet the minimum transit requirement by using “van pools or other similar means of transporting people on a regular schedule.” 2017 Review Completion Letter at 85. As DPS noted, BSRE can only meet this baseline requirement by option 3 “because there are no existing or planned stops or stations for high capacity transit routes within ½ mile of Point Wells.” *Id.*

Though SCC 30.34A.040 (2011) lacks detail about what “high capacity transit” suffices for the height limit, section .040 must require significantly *more* access to transit than Section .085 to qualify for the height bonus. Otherwise, any business or residence allowable within *any* urban center would automatically qualify for added height. Such a reading of the Code would render meaningless the “high capacity transit” requirement in .040. In any event, PDS has concluded that the proposal cannot meet even the baseline requirement through high capacity transit, and must instead rely instead on charter bus service. 2017 Review Completion Letter at 85. Thus, whatever transit access is required to qualify for the height bonus of section .040, BSRE’s proposal cannot meet it, and thus cannot qualify for the added height on which its applications depend.

Moreover, even if the additional transit options predicted by BSRE were to materialize *and* qualify as “high capacity transit” for purposes of the increased height limit, the phasing of transit improvements proposed by BSRE still violates this requirement. This is because Phase 1 of the project (a.k.a. the “South Village”) alone includes at least six buildings that will exceed 100 feet in height. *See* Revised Project Narrative at 6; 2017 Architectural Plans, sheet A-040. Yet BSRE does not propose to build the “urban plaza,” which would “serve[] as the main . . . transit hub for the community” until Phase 2. *Id.* at 6 and 33. Not until phase 3 or 4 does BSRE envision even the possibility high-capacity transit, and even then there is no guarantee that this will ever be available at the project site. *Id.* at 7.

In other words, BSRE seeks to benefit in Phase 1 from overheight buildings long before it has any intention of building out any kind of transit capacity to attempt to legalize those heights. Instead, BSRE relies on charter bus service to meet even the minimum requirement of SCC 30.34A.085. A development as large as Point Wells would take many years to complete even in the best of circumstances. There is no guarantee that BSRE will actually complete the entire development, and still less that it will complete them within the schedule it envisions, let alone provide all of the amenities promised.

And even if all the requirements of SCC 30.34A.040 are met, that section provides only that the additional height “*may* be approved,” not that it must. (Emphasis added). As discussed

in Section II, the application contains numerous gaps with respect to the actual design of the towers. **Accordingly, the DRB should recommend against allowing buildings exceeding 90 feet high, due to both the fatal deficiency in access to transit and also because the application lacks sufficient detail in the design of the buildings and surrounding development to justify a discretionary allowance of height above 90 feet.**

Finally, in the event that the Hearing Examiner determines the height limit to be 90 feet, we agree with the detailed comments by Mr. Tom McCormick recommending that all building heights be adjusted to maintain the tiered, stepped-back approach to the overall arrangement of buildings, as advocated by BSRE. The Board should adopt Mr. McCormick's detailed recommendations in that regard.

To address this issue, the DRB should recommend as follows, or reject the proposal outright:

- **BSRE must provide high capacity transit access with the first phase of the development, rather than waiting until years after construction of the first over-height buildings dependent on that access;**
 - **If BSRE cannot do so, the design cannot be approved with buildings exceeding 90 feet in any phase before high capacity transit is added; and**
 - **Even if BSRE's speculative transit concepts materialize, the application lacks sufficient design detail to justify discretionary approval of buildings exceeding 90 feet.**
 - **If the Hearing Examiner determines the height limit to be 90 feet, the application should be conditioned as recommended in the public comments of Tom McCormick to maintain BSRE's proposed tiered approach.**
- B. Even if the Project's Substantially Undescribed Pedestrian and Recreation Design Features Are Sufficient, SCC 30.34A Disallows Applicant's Proposed Phasing Schedule.**

Applicant's proposed plan for pedestrian and open space design presents an even clearer fatal flaws that the Board should recommend be remedied as a condition of approval. The Board, charged with "ensur[ing] fair and consistent application of the design standards of this chapter [SCC 30.34A]," SCC 30.34A.180(2)(b)(i)-(ii) (2011), must thus ensure compliance with the chapter's "Public spaces and amenities" provision codified as of vesting, SCC 30.34A.190 (2011). That provision dictates, without exception:

“On-site recreation . . . and pedestrian circulation . . . must be installed with completion of the first building or first phase of the development if the overall development is to be phased.”

