

Bellevue Washington
November 2, 2009
DELIVERED VIA EMAIL

RE: SnoCadia on Gold Creek PUD (P-07-00058). Further thoughts on how I intend to respond and where I am in the process

Dear Ms. Cote:

Another project requires my full attention for the next week and one half to two weeks. I have begun formulating a response to your question as to how I plan to respond. I have been working on that response, in addition to the information I recently sent to you and will be returning to that subject as soon as I complete my work on the other pressing project.

In the meantime, there is no doubt that many of those commenting are of the opinion that an environmental study, of some sort, would benefit legislative and quasi-judicial decision makers in their review of the SnoCadia PUD. Many of those commenting are those responsible for developing new plans for the area, which will change the status quo and directly impact my development. They believe that their new plans will be negatively affected by implementing the SnoCadia PUD on my private property. This belief is founded on their opinion that my private property is somehow required to make way and accommodate their plans. Fortunately, at this time, all of their plans as regards animal migration are just that—**plans**. This project provides an excellent planning and decision-making environment in which to consider pertinent parts of the agency plans which assume the legal right to impact and damage long standing plans of municipal governments and local legislative bodies known to them substantially in advance of the WSDOT Final EIS. Their planning should be in conformance with all existing land use, zoning and municipal water and sewer service regulations that existed when the SnoCadia PUD was filed for legal implementation in accord with adopted plans.

Parties of all persuasions that have an opinion on the SnoCadia PUD should agree that environmental studies, especially an Environmental Impact Statement (EIS), is fundamentally a decision making tool. Normally an EIS is employed where federal government funding is involved. No federal funds are involved in the SnoCadia PUD. However, most agency comments, requesting that I complete an EIS are precisely the same federal and state agencies for whose plans the EIS requirement was developed and required. Development of the SnoCadia PUD on private property DOES NOT involve use of federal funds.

At this juncture, it's clear that the final review for the SnoCadia PUD will be decided at some level of the judiciary system. It is important that each level of regulatory decision making bodies have all relevant information and studies available on which they based most of their comments. None of the plans used to claim how important my property is in their mission have yet to be implemented. No animals have been moved. It is not finalized as to where and how the agency plans for reinstatement of animal migration will be implemented. Graphic information illustrating where reinstated animal migration will occur has been a long-standing request of mine. This request was recently partially satisfied by documents disclosed by an agency in their comments on the SnoCadia PUD. BUT THIS INFORMATION WAS NOT INCLUDED IN THE WSDOT EIS SECTION DEALING WITH GOLD CREEK & SNOCADIA PUD.

Unfortunately, as documented and asserted by several commenting agencies, construction of Interstate 90 (I-90) blocked and has been blocking animal migration since 1969. Today, 40 years later, actual animal does not exist when compared to other areas in the I-90 expansion project. Animal kill data for the Gold Creek Valley, when compared to other migration sites in the corridor aptly demonstrate that point. Documented controversy exists in the environmental community about the efficacy of the migration effort in the Gold Valley. The year, 1969, by coincidence, also marked the passage of the National Environmental Policy Act of 1969 (PL91-190).

The response I am formulating ties to the definition of requirements, purposes and limitations of an EIS. To my knowledge, the only EIS related to the Gold Valley that even specifically mentions the SnoCadia PUD property is the WSDOT Final EIS. There may be other EIS studies for what are major federal proposals regarding animal migration, but I have not been able to locate them during the short period following receipt of your letter.

The following are legal rules that all commenting parties should have followed to have reached this point with their study based comments and should be required to follow with documentation through the final judicial decision. The essence of this synopsis comes from the citation listed further below:¹

Environmental Impact Statements

Environmental impact statements are reports that outline the predicted environmental effects of a particular action or project in which the federal government is involved. **These statements are often important in**

1. Environmental Impact Statements, Ohio State University Fact Sheet, Community Development CDFS-188, Joe E. Heimlich, Mitchell Smith <http://ohioline.osu.edu/cd-fact/0188.html>

environmental regulation and litigation. Environmental impact statements of a necessary or projected activity highlight the significant environmental ramifications of a project, describing alternative actions, **which also must include no action being taken.** (*Emphasis mine*)

Section 102(2) (C) of the National Environmental Policy Act of 1969 requires environmental impact statements (PL91-190), which requires federal agencies to consider the probable environmental effects of projects and programs under their control. The most significant revisions comprise the 1978 guidelines, which are essentially, what is in use today.

