



**LANDERHOLM**

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December 6, 2017

Ms. Sarah Fox  
City of Camas Community Development  
616 NE Fourth Avenue  
Camas WA 98607

**Re: Dawson Ridge Subdivision – SEPA17-16 Appeal**

Dear Ms. Fox:

This is the applicant's SEPA comments and appeal. The applicant is also the property owner and has standing under Section 16.13.060 because the applicant is the "proponent" of the project and "aggrieved party." Applicant agrees with the MDNS threshold determination but challenges conditions 1, 2, 9, 10, 12, and 15.

We request that Condition 1 be amended to protect the geologic hazard areas with an "easement" rather than requiring a separate tract, consistent with Section 16.51.240.A and the applicant's engineering report by PBS. The PBS engineering report states that limited site disturbance, including landscaping and uninhabited structures such as fences and patios are allowed in the geologic hazard area. The City's EEI Report No. 17-214-1 confirmed that: "Development within the setback areas should be limited to landscaping or uninhabited structures such as fences, patios, or similar." Therefore, an easement is more appropriate here rather than a separate tract, since landscaping and fences could be constructed in an easement area and there is no need to put the land in a tract.

The City has expressed a concern about "weekend warriors" undertaking unapproved work in the geohazard setback, but since the geotechnical engineering report specifically allows landscaping and uninhabited structures in the geohazard setback, there is no issue with "weekend warriors" constructing these sorts of improvements in the setback. In any event, the CC&Rs can contain provisions that will allow the HOA to police unauthorized uses in the geohazard setback area.

Requiring a separate tract would reduce density since there is no way to preserve lots 31-34 if the geologic hazard area were put into a separate tract, rather than an easement. Since landscaping and uninhabited structures are allowed in the geohazard setback and to the extent necessary the setback can be protected adequately through provisions added to the CC&Rs, there is no need to unnecessarily reduce density in this situation by requiring the geohazard areas to be put into an unbuildable tract.

Finally, the applicant's geotechnical engineering report, which was confirmed by the City's EEI Report No. 17-214-1, allows dwellings to be constructed within the geohazard setback with

further geotechnical engineering analysis and foundations that are supported directly on the underlying basalt bedrock. Such site specific study for specific residences would be cost prohibitive without first knowing the proposed building plans. Since it is premature to know what individual building plans will be proposed for dwellings on the lots, the geohazard area should be preserved with an easement rather than a tract to allow flexibility in site design for individual homeowners. An easement together with provisions in the recorded CC&Rs will be adequate to resolve this issue and allow the geohazard setback to be preserved with an easement rather than a tract.

Therefore, we request Condition 1 be revised to read as follows: “The applicant shall protect the geologic hazard areas including the geotechnical management setback areas with an easement through a recorded conservation covenant (the terms of which shall be consistent with these conditions and applicable regulations) and the CC&Rs for protection and preservation, as allowed per CMC§16.51.240.”

For the same reasons discussed above, we request that condition 2 be amended to require residential “dwellings” remain outside the geohazard management setback area rather than residential “lots” and we request an exception be added for approval by a licensed geotechnical engineer. So, we request Condition 2 read as follows: “All residential dwellings shall remain outside of the geohazard management setback area, unless approved by a licensed geotechnical engineer and the City.”

The reference to “tract” in Condition 3 should be changed to “easement.”

We further request condition 9 be amended to read as follows: “9. No fill within identified geohazard and setback area shall occur, except as may be approved by a licensed geotechnical engineer and the City.”

Since fencing is specifically allowed within the geohazard setback area by the applicant’s geotechnical report, which was confirmed by the City’s consultant, the applicant objects to the fencing provision of Condition 10. Condition 10 should be revised to read: “Prior to final acceptance of site improvements, signage will be installed along the geologic hazard area setback to alert homeowners of the easement. The signs will include text provided by the City that shall consistent with these conditions and applicable regulations.”

We further request Condition 12 be amended to read as follows. “All significant trees and native vegetation within the required geologic hazard area shall be retained, except as shown on applicant’s tree removal plan or as otherwise approved by the City.” The current plans show at least one tree being removed within the geohazard area west of lot 32, and in addition as final construction plans for the trail (including, but not limited to Tract I) are developed the issue of tree removal may need to be readdressed.