Here, BSRE’s proposed pedestrian and recreational design planning does *not* comply with this requirement. On page 22 of the Project Proposal, applicant admits that “the Point Wells Urban Center plan proposes to develop the on-site public pedestrian and open space network to follow the phasing schedule of the overall development.” *Id.* (emphasis provided). BSRE has not even confirmed whether any petroleum storage tanks will remain on the north part of the site after Phase I or other phases are completed, despite PDS requesting this clarification as early as 2013. 2017 Review Completion Letter at 24.

While the importance of site clean-up and remediation cannot be overstated, the plain language of the Code does not allow for such an exception. Accordingly, the plan’s proposed phasing of pedestrian and recreational design features is not “consistent with this Chapter,” as the Board is required to ensure.

In this respect, the DRB should recommend as follows:

- **BSRE must complete all recreational and pedestrian design features of the project in accordance with the plain language of the applicable Code provisions – during the first phase of the development.**

II. NON-REVIEWABLE ASPECTS OF THE PROJECT PROPOSAL

In addition to the non-compliant aspects of the current proposal, the County’s 2017 Review Completion Letter clearly outlines many more design aspects that the Board cannot review, simply because the proposal provides insufficient detail. It does not appear that BSRE has submitted any substantive documents to supplement its application since receiving the 2017 Review Completion Letter. BSRE’s failures are particularly egregious given that the County identified many of these issues in its original 2013 Review Completion Letter, and BSRE left the vast majority of those issues completely or partially un-addressed in its re-submittal four years later. *See* 2017 Review Completion Letter at 12-13.

The Appendix to this letter aggregates several of the most important areas in which BSRE’s application is insufficient to confirm the project’s compliance with Code requirements and design standards within the scope of the Board’s review. In light of this long (though not exhaustive) list of omissions and superficial descriptions of key project elements, the Design

Review Board has been denied the opportunity to conduct meaningful review of multiple aspects of the proposal.

With respect to subjective design considerations, the 2017 Review Completion Letter discusses only whether the application is sufficient for design review. PDS does not itself evaluate compliance with subjective design criteria, but instead “refers recommendations on subjective matters” to this Board, applying the version of SCC 30.34A.165 in effect in 2011. 2017 Review Completion Letter at 79, 241-43. The Board’s responsibility is then to “[e]nsure fair and consistent application of the design standards of this chapter and any neighborhood-specific design guidelines.” *See* SCC 30.34A.180(2)(b)(ii) (2011); 2017 Review Completion Letter at 246.

These recommendations from the Board feed directly into the final decision of the Hearing Examiner. The Hearing Examiner may only approve the application (even with conditions) if (among other conditions):

- (iv) The development demonstrates high quality design by incorporating elements such as
 - (A) Superior pedestrian- and transit-oriented architecture;
 - (B) Building massing or orientation that responds to site conditions;
 - (C) Use of structural articulation to reduce bulk and scale impacts of the development;
 - (D) Use of complementary materials; and
 - (E) Use of lighting, landscaping, street furniture, public art, and open space to achieve an integrated design[.]

See SCC 30.34A.180(2)(c) (2011).

The shortcomings outlined in the Appendix to this letter, drawn from the much longer list of failures in the 2017 Review Completion Letter, make it abundantly clear that the application lacks sufficient detail for the Board to ensure compliance with the design requirements, let alone make any meaningful recommendation to the Examiner.

In light of these failures, the DRB should recommend as follows:

Paul MacCready
March 15, 2018
Page 8

- **The project should not be approved unless and until an application is submitted that allows for the Design Review Board to ensure compliance with applicable design standards as required by law.**
- **The application lacks sufficient detail to find compliance with SCC 30.34A.180(2)(c) (2011), which would be required before the Hearing Examiner can approve the application.**

III. CONCLUSION

We appreciate the hard work by the Board and by PDS staff to ensure that any development at Point Wells meets Code requirements for projects of this magnitude. For the foregoing reasons, we respectfully request that the DRB recommend against approving the application as submitted. We further request the Board's recommendation that if the application is not rejected outright, it be conditioned to ensure full compliance with all design requirements *before* final approval, as required by the County's Code.

Sincerely,



Clayton P. Graham

APPENDIX – SUMMARY OF MOST SERIOUS OMISSIONS BY BSRE

This Appendix highlights several areas in which the Board’s required review is impossible based on the current record. This list is not exhaustive, but merely aggregates some of the most critical shortcomings referenced in the 2017 Review Completion Letter. Emphasis in bold has been provided throughout for ease of reference.