Contents of an Environmental Impact Statement

An environmental impact statement for a proposed project outlines in detail the proposed actions, **alternative actions (including no action)**, (*Emphasis mine*) and their probable environmental ramifications. **The environmental impact statement must cover all plausible bases, which are generally determined by the rule of reason. If a "reasonable person" would consider an activity sufficiently significant to warrant further discussion, it should be included in the environmental impact statement. The environmental impact statement must also give information on the probable impact of alternative actions outside the jurisdiction of the responsible agency.** (*Emphasis mine*)

Although requirements differ between situations, the environmental impact statement **must discuss the total impact on the environment** (see Figure 1). According to the Council on Environmental Quality guidelines, it should consider:

- direct and indirect effects **of the project**
- **interference with other activities**
- **energy** and resource requirements
- conservation and reparation potential
- **preservation of urban, historic and cultural quality**
- **ways to minimize damage**

National Environmental Policy Act, PL 91-190

Section 102 (2) (C)

The Congress authorizes and directs that, to the fullest extent possible, all agencies of the federal government shall include in every recommendation or report on proposals for legislation and other major Federal actions significantly **affecting the quality of the human environment**, a detailed statement by **responsible officials on:** (*Emphasis mine*)

- the environmental impact of the proposed action,
- any adverse environmental effects which cannot be avoided should the proposal be implemented,
- alternatives to the proposed action,
- the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Of major importance in this matter is the clear requirement for a project that:

“....significantly affects the quality of the human environment.”

The majority of those agencies commenting have submitted unfavorable comments on the SnoCadia PUD. I am assuming that they have numerous studies, memoranda and other documents which clearly demonstrate the impacts of what they are PLANNING TO DO AS THEIR PLANS IMPACT ON THE HUMAN ENVIRONMENT, including the SnoCadia PUD.

I place special emphasis on the word **human** as I find this word and the impacts on humans almost completely missing in everything that I have been able to locate relating to any EIS for all planned actions in the Gold Valley, including the oft-mentioned WSDOT EIS. I also find many other of the required elements (cited above) of an EIS **missing** in the WSDOT EIS document as it should relate to IMPACTS WSDOT CREATES ON such near by projects known to WSDOT, FOR MORE THAN several YEARS PRIOR TO COMPLETION OF THEIR FINAL EIS.

This includes specific requests I made of WSDOT in public meetings. I recorded these meetings and my requests. I also have written and made specific requests for identification of related and planned impacts on the SnoCadia PUD property and all planned impacts from animal migration on my property and my development. I, in fact, made a provision in the filing of the SnoCadia PUD stating that a fence be constructed to protect my property and its planned development from the “attractive nuisance” being created to induce and reinstitute animal migration through and over the property and the current opportunity for predation on endangered fish.

It is obvious that federal agency planning has been conducted through the lens of animals and their migration and not both animals and humans. My requests were made more than 2 years prior to WSDOT’s completion of the I-90 Final EIS. The issues I requested WSDOT address are not to be found in the Final EIS as they relate to the human environment of which they knew SnoCadia was planned

to be a part. Statements that are contained in the WSDOT EIS regarding SnoCadia demonstrates that SnoCadia was examined, analyzed and describe as **impacting plans for the I-90 project and planned animal migration** and not the other way around. The EIS It is rampant with statements regarding adjustments that SnoCadia **will have to make to accommodate and adjust to the planned Federal action.** This turns the EIS process on its head. It does not, as required by federal law, make an analysis of the total I-90 migration impacts and alternative adjustments that would have to be made by WSDOT to the long standing local government plans to permit use of the SnoCadia PUD property precisely as is being proposed in the SnoCadia PUD. This is especially true when one considers that:

“The environmental impact statement must cover all plausible bases, which are generally determined by the rule of reason. If a “reasonable person” would consider an activity sufficiently significant to warrant further discussion, it should be included in the environmental impact statement.”

The intent of this language is not to justify imposing impacts of a planned project (*elevating I-90 and reestablishing animal migration*) on adjacent properties and then launch an exposition of how those being impacted by the federally funded plans are to be forced into explaining how, as private property owners, they are going to responsibly accommodate and absorb, at their own cost, impacts of new federal plans and projects. However, until documents submitted to the decision makers on this project demonstrate to the contrary this is precisely what the WSDOT EIS statement does. Any decisions made by local administrative bodies lacking these studies and data will be found incomplete and without sufficient foundation.

