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September 5, 2012

The Bellingham Herald  
ATTN: John Stark  
1155 N. State St.,  
Bellingham, WA 98225

Dear Mr. Stark:

In order to address changed circumstances and to avoid undue speculation about the nature of the City's deliberative processes, the City is revisiting its decision to redact portions of a letter sent from Mayor Kelli Linville to David Rogers of Costco Wholesale on June 20, 2012.

The letter was redacted in response to a request for public records from Jared Paben of the Bellingham Herald. The City believes that the redacted portions of the letter meet the four-part test for the deliberative process exemption outlined by the Court of Appeals in *ACLU v. City of Seattle*, 121 Wn.App. 544, 89 P. 3d 295 (2004): (1) the records contain pre-decisional opinions or recommendations of subordinates expressed as part of the deliberative process, (2) that disclosure would be injurious to the deliberative or consultative function of the process, (3) that disclosure would inhibit the flow of recommendations, observations and opinions, and (4) that the materials covered by the exemption reflect policy recommendations and opinions rather than the raw factual data on which a decision is based.

There are several overlapping deliberative processes at issue here, which include: developing a regional strategy for environmental mitigation of impacts from economic development activity in the Bakerview area; negotiating the purchase of real estate that will serve as a regional wetland site and/or a regional stormwater facility; developing a policy that allows businesses to utilize the City-owned and managed regional facilities for mitigation while paying their fair share for such use; and discussions with Costco regarding the company's potential relocation to a new site within the City.

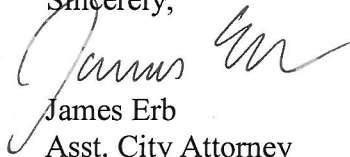
As in the *ACLU* case, the City's letter to Costco was "a starting point for a complex and delicate policy-making process." Importantly, the estimates of the potential savings to Costco if the recommended policies are adopted represent the opinions of City staff. While the development of a regional wetland site and a regional stormwater facility should result in savings

for businesses (including Costco) that partner with the City to use those resources, it is important to note that those businesses will be responsible for paying their fair share for such use.

There have been several requests for the letter and related materials since the City first responded to the Herald's request. Some have speculated about the contents of the letter. However, no potential tenants (including Costco) have applied for a building permit for construction on the Bakerview site. Nor has the City entered into contracts with any businesses (including Costco) to use the regional wetland site or the regional stormwater facility. The speculation distracts from the overall purpose of the deliberative processes detailed above, *i.e.* developing policies that mitigate environmental impacts while at the same time providing an opportunity for increased economic development activities within the City.

In conclusion, the City believes that the letter may be disclosed at this time without jeopardizing the deliberative process. A copy is attached.

Sincerely,

A handwritten signature in cursive script, appearing to read "James Erb", written in dark ink.

James Erb  
Asst. City Attorney  
Public Records Officer  
Legal Department  
City of Bellingham  
(360) 778-8132