- Landscaping Design:
 - As documented in the 2017 Design Completion Letter, “**the general level of detail shown is not enough. . . . Detailed landscaping plans will be required before consideration of the project by the Design Review Board (DRB).**” 2017 Review Completion Letter at 51, *et seq.*
 - In addition, “[s]ome of the proposed trees and locations do not comply. . . . An example would be the big leaf maple trees that the landscaping plans propose as street trees in the Central Village. Big leaf maples are not an approved street tree.” *Id.*
 - Further:
 - “The landscaping plans do not include figures for the total amount of landscaping provided. . . . the applicant should revise the plans to include the missing information so that future findings related to the project can state the amount of landscaping provided relative to this requirement.” *Id.*
 - “Sub-subsection (2)(c) [of SCC 30.25.015 (2009)] requires an assessment of “whether temporary or permanent irrigation is required to maintain the proposed landscaping”. There is no such assessment in the landscaping plans and it must be included in a revised application.” *Id.*
 - “Sheets L-100 and L-101 show a number of street trees, but they do not show other right-of-way plantings as required [under SCC 30.25.015(2)(d)].” *Id.*
 - “Sub-subsection (2)(e) [of SCC 30.25.015 (2009)] requires that the landscaping plan include the location, caliper and species of all significant trees on the site that are proposed to be removed. The landscaping plan does not include this information.” *Id.*
 - “Subsubsection (2)(i) says that the landscaping plan, which is part of the Urban Center application (11 101457 LU), must show the clearing limits of the proposed land disturbing activities (11 101008 LDA). At present, the landscaping plans do not show the clearing limits.” *Id.*
 - “Subsection (6) sets forth certain landscaping requirements, most of which cannot be evaluated at this time due to lack of detail.” *Id.*
 - “Subsection (7) sets forth certain landscaping requirements, most of which cannot be evaluated at this time due to lack of detail.” *Id.*
 - “The April 17, 2017, landscaping plans (Sheet L-100 and L-101) depict many street trees but do not have sufficient detail to evaluate street tree requirements fully [under Subsection (8)]” *Id.*

- “Snohomish County cannot evaluate [General Tree Retention and Replacement Requirements under 30.25.016] until the applicant provides the information required for SCC 30.25.015(2)(i) (2009) above.” *Id.*
 - “Snohomish County cannot evaluate [type A and Type B Landscaping under SCC 30.25.017] until the landscaping plans provide greater detail.” *Id.*
 - “Snohomish County cannot evaluate [Perimeter Landscaping under SCC 30.25.020 (2010)] until the landscaping plans provide greater detail.” *Id.*
 - “The April 17, 2017, landscaping plans lack sufficient detail to determine what, if any, parts of the proposal would require landscape modifications [under SCC 30.24.040].” *Id.*
- Open Space Design:
 - “More revisions and corrections are necessary to demonstrate compliance with Snohomish County Code.” *Id.* at 27.
 - “Subsection (3) [of SCC 30.34A.070 (2010)] requires provision of one or more types of active uses and provides an illustrative list of such uses. Before Snohomish County can recommend approval of Point Wells, the applicant must update the plans to show specifically how the project will meet this requirement.” *Id.*
- Step Back and Roof Edge Design:
 - “Subsection (2) [of SCC 30.34A.120] says that façades of “floors that are stepped back must be distinguished by a change in elements [followed by a list of possible elements] so that the result is a rich and organized combination of features that face the street.” *Id.* at 87.
 - “Because this is an admittedly subjective measure, Snohomish County will refer Subsection (2) to the Design Review Board for them to address in their recommendation to the Hearing Examiner.” *Id.*
 - “It is important to note that no building elevations for the towers in the Urban Plaza have been provided, despite having been requested in the April 12, 2013, Review Completion Letter. The absence of these required elevations makes completing review of Subsection (2) impossible.” *Id.*
- Massing and Articulation Design:
 - “[T]he application does not satisfy the submittal requirements of SCC 30.34A.170 [2010]. This section sets forth requirements on the level of detail required for each building or major building type. The application only provides three elevations for typical buildings.” *Id.* at 19-20.
 - “The April 17, 2017, urban center submittal does not include enough information to evaluate this section [SCC 30.34A.130]. The April 12, 2013 Review Completion Letter requests elevations for the other types of buildings (comment (k) on page 2), but the applicant has not responded to this request.” *Id.* at 90.