It is clear during the conduct of an EIS, major decision-making and willful and uninformed imposition of impacts on private property should be withheld until the results from the data and analysis being conducted in the Final ESI are completed with an understanding of what those impacts are. This is especially true when the impacting agency continue to assure those being impacted, in writing, that they, the impacting agency, are withholding such decisions until they have had the opportunity to review the Final EIS. What makes this an interesting situation and requires additional time for me to respond is the number of major decisions that were and have been made to knowingly create substantial social and economic impacts, years in advance of the completion of studies that the agency alleges they were awaiting prior to making negatively impactful decisions on the very property they attempt now to further impact.

It is my intent to be very specific in the document I am preparing regarding how I intend to respond, not only to the comments but to the actual impacts that are

planned to be experienced on the SnoCadia PUD resulting from the plans, (not existing projects but plans) that WSDOT and other agencies have NOT YET IMPLEMENTED.

I do not believe I have an incorrect perception when it comes to consideration of the significant affects on the quality of the HUMAN ENVIORNMENT. I have seen NO STUDIES THAT WERE CONDUCTED of the substantial social and economic damage that will certainly occur to the planned built environment including the SnoCadia PUD. WSDOT and its collaborators should have addressed these substantial issues as cited above in the requirements for an EIS and as I requested well before completion of the Final EIS.

If I may suggest you do so, you might consider requesting that each and every public agency that has requested that I undertake some level of EIS be requested to provide your office with copies of the specific EIS document pages which, documents all impacts that were evaluated and considered in their plans that directly mention or refer to the property on which the SnoCadia PUD will be developed. Their combined submittal will not involve many sheets of paper in the aggregate. This is not a frivolous, unreasonable or burdensome request, but almost mandatory given their proclivity to backup all of their assertions with non-specific references to these plans and to the only WSDOT EIS conducted in the Gold Creek area.

Knowledge of their fundamental justification and the basis for their negative comments on the SnoCadia PUD is contained in these plans. This is important information regarding the impacts they identified as they plan to use federal funds while making these impacts. Their documents are essential, for the public record, to be used in decision making by those all governmental agencies that have the legal authority to regulate the use of my property and as the basis of the final local legislative and quasi-judicial review.

At the present moment, what I have been able to determine is that there are many rumors of extensive studies over the yet to be defined "*10 year planning period*" that were conducted by a "*multi-disciplinary team of specialists.*" Yet, I have not heard of nor have I discovered any studies that were ever conducted regarding the impact on the private land underlying the SnoCadia PUD that will result from I-90 and reinstating reinstatement of animal migration. Their comments on the SnoCadia PUD are proof positive of the economic impact.

This request should present no difficulty at all to the commenting agencies. Given their comments they seem to know exactly what these studies are and what they contain. These studies either contain social, economic and environmental impacts on the SnoCadia property or they do not. In order to fairly evaluate their claims and the information I shall provide together, those agencies

must submit copies of any and all studies, memos and other relevant information that specifically demonstrates their consideration and evaluation of the social, economic and environmental impacts that they identified, analyzed, quantified and document that will be visited upon the SnoCadia PUD property by their projects and plans mentioned in their comments.

I believe that we will all be pleasantly surprised. I know I was when I saw the several illustrations that I had been requesting for over two years showing how the agencies plan to impact my property with migrating animals and use fences to force animals through my property. This will also assist me in providing your agency with a more complete response as you have suggested. Since I have not been able to find mention of any study remotely related to impacts that they plan to cause on my property, I do not expect them to submit very many pages to you. What I have found are various studies of impacts on animals. These studies describe impacts that I-90 has had on migration and are founded on the hope that animal migration can be reestablished and to do so over my private property without compensation. I have yet to find one full page or any single document that speaks to project impacts on any human investments and established plans during the status quo for the last 40 years to provide and improve the “*habitat for human animals.*”

This suggestion is to advance the data collection efforts for the staff analysis and other planned levels of review. I noticed that my concerns regarding the fact that people commenting would not know that I am vested in my right to proceed with this development application under the regulations in force at the time of my application submission. A number of “red herrings” related to the GMA decision, the availability of water and sewer and the fact that I am not trying to develop land under a rezone, but in accord with exiting land use, zoning within a municipal water and sewer district for which I will have certificates of availability at the time necessary to develop the lots. Unfortunately, some of this misinformation is occurring from state agency personnel.

You may consider this a part of my project record and post it in the project web information section. I will complete the other project I mention as soon as possible. I do not oppose animal migration. I do oppose it when it involves taking my private property. Thank you and,

Best regards,

Michael L. Darland

cc: Dan Valoff, Kittitas County Development Services
Doug Nicholson, Esq. Cone Gilreath
Jim Platt - Mountain Grandeur