

September 25, 2008

ROBERT A. CARMICHAEL, Attorney  
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Mr. C. Thomas Moser  
411 Main St.  
Mount Vernon, WA 98273

SENT BY E-MAIL AND FIRST CLASS MAIL

Re: *Janicki v. Sedro-Woolley*

Dear Mr. Moser:

This is in response to your letter dated September 11, 2008, in which you request that the City of Sedro-Woolley agree to an order that includes 4 specific directives. Each of your requested directives is set forth below, followed by the City's response.

- 1) The City will perform a new SEPA threshold determination for the Deluxe proposal, triggering a new appeal period.**

There are at least two potential approaches to the scope of the remand: (a) Remand to City SEPA official, or his designee, to review the Jacobs letter and determine if the MDNS ought to be withdrawn; or (b) Remand to City SEPA official, or his designee, with direction to withdraw the MDNS and to make a new threshold decision following review of the Jacobs letter.

For a variety of reasons, the City intends to leave it up to the judge to determine the appropriate remedy for remand and expresses no opinion on which of these two basic approaches is chosen; provided that, the City reserves the right to comment on the details of each approach.

- 2) The City will consider the Leo Jacobs comment letter and input from Mr. Jacobs.**

The City agrees that its SEPA official or his designee will consider the Leo Jacobs comment letter in accordance with the judge's ruling. The City will obviously abide by what the judge decides in the final order regarding the extent of any additional input from Mr. Jacobs. The City will not object to additional comments from Mr. Jacobs in his personal capacity, if the judge opens the matter up to additional comments from the public. The City does have concerns, however, regarding a judicial order directing additional input from Mr. Jacobs in his capacity as a city employee, on city letterhead.

Mr. Jacobs' job responsibilities are operational in nature and he is frankly not qualified as the expert he has been made out to be. More important, Mr. Jacobs appears to have a conflict of interest in this matter. The City does not believe the judge intends to require acceptance of additional input from a city employee with a conflict of interest.

- 3) **The City will retain an outside environmental consultant to perform the environmental review that is mutually agreeable to the City and Janicki, the costs of which shall be jointly and equally paid by the City, Deluxe, and Skagit County (should the County agree).**

The City will not agree to a provision in the order directing that it retain an outside environmental consultant. However, the City intends to, and very likely will choose to hire such a consultant for that purpose. I understand that Deluxe may be in opposition to this position. Therefore, the City will request a specific provision in the order that authorizes it to hire an outside environmental consultant to perform the environmental review, if it so chooses. The City will reserve the right to select its own consultant without the need to secure prior approval of its choice from Janicki.

- 4) **The City pays for Janicki's costs for the preparation of the record. See, RCW 36.70C.110(4) ("If the relief sought by the petitioner is granted in whole or in part the court shall equitably assess the cost of preparing the record among the parties.")**

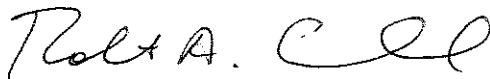
The City agrees with this request; subject to agreement on the actual cost.

As you know, the City did not agree that a remand of this matter was appropriate. It is therefore very difficult to agree that only a certain scope of remand is sufficient. The City believes that the judge is in the best position to determine the scope the remand necessary to effectuate the intent of his ruling.

Accordingly, the City may outline options available, but will ultimately not advocate for a particular outcome on the remand, except perhaps with respect to the scope of additional comments from Leo Jacobs in his role as a city employee.

If you have any questions, please let me know.

Yours truly,



Robert A. Carmichael

c: client  
Phil Serka  
Will Honea