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City of Camas SEPA Official
Community Development Department
616 NE Fourth Avenue
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Joe Turner
Hearing Examiner

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**Re: SUPPLEMENTAL MEMORANDUM IN SUPPORT OF APPEAL 18-02
SEPA 18-05 Larkspur / Camas Meadows Drive Street Improvements**

Dear SEPA Official and Mr. Examiner:

This memorandum is filed on behalf of Jay Ponce, the appellant in Appeal 18-02 of SEPA 18-05; as additional briefing authorized at the SEPA Appeal Hearing on May 24, 2018.

SEPA mandates analysis of the "Built Environment:"

Significant impacts on both the natural environment and the built environment must be analyzed, if relevant (WAC 197-11-444). This involves impacts upon and the quality of the physical surroundings, whether they are in wild, rural, or urban areas. [¹]

The Administrative Code defines "Built Environment" to include the following elements:

- (2) Built environment
 - (a) Environmental health
 - (i) Noise . . .
 - (b) Land and shoreline use
 - (i) **Relationship to existing land use plans** and to estimated population

¹WAC 197-11-440(6)(e). Accord *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wash.2d 619, 642, 860 P.2d 390 (1993).

- (ii) **Housing**
- (iii) Light and glare
- (iv) Aesthetics . . .

(c) Transportation

- (i) **Transportation systems**
- (ii) Vehicular traffic . . .
- (v) Movement/circulation of people or goods
- (vi) Traffic hazards

(d) Public services and utilities . . .

- (vii) Water/storm water [²]

The Washington Supreme Court applies a “rule of reason” which focuses upon whether environmental impacts are sufficiently disclosed, discussed and substantiated:

In determining whether a particular discussion of environmental factors in an EIS is adequate under the rule of reason, the reviewing court must determine whether the environmental effects of the proposed action are sufficiently disclosed, discussed, and substantiated by supportive opinion and data. [³]

Of course, agencies must use environmental checklists in making threshold determinations;⁴ hence, EIS adequacy is pendent upon checklist adequacy. Applied explicitly to SEPA Checklists:

We agree that if the probable effect of competition is such that the “built environment” is affected, review is called for by WAC 197–11–444(2). . . . However, economic competition, in and of itself, is not an element of the environment under WAC 197–11–448(3). SEPA review was not inadequate on this basis. [⁵]

On the other hand, “if the probable effect of competition is downtown blight such that the built environment is affected, then discussion of that effect in an EIS is called for.”⁶

²WAC 197-11-444(2), emphasis added.

³*Klickitat County Citizens Against Imported Waste*, 122 Wash.2d at 644.

⁴WAC 197-11-315(1).

⁵*Indian Trail Property Owner’s v. Spokane*, 76 Wash.App. 430, 444, 886 P.2d 209 (1994).

⁶*W. 514, Inc. v. Spokane*, 53 Wash.App. 838, 847-48, 770 P.2d 1065 (1989).

Scrivener's errors do not excuse inadequate disclosure:

[T]he County argues the hearings board undervalued the checklist's thorough contents. But the checklist failed to adequately address the proposal. Apart from reciting it in a background section with seven other comprehensive plan amendments and concurrent rezones, the checklist did not mention amendment 07-CPA-05. Assuming this omission was a scrivener's error, the checklist still lacked required particularity. [7]

In the present case James Carothers, City Engineer and SEPA Applicant, admitted at hearing that required quantities were inadvertently misstated in the SEPA Checklist, and the proposed project will actually disturb approximately two and one half acres including cuts comprising approximately 9,000 cubic yards (increases greater than 200%). The Washington Supreme Court held that SEPA does not require the reporting of specific quantities (gas emissions) where there is sufficient information to weigh the environmental impacts of the project.⁸ However, the appellant does not argue merely that erroneous quantities skew the evaluation. In addition, misstated quantities reveal that the so-called "Temporary Construction Easement" is outside of the geographical area analyzed; hence, misstated quantities evidence insufficient information to evaluate potential impacts to the built environment. Impacts to appellants' property were never analyzed, in direct contravention of SEPA.⁹

Sincerely,



Mark A. Erikson
Attorney at Law

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Enclosures

cc: Client

⁷*Spokane County v. GMHB*, 176 Wash.App. 555, 580, 309 P.3d 673 (2013).

⁸*PT Air Watchers v. Ecology*, 179 Wash.2d 919, 930-31, 319 P.3d 23 (2014).

⁹RCW 43.21C.031; WAC 197-11-315(6)(c) ("Nothing in this section authorizes a lead agency to ignore or delete a question on the checklist.")