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October 2, 2018

Pend Oreille County Commissioners  
PO Box 5025  
Newport, WA 99156

## **RE: Recusal of Commissioner Kiss**

Dear Commissioners:

This letter is sent on behalf of the organizations, Responsible Growth\*NE Washington and Citizens Against Newport Silicon Smelter, and their members requesting the recusal of Commission Stephen Kiss from any action related to review or approval of the County's proposed amendment of the County's Comprehensive Plan eliminating and otherwise amending the County's "public land" designation. We believe Commission Kiss' involvement in this action would be unethical and call into question the legality of any land use action.

Based upon publicly-available information, Commissioner Kiss recently acquired 53-acres of land near the Mill Pond Flume<sup>1</sup> from the PUD for \$33,000 on November 17, 2016. This land is currently subject to the "public land" designation. Accordingly, the use of this land is limited to "public" uses.

Last month, Pend Oreille County proposed a county-wide redesignation and rezone that would delete the "public lands" zone from the Comprehensive Plan, the development regulations, and the table of permitted zoning use, to create a new "public/institutional uses" designation, and to otherwise rezone rural lands. Commissioner Kiss' property would benefit from this redesignation. If the Commissioners involved himself in decision making regarding this proposal, there would be an obvious conflict of interest and bias and, accordingly, the Commissioner must recuse himself.

Washington courts have long-recognized a prohibition of the type of conflict of interest stating that the common law principle preventing municipal officers from advocating for their own self-interest is a "maxim as old as the law itself." *Smith v. Centralia*, 55 Wash. 573 (1909). Courts are clear that public officials making land use decisions have a duty of conducting fair and impartial decisions on issues affecting individual property rights, as well as community interests. *State ex rel. Beam v. Fulwiler*, 76 Wn.2d 313, 456 P.2d 322 (1969). Decision makers must be open-minded, objective, and impartial. *Id.* In *Smith v. Skagit County*, 75 Wn.2d 715, 739, 453 P.2d 832, 846 (1969), the Court stated:

It is axiomatic that, whenever the law requires a hearing of any sort as a condition precedent to the power to proceed, it means a fair hearing, a hearing not only fair in substance, but fair in appearance as well.

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<sup>1</sup> According to the PUD's 2016 Notice of Sale, the legal description for the property is NW ¼ SE ¼, N ½ SW ¼ N ¼ E, Portion SE ¼ NW ¼, Sec. 25, T39N, R43E, W.M.

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Consistent with this, the Legislature passed a number of laws against self-dealing, including RCW 42.23.070, which prohibits public officials from using his or her position to secure special privileges or exemptions for himself, herself, or others. Violating these rules can bring serious penalties, including monetary fines, nullification of actions, and possible forfeiture of office.

Given the benefit, Commissioner Kiss would receive from approval of the County's public land proposal, it is clear that it is both unethical and unlawful for him to take part in any decision-making. Moreover, given that the requirement in RCW 36.70A.130(2)(b) that the cumulative impacts of all comprehensive plan amendments be considered concurrently, as well as the obligation to consider the cumulative impacts of all the proposed amendment under the State Environmental Policy Act, it is likely that the Commissioner must recuse himself from consideration of all of the proposed amendments.

We would appreciate a prompt response and action to address the concerns addressed in this letter.

Sincerely,

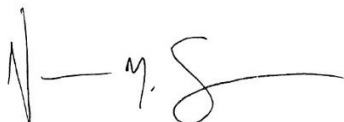
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RKE/vly