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Camas City Council  
City of Camas  
616 NE 4<sup>th</sup> Avenue  
Camas, WA 98607

**Re: Applicant's Hearing Briefing on SEPA appeals in the Grass Valley Master Plan Development (City File No. DA18-01, SPRV18-01, SEPA18-06, SP18-01, APPEAL18-03, APPEAL18-04)**

Dear Council:

On behalf of the Applicant, Holland Partner Group, we are submitting the following legal briefing on the issues raised in the SEPA appeals filed by Jiri Vasat and Mitchell Copp.

**1. Background and Summary of Facts.**

The Grass Valley Master Plan Development includes approximately 35 acres of Mixed Use Development that includes three office buildings, one commercial retail/restaurant space, and 276 residential apartment units. The Applicant also proposes to short plat the property into four lots. The site is zoned Regional Commercial (RC). The site is located at the 5700 Block of NW 38th Avenue (parcel numbers 126043-000 and 126255-000). The record on review is a consolidated record that includes all of the information and application materials for all of the applications, including, but not limited to the Applicant's erosion control plan, stormwater report, critical areas report and the Applicant's design review materials.

A SEPA Checklist was also submitted with the application. A DNS was issued and mailed to all parties of record on May 10, 2018. During the 14 day comment period, a number of residents of the Vancouver subdivision to the south of the project submitted comments. The Applicant also submitted supplemental SEPA information during the 14 day comment period, including information that it is likely that various hawks, Blue Herons, deer and coyotes periodically utilize the site or the Fisher swale. Based on the comments and supplemental information received during the SEPA comment period, the City's Responsible Official determined that the Threshold Determination, in light of the additional comments, should still be DNS.

The appeals on SEPA are regarding the issued Determination of Non-significance (DNS).

**2. Summary of Issues.**

SEPA appeals were filed by Jiri Vasat and Mitchell Copp, challenging the Determination of Non-significance (DNS). In addition to the informational issues raised in the SEPA appeals that

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have been addressed in Applicant's supplemental SEPA information, the SEPA appeals raise the following issues:

- 1) Whether emissions mitigation measures are adequate to address potential impacts?
- 2) Whether fuel spill mitigation measures are adequate to address potential impacts?
- 3) Whether noise, glare and illumination mitigation measures are adequate to address potential impacts?
- 4) Whether erosion control measures are adequate to address potential impacts?
- 5) Whether stormwater control measures are adequate to address potential impacts?
- 6) Whether wetland and riparian habitat mitigation measures are adequate to address potential impacts?
- 7) Whether design review measures are adequate to address potential impacts?

### **3. Standard of Review for a SEPA appeal.**

It is important to understand the role of the City Council in deciding a SEPA appeal. Since the City Council is acting as an appellate body, the City Council should give substantial weight to the procedural determinations made by the City's Responsible Official, including the DNS that was issued in this case. See RCW 43.21C.075(3)(d).

The City Council must consider the evidence and apply the provisions of SEPA and the implementing rules adopted by the Washington Department of Ecology in WAC 197-11 to determine whether to affirm the threshold determination of no significant impact (DNS). In carrying out this responsibility, courts have held that the City need not consider "speculative" impacts in its SEPA analysis. *Boehm v. City of Vancouver*, 111 Wash. App. 711, 720, 47 P.3d 137, 142 (2002).

Further, SEPA authorizes GMA cities to rely on compliance with existing laws and regulations to make a SEPA compliance determination of no significant impact:

A "county, city, or town reviewing a project action" may determine that the adverse environmental impacts of the proposed action are addressed sufficiently under SEPA by its existing development regulations, comprehensive plan, or other applicable rules. RCW 43.21C.240(1), (2); see also WAC 197-11-158 (rule allowing counties or cities to rely on existing plans, laws, and regulations for project actions).



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*Heritage Baptist Church v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 2 Wash. App. 2d 737, 751-52, 413 P.3d 590, 598 (2018)(holding that cities can rely on their existing development regulations when reviewing SEPA for project actions but not non-project actions).

As a GMA compliant jurisdiction, the City of Camas may rely on existing laws and regulations to support a SEPA DNS, provided the City "considers the specific probable adverse environmental impacts of the proposed action and determines that these specific impacts are adequately addressed by the development regulations or other applicable requirements of the comprehensive plan, subarea plan element of the comprehensive plan, or other local, state, or federal rules or laws" and conditions its approval of the land use review for the project on compliance with the applicable regulations. RCW 43.21C.240(1) and (2); WAC 197-11-158.

#### **4. Legal Analysis.**

As discussed in more detail below and as evidenced by the documents in the SEPA record, the City has considered the specific probable adverse environmental impacts of the proposed action; and a threshold SEPA determination of DNS is correct, because these specific impacts are adequately addressed by the City's development regulations or other applicable laws and regulations.

The specific issues raised in the SEPA appeals filed by Jiri Vasat and Mitchell Copp, both residents of the Vancouver subdivision to the south of the project, relate to emissions, fuel spills, noise and glare, wetlands and riparian habitat, erosion, stormwater, and design review. These are all the types of issues that are addressed by the City's development regulations and other applicable state and federal standards. For instance, emissions are addressed by RCW 46.16A.060 and RCW Chapter 70.120A, which require vehicles to meet the California motor vehicle emission standards and 42 U.S.C. Sec. 7507 (section 177 of the federal clean air act). As stated in the SEPA Checklist, construction vehicles will have emissions control devices that meet the requirements of state and federal law. Therefore, the issue of emissions is adequately addressed by the existing laws and regulations.

An issue was raised about potential fuel spills. Fuel spills are regulated by a variety of state and federal statutes, including but not limited to the Clean Water Act, CERCLA, SARA, MTCA, RCW Chapter 90.56, WAC 173-303-145 and WAC 296-56-60243. The applicant will at all times comply with all applicable environmental laws. Therefore, the issue of fuel spills is adequately addressed by the existing laws and regulations.

Noise and glare are also adequately addressed by the City's codes as well as the state regulations, including but not limited to WAC Chapter 173-60, which contains regulations pertaining to construction noise, hours, etc. The project will comply with all existing noise and glare regulations. Therefore, the issue of noise and glare is adequately addressed by the existing laws and regulations.



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Erosion is adequately addressed by the applicant's erosion control plan in the SEPA record and discussed in the SEPA Checklist. The erosion control plan complies with all applicable erosion control laws and regulations, including but not limited to the requirements of the City regulations, as well as the federal Clean Water Act, as implemented by the