- “[T]his level of building detail is necessary as part of final site plan approval and it is unclear whether the Design Review Board will be able to make recommendations on this section.” *Id.*
- “For the tower buildings, more detail on materials at the base of the building will be necessary for final design. **At the Design Review Board stage, the lack of detailing is problematic because it makes it difficult for the DRB to provide meaningful input and recommendations.**” *Id.*
- Specifically with respect to the possibility of alternate massing and articulation, “[i]t is . . . possible that the Hearing Examiner could approve massing and articulation designs different than called for in [SCC 30.34A.130(4)]. However, the part [sic] of the basis for the Hearing Examiner decision would be recommendations from the Design Review Board. **The sparse level of the detail in the April 17, 2017, Urban Center submittal is insufficient for the DRB to make anything other than preliminary recommendations.**” *Id.* at 93.
- Design for Blank Walls:
 - “This section [SCC 30.34A.160] provides design options to meet a requirement that blank walls longer than 20 feet have visual interest. [However], **the submittal drawings do not enough building elevations to allow evaluation of this section. Blank wall treatment is a subject that will be part of the discussion of the Design Review Board for guiding recommendations.**” *Id.*
- Parking Entrance Design:
 - Per SCC 30.34A.050, “garage entrances must be minimized, and where feasible, located to the side or rear of buildings. . . . Exterior architectural treatments must complement or integrate with the architecture of the building through the provision of architectural details.”
 - The 2017 Review Completion Letter affirms “that **location of parking entrances will be an agenda item for the Design Review Board (DRB) to consider. . . . Absent information such as garage entrance elevations, it will be difficult for the DRB to recommend anything other than the provision of adequate detail.**” *Id.* at 23.
 - Further, “[m]ore detail is necessary to confirm the appropriateness of the proposed [parking lot] landscaping. The beach parking area at the south end of the project site is the main concern here. The applicant must revise this parking area to include landscaping per SCC 30.25.022.” *Id.* at 55.
- Signage Design:
 - “[T]he urban center architectural plans did not [in the first instance] indicate proposed project signs or sign program [under SCC 30.34A.090]. . . . The applicant did not respond to this comment. Second request: A response is still required.” *Id.* at 27.
- Screening Design:
 - “If garbage collection areas are outside, then the building elevations will need revision to show either architectural treatment (e.g. walls) similar to the adjacent buildings or screening with landscaping.” *Id.* at 86.

- “Will garbage collection for the public areas – e.g. the amphitheater, beach, and pier . . . be in standard cans screened by walls or landscaping?” *Id.*
- “If there are any outdoor garbage collection areas that will have screening via landscaping, then the landscaping plans need to reflect this. See SCC 30.25.024.” *Id.*
- Floor Area Ratio³:
 - “[N]ot enough information appears on the April 27, 2017 version of the plans to demonstrate compliance with the applicable definitions and method for calculating FAR.” *Id.* at 22.
 - This shortcoming violates the 30.34A.170 submittal requirements that the plan to be considered by the Design Review Board must contain “at a minimum . . . [p]roposed building heights and FAR.”
- Parking Ratios⁴:
 - “The applicant has only partially responded. . . there is still missing information [in] these tables regarding some of the uses and the tables include several conflicts with the plans.” 2017 Design Completion Letter at 24.

³ Subject to Board review under SCC 30.34A.180(2)(b) (“the design review board shall provide written recommendations . . . on potential modifications regarding the project, such as . . . density”)

⁴ *Id.*



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April 1, 2014

VIA EMAIL AND U.S. MAIL

Snohomish County Planning & Development Services
Attn: Darryl Eastin
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2nd Floor, Robert Drewel Building
Everett, WA 98201
E-mail: darryl.eastin@co.snohomish.wa.us

Re: Comments on the Scope of the Environmental Impact Statement for the Point Wells Development, File Nos. 11-101457; 11-101461 SM; 11-101007 SP; 11-101008 LDA; and 11-101464 RC

Dear Mr. Eastin:

This firm represents Joseph and Mary Bundrant in matters relating to the above-referenced development proposal, which involves redevelopment of a waterfront site of over sixty acres at Point Wells (the “Project”). We write on the Bundrants’ behalf to submit comments on the scope of the SEPA review being carried out for the Project. The Bundrants will be particularly affected by the Project—perhaps more than any other neighbor—because their home is located adjacent to the Project site. (As I explained in our email exchange last week, the Bundrants’ mailing address is 20530 Richmond Beach Drive, Shoreline, Washington 98177, though their property is located in the Town of Woodway.) For the reasons discussed below, the Bundrants oppose the proposed Urban Center and Urban Village Alternatives for the Project, and urge an expanded scoping analysis for the SEPA review of the Project. In our view, proceeding with the Draft Environmental Impact Statement (“DEIS”) for the Project without this additional public input and analysis would be premature and inappropriate for a development like the Project, considering its size, complexity, and the numerous significant environmental impacts that will result from the Project. This is especially so considering the omissions in the SEPA documentation that has been provided for the Project so far.

The Need for Expanded Scoping

The Bundrants respectfully urge Snohomish County, through its Planning & Development Services (collectively “PDS”) to extend and expand the SEPA scoping process for the Project.

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The expansion should include at least one additional scoping meeting, additional notices and information to the public regarding the Project's probable significant impacts, public workshops, and any other steps PDS can take to ensure adequate participation from government and community groups. This should be done to allow the thorough public consideration and input on the alternatives that is warranted by the Project. Pursuant to the SEPA regulations incorporated into the County Code, PDS may expand the scoping process on a proposal-by-proposal basis where it would be consistent with SEPA's policies and goals. *See, e.g.*, WAC 197-11-232(2)(a), -410; *see also* SCC 30.61.020 (adopting SEPA regulations of Chapter 197-11, WAC). We agree with comments submitted by the City of Shoreline and other stakeholders¹ that that Project's significant adverse environmental impacts are broad and encompass all elements of the environment. *See also* WAC 197-11-030(2)(b) (SEPA goals include "emphasiz[ing] important environmental impacts and alternatives"). The breadth of the Project's adverse environmental impacts, and the fact that these impacts will affect a great deal of land as well as a large number of residents in multiple jurisdictions, requires PDS to go further than the bare minimum required by SEPA and the Snohomish County Code.

The Project's impact on and within multiple jurisdictions further necessitates expanded scoping. *See* WAC 197-11-410(2) (expanded scoping is "intended to promote interagency cooperation..."). As residents of Woodway, the Bundrants are concerned that the affected municipalities do not have adequate resources and information necessary to meaningfully participate in the EIS.² Prior to beginning the EIS, PDS should make sure the Cities of Woodway and Shoreline, as well as King County, have the resources and technical assistance needed to fully participate in the EIS process on behalf of their citizens. This certainly has not occurred yet, so this should be ensured through the expanded SEPA scoping process.

PDS should also expand the scoping process to "encourage public involvement in decisions that significantly affect environmental quality." *See generally* WAC 197-11-030(2)(f); WAC 197-11-410(2) (expanded scoping intended to "promote . . . public participation Steps shall be taken . . . to encourage and assist public participation."). As PDS acknowledges, the original Notice of Determination of Significance was not posted at the Project site. While an extended comment period may or may not meet the notice requirements of SEPA, it does not, as a practical matter, provide enough time for citizens—in particular those without technical knowledge or expertise—to review the voluminous material relating to the size and scope of the Project or have an adequate opportunity to participate in this stage of its SEPA review. The Project, in addition to its sheer size, directly affects at least three municipalities and two counties. The Project directly affects tens of thousands of residents and, as Save Richmond Beach notes in

¹ See City of Shoreline's comment letter date February 21, 2014.

² See, for example, the City of Shoreline's comment letter of February 21, 2014, stating that the City lacks adequate resources to perform a review of the Project.

its comment letter³, its potential transportation impacts affect the entire northern Seattle metropolitan area by increasing trips to and from Interstate 5. Again, the probable adverse environmental impact of the Project is so expansive that the statutory minimum is just not enough. Additional time is needed so that citizens and affected jurisdictions can participate in the scoping process in a meaningful way.

The Inadequacy of the Alternatives

PDS should consider additional alternatives to the Project and revise the Urban Village Alternative. The three proposed alternatives are inadequate because they fail to encompass other less environmentally costly and reasonable courses of action. *See generally* WAC 197-11-792(2)(b)(ii); *King Cnty. v. Cent. Puget Sound Bd.*, 138 Wn.2d 161, 183 (1999). The Urban Center and Urban Village Alternatives are essentially the same alternative and thus contribute almost nothing to the analysis of proposed impacts from the Project. Both Alternatives radically increase the intensity of residential, commercial, and retail development in the area and both have proposed roughly the same amount of commercial, office, and retail uses; the only difference between said alternatives being a modest reduction in the number of residential units and some reduction in open space. At a minimum, the Urban Village Alternative should have at least as much open space and parks as the Urban Center Alternative.

The “No Action” Alternative is not truly “no action” because it contemplates expansion of “underutilized existing facilities,” without sufficient evidence of any demand for such increased utilization. In other words, the “alternatives” presented are large-scale industrial development, large-scale residential/commercial development, and larger-scale residential/commercial development. In order for the EIS to provide a useful benchmark by which to analyze such a massive increase in intensity of development, PDS should consider lower impact alternatives as suggested by Save Richmond Beach and Richmond Beach Advocates in their SEPA scoping comments.⁴ The County must also consider the true “no action” alternative of continuing use of the site as an industrial facility *as currently utilized*.

The Inadequacy of the Applicant’s SEPA Checklist

PDS should require the applicant to update and resubmit its SEPA checklist prior to proceeding with SEPA scoping for the Project. The applicant’s SEPA checklist, dated February 2011, is outdated. And considering the current proposal before PDS, it is an inadequate base from which to conduct the full environmental analysis that is required for the Project. To give one example,

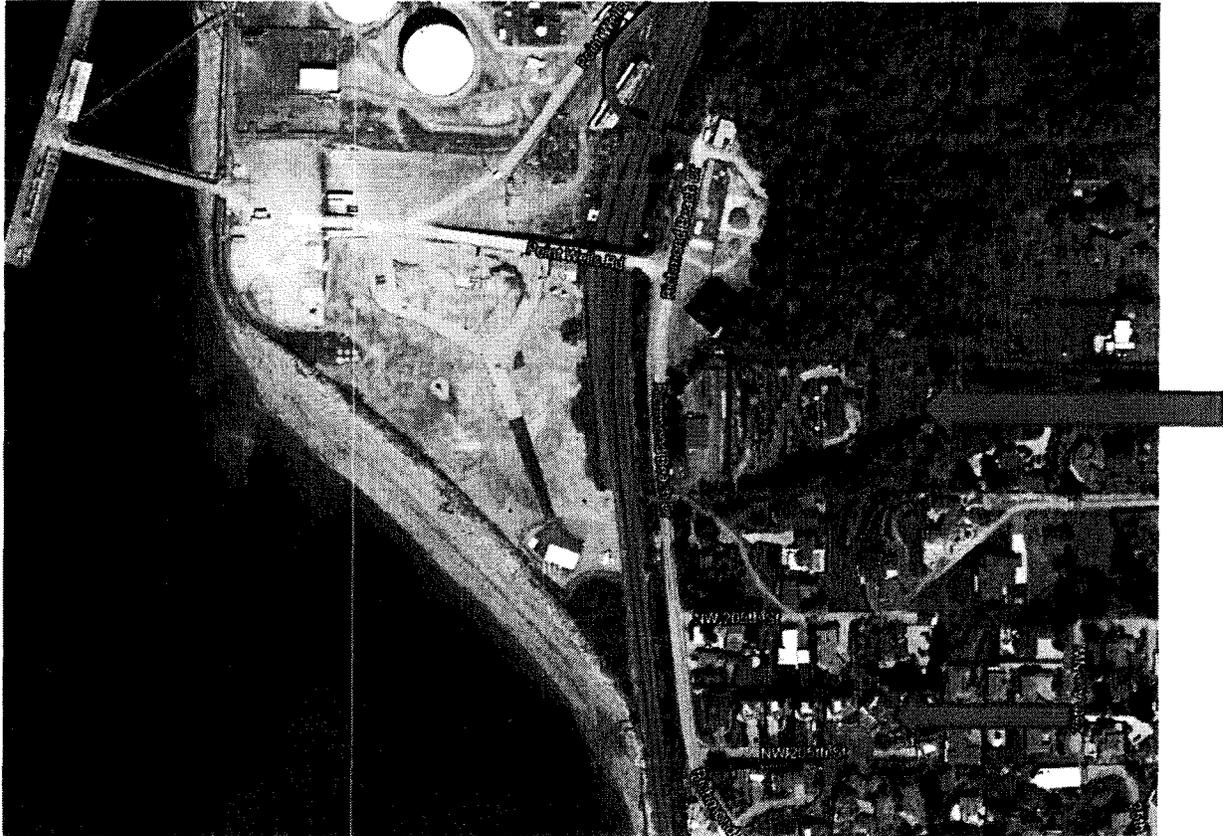
³ See Save Richmond Beach’s comment letter dated March 3, 2014.

