ORAL ARGUMENT
Larkspur / Camas Meadows Drive Street Improvements
Appeal 18-02 of SEPA 18-05
May 24, 2018

The City **failed to consolidate procedural and substantive decisions**, including "the agency's decision on the proposed action." **RCW 43.21C.075(6)(c) and WAC 197-11-680(3)(a)(v).**

The City **made a procedural decision** (March 15, 2018) **prior to the end of the comment period** (March 29, 2018), **or failed to consider comments. WAC 197-11-550.**

Administrative decisions cannot become final while a SEPA component is still subject to review:

> [N]eighbors should not have been forced to initiate judicial review of a decision when the SEPA component of that decision was not yet final in that it was still subject to further administrative review.

State v. Grays Harbor County, 122 Wash.2d 244, 256, 857 P.2d 1039 (1993).

The City **rejected** a **retaining wall alternative** (HEE 1, Exhibit 2 at 6-7) **prior to issuance of the final DNS.**

> **Until** the responsible official issues a **final determination** of nonsignificance or final environmental impact statement, **no action** concerning the proposal **shall be taken** by a governmental agency **that would:** . . .
>
> (b) **Limit the choice of reasonable alternatives.**

WAC 197-11-070(1)(b). The term reasonable alternative is defined as follows:

> "Reasonable alternative" means an action that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation. Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts, either directly, or indirectly through requirement of mitigation measures.

WAC 198-11-786. The Washington Supreme Court ruled that a decision to lease property under Port control "**is independently subject to SEPA** and must await the lead agency's analysis of environmental impacts and reasonable alternatives." ***Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wash.2d 80, 100, 392 P.3d 1025 (2017).**

ERIKSON & ASSOCIATES, PLLC
ATTORNEYS AT LAW
110 West 13th Street
Vancouver, WA 98660-2904
(360) 696-1012

The City **failed** to **complete SEPA review** prior to filing a condemnation action.

The City **failed to** disclose and **analyze environmental impacts** to appellants' property lying **outside of the proposed road alignment.**

***SEPA Checklist* at 4, paragraph B(1)(a):**

> **Describe the** purpose, type, total area, and approximate quantities and **total affected area of any** filling, **excavation, and grading** proposed."
>
> . . . **Approximately 1.06 acres will be disturbed** to build the road.
> Estimated cut and fill quantities:
> • **Cut = 3,700 Cu. Yd.** . . .

HEE 4 at 2 depicts a **10 foot cut** at the proposed right of way, which daylights "approximately 65 feet [west of the] right-of-way [centerline]."

HEE 5 depicts **15,660** feet of so called "Temporary Construction Easement."

Interpolated cut = **78,300 cubic feet, or 8,700 cubic yards**, which is more excavation within the "Temporary Construction Easement" than the 3,700 cubic yards noted for the entire project.

HEE 4 at 2 depicts road improvements just over 50 feet in width,

HEE 1, Exhibit 1 reports that the project is ".25 miles long."

Multiplying 50 feet in width by 1,320 feet in length (one quarter mile) yields **66,000 square feet, or 1.52 acres.**

The 1.06 acres reported by the City does not include **.36 acres of "Temporary Construction Easement" on appellants' property**, nor an additional **.36 acres of "Temporary Construction Easement" on properties north and south of the appellants**.

***SEPA Checklist* at 5, paragraph 1(g):**

> About what percent of the site will be covered with **impervious surfaces** after project construction . . . ," to which the City answered as follows:
>
> Approximately **94 percent of the site** will be covered with an asphalt road and concrete sidewalks.

ERIKSON & ASSOCIATES, PLLC
ATTORNEYS AT LAW
110 West 13th Street
Vancouver, WA 98660-2904
(360) 696-1012

The proposed **roadway** comprises approximately **66,000 square feet, or 68%** of the total, and unpaved **"Temporary Construction Easements" comprise 31,296, or 32%** of the total.

The entire project is not included in the SEPA Checklist if 94 percent of the site is covered with asphalt and concrete after completion.

***SEPA Checklist* at 10, paragraph 7(b)(2):**

> What types and levels of **noise** would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)," to which the City responds
>
> **No** long-term noise **impacts** are anticipated.

Ordinance No. 18-008, authorizing condemnation, notes that "**NW Larkspur Street is currently an under improved arterial consisting of two lanes** and no improved shoulders," and estimates "[a]t full buildout of the City Street, Larkspur is **projected to carry over 10,000 vehicles per day**." *Reply Memorandum* dated May 21, 2018, Exhibit 1 at 1.

Traffic and noise are defined elements of the environment. **WAC 197-11-444(2)**(a)(i) and (2)(c)(ii). **Traffic noise** is an "'element[] of the environment' that can be addressed in Environmental Impact Statements under SEPA rules." ***Maranatha Mining v. Pierce County***, 59 Wash.App. 795, 803 fn 9, 801 P.2d 985 (1990).

***SEPA Checklist* at 12, paragraph 8(l):**

> Proposed **measures to ensure the proposal is compatible with existing and projected land uses** and plans:
>
> **None.**

The City did **not analyze the retaining wall alternative** proposed by appellants' engineer. HEE 1, Exhibit 2 at 6-7.

ERIKSON & ASSOCIATES, PLLC
ATTORNEYS AT LAW
110 West 13th Street
Vancouver, WA 98660-2904
(360) 696-1012

***SEPA Checklist* at 15, paragraph 14(f):**

> How many **vehicular trips per day** would be generated by the completed project or proposal:

The City provided estimates of peak traffic hours and the percentage of truck traffic, but completely **omitted the 10,000-trip ADT** projection mentioned in Ordinance 18-008.

> [Under SEPA,] the term 'significantly' has been defined to include the examination of at least two relevant factors: (1) the extent to which the action will cause **adverse environmental effects in excess of those created by existing uses in the area**, and (2) the **absolute quantitative adverse environmental effects of the action itself**, including the cumulative harm that results from its contribution to existing adverse conditions or uses in the affected area.

Norway Hill v. King County, 87 Wash.2d 267, 277, 552 P.2d 674 (1976), superseded on other grounds, *Moss v. City of Bellingham*, 109 Wash.App. 6, 21, 31 P.3d 703 (2001).

ERIKSON & ASSOCIATES, PLLC
ATTORNEYS AT LAW
110 West 13th Street
Vancouver, WA 98660-2904
(360) 696-1012