We finally object to Condition 15, which is apparently based on the recently adopted Comprehensive Plan Policy H-1.4. However, Comprehensive Plan Policy H-1.4 has not yet been



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implemented by specific zoning regulations. In these types of situations where a generalized comprehensive plan policy is adopted, it is not directly applicable as an approval criterion for a land use decision until it is implemented by a specific zoning code provision. *Citizens of Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 947 P.2d 1208 (1997)(“Since a comprehensive plan is a guide . . . conflicts between a general comprehensive plan and a specific zoning code [must] be resolved in the zoning code's favor”).

There are no specific impacts of this development that would create a need for any mitigation relating to ADA or ADU. Rather, the need for more ADA or ADU housing is a citywide concern. As such, it is not appropriate or allowed to impose a mitigation condition under SEPA. If the City wants to require ADA or ADU, such requirements must be imposed through specific zoning code provisions (which currently do not exist).

WAC 197-11-158 authorizes cities to rely on its GMA comprehensive plan and zoning regulations to make a SEPA compliance determination. Since ADU and ADA cannot be required absent an amendment to the zoning and development regulations, the development complies with all current and applicable comprehensive plan and zoning regulations and can be approved without any SEPA conditions relating to ADU or ADA under WAC 197-11-158.

In any event, since the City’s desire for ADU or ADA is not related to any specific impact of the proposed subdivision, Condition 15 cannot be imposed under SEPA. Nevertheless, the applicant would be willing to agree to include a provision in the CC&Rs establishing that any lot owner may develop either ADA or ADU (or both) type dwellings on the individual lots. Therefore, the applicant would accept a Condition 15 that read as follows: “To promote single-story and barrier-free dwellings (consistent with Americans with Disabilities Act); and Accessory Dwelling Units (ADUs) to be constructed concurrent with primary dwellings, the CC&Rs for the development shall contain no provisions prohibiting single-story barrier-free dwellings or ADUs.”

But, for the reasons discussed above, the applicant rejects any conditions that would require individual lots to be set aside for such development. Those choices should be up to the individual homeowner.

Sincerely,

LANDERHOLM, P.S.



STEVE C. MORASCH  
Attorney at Law

SCM/mmr

Enclosure

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Community Development Department | Planning  
616 NE Fourth Avenue | Camas, WA 98607  
(360) 817-1568 | [www.cityofcamas.us](http://www.cityofcamas.us)

General Application Form

Case Number: SEPA 17-16

Applicant Information

Applicant/Contact: McIntosh Ridge PRD, LLC Phone: (360) 947-0347

Address: 16420 SE McGillivray Blvd.  
Street Address  
Vancouver WA 98663  
City State ZIP Code

Property Information

Property Address: 4626 NW McIntosh Rd. SEE ATTACHED.  
Street Address County Assessor # / Parcel #  
Camas WA 98607  
City State ZIP Code  
Zoning District R15 Site Size 21.7 Acres

Description of Project

Brief description:  
SEPA comments and SEPA APPEAL - SEE ATTACHED.

Are you requesting a consolidated review per CMC 18.55.020(B)?

YES

☐

NO

☒

Permits Requested: ☐ Type I ☐ Type II ☐ Type III ☐ Type IV, BOA, Other

Property Owner or Contract Purchaser

Owner's Name: McIntosh Ridge PRD, LLC Phone: (360) 947-0347  
Last First  
Address: 16420 SE McGillivray Blvd.  
Street Address Apartment/Unit #  
E mail Address: Vancouver WA 98663.  
City State Zip

Signature

I authorize the applicant to make this application. Further, I grant permission for city staff to conduct site inspections of the property.

Signature: 

Date: 12/6/17

Note: If multiple property owners are party to the application, an additional application form must be signed by each owner. If it is impractical to obtain a property owner signature, then a letter of authorization from the owner is required.

Date Submitted:

Pre-Application Date:

Staff:

Related Cases #

Validation of Fees