⁴ See Richmond Beach Advocates’ comment letter dated March 3, 2014.

note the following aerial view of the Project, which was provided by the applicant in the initial SEPA checklist for the Project:



The area surrounding the Project site has changed since 2011 and the SEPA checklist does not take these changes into account. Notably, the Bundrants' home is located in the area indicated by the red arrow in the graphic above, but does not appear in the above map. Nor does it show the numerous houses that are located to the southeast of the Project site—all of which can be seen in the following aerial photo, which we accessed through Google Maps several days ago. In the following graphic, the location of these residences is indicated with red arrows.



The Project will have significant adverse impacts on all of these properties, and these impacts must be taken into account in the DEIS for the Project. The view impacts alone deserve particular attention, as the Project could nearly eliminate the view of the Sound and the Olympics for many of these owners. These impacts are not acknowledged or discussed in the SEPA documents provided for the Project. Notably, some of the buildings in the Project (specifically, those identified as SV-T 3 through 5 in the Project documents) are slated to be eight to twelve stories tall, and will tower over nearby homes—possibly as much as 120 feet. Yet, the applicant's View Impact analysis does not acknowledge this impact, or present a cross-section showing the relative heights of development for this location.⁵ PDS must conduct a thorough view impact analysis as part of the DEIS, and should not rely on the limited information provided in the SEPA Checklist for the Project.

⁵ The applicant states that a "small number" of neighboring residents' "small but noticeable portion" of Olympic Mountain and Puget Sound views could be affected. EIS Checklist, page 36. This potential impact is not analyzed in the applicant's View Impact analysis cross-sections.

PDS must also go beyond the applicant's Extended Traffic Impact Analysis, for the reasons spelled out in detail in the SEPA scoping comments of Save Richmond Beach, Richmond Beach Advocates, and the City of Shoreline. The Bundrants access their property via NW Richmond Beach Drive, which is the *only* access to the Project. The Bundrants will be particularly affected by the massive increase in vehicle trips per day on NW Richmond Beach Drive caused by the Project.

Elements of the Environment to Be Analyzed in EIS

The DEIS for the Project should evaluate all elements of the natural and built environments set forth in WAC 197-11-444, *including all sub-elements therein*. The scope of every EIS must include study of probable significant adverse impacts. *See, e.g.*, WAC 197-11-408. The Bundrants agree with PDS's decision to include Earth, Water Resources, Air Quality, Noise, Energy/Greenhouse Gases, Plants and Animals, Environmental Health, Aesthetics, Land Use/Plans and Policies, Historic and Cultural Resources, Transportation, Public Services and Utilities in the scope of the EIS. The Project will result in probable significant adverse impacts to each of these elements for the reasons set forth in the SEPA scoping comments submitted to you by Save Richmond Beach, Richmond Beach Advocates, and the City of Shoreline. Almost every one of these impacts will disproportionately affect the Bundrants as the Project's closest residential neighbor, so we respectfully urge you to consider and fully analyze each of these sub-elements listed in Appendix A to this letter. Further, due to the size of this project—which is unprecedented in this area—its significant adverse environmental impacts will extend to each of these sub-elements.

By way of example, the SEPA Checklist for the Project acknowledges the significant landslide hazards, liquefaction hazards, and critical areas, including wetlands, existing at the Project site. The Project will have an adverse effect on the shoreline and tidelands and will generate at least a hundred-fold increase in traffic along its only point of access. The Project will have significant land use impacts, including light and glare, view obstruction, and noise impacts on the surrounding neighborhoods, including the Bundrants. These and other significant adverse environmental impacts are not only likely to result from the Project and thus require evaluation in the EIS, their mitigation may also limit development of the site to such an extent that it will not accommodate the Urban Center and Urban Village Alternatives proposed by the applicant. PDS must consider this possibility in its scoping decision, and in its analysis of the overall Project, as the County may (and in our view, should) require the evaluation of alternatives with less density and impacts in its review of the Project.

It would also be appropriate to include an economic impact analysis in the EIS, which is warranted considering the Project's impacts outside the County, in the City of Shoreline and the Town of Woodway, and within Snohomish County due to increased traffic congestion, increased need for public services (including public transportation, schools, utilities, and emergency

services), and the effect on existing housing and businesses resulting from a massive increase in the scale of development in the area. *See also* WAC 197-11-448(4).

Incorporation of Prior Comments

While the Bundrants have recently retained their own counsel, they have been actively participating in the review of the Project and have supported neighbors' and neighborhood groups' efforts to ensure the adequacy of this public process. The Bundrants generally agree with and support their neighbors prior comments on the Project in general and the County's SEPA review of the same, and hereby incorporate by reference the SEPA scoping comments submitted by Save Richmond Beach in its letter dated March 3, 2104, Richmond Beach Advocates in its letter dated March 3, 2014, and the City of Shoreline in its comment letter of February 21, 2014.

Conclusion

As is evident from the concerns and impacts noted in neighbors' and stakeholders' comment letters, the Project will result in significant adverse environmental impacts to all elements and sub-elements of the natural and built environments. SEPA requires a full examination and analysis of each of these potential impacts, as well as adequate public participation in this process. The fact that a number of critical stakeholders have yet to weigh in on the Project demonstrates the inadequacy of public participation so far. Considering this, we respectfully urge PDS to extend and expand the scoping process for the Project to allow for public consideration and input on the current proposal, alternatives to the Project as proposed, and possible mitigation. An adequate analysis of these impacts will demonstrate the unsuitability of the Point Wells site for a massive urban redevelopment, including the lack of adequate access for the number of vehicle trips that will result from the Project. In any event, the County's review of the Project must fully analyze alternatives as well as alternatives with less density and fewer impacts on the environment and the Project's neighbors.

Thank you for consideration of these comments.

Sincerely,

Davis Wright Tremaine LLP



Clayton P. Graham

cc: Joseph and Mary Bundrant

Appendix A

Affected Elements of the Environment

- **Natural Environment**
 - Earth
 - Geology
 - Soils (including but not limited to landslide and earthquake hazards)
 - Topography
 - Unique physical features (including but not limited to the site's location, which is surrounded on three sides by steep bluffs and water)
 - Erosion (including but not limited to probable effects on the shoreline resulting from significant construction activities)
- **Air**
 - Air quality (both during construction and due to a massive increase in vehicular traffic)
 - Odor (both during construction and due to a massive increase in vehicular traffic)
 - Climate (both during construction and due to a massive increase in vehicular traffic)
- **Water**
 - Surface water movement/quantity/quality
 - Runoff/absorption
 - Floods
 - Groundwater movement/quantity/quality
 - Public water supplies (including a study the effect on existing capacity)
- **Plants and animals**
 - Habitat for and numbers or diversity of species of plants, fish, or other wildlife
 - Unique species
 - Fish or wildlife migration routes
- **Energy and Natural Resources**
 - Amount required/rate of use/efficiency
 - Source/availability
 - Nonrenewable resources
 - Conservation and renewable resources
 - Scenic resources
- **Environmental Health**
 - Noise
 - Risk of explosion
 - Releases or potential releases to the environment affecting public health, such as toxic or hazardous materials (including but not limited to releases occurring during the proposed cleanup of the site)
- **Land and Shoreline Use**
 - Relationship to existing land use plans and to estimated population
 - Housing
 - Light and glare (both during construction and as-built)
 - Aesthetics

- Recreation (including effects on shoreline recreation and public access)
- Historic and cultural preservation
- **Transportation**
 - Transportation systems (including but not limited to probable adverse effects throughout the northern metropolitan area)
 - Vehicular traffic
 - Waterborne, rail, and air traffic (including but not limited to safety and environmental hazards resulting due to the Project's proximity to BNSF's existing railway)
 - Parking
 - Movement/circulation of people or goods (including but not limited to an evaluation of the need for multiple points of ingress/egress to and from the Project)
 - Traffic hazards (including but not limited to hazards to drivers, bicyclists, pedestrians, and wildlife due to increase traffic volume and speed)
- **Public Services and Utilities**
 - Fire
 - Police
 - Schools
 - Parks or other recreational facilities
 - Maintenance
 - Communications
 - Water/storm water
 - Sewer/solid waste
 - Other governmental services or utilities (including but not limited to the probable adverse effects of providing emergency services in an area with only one point of ingress/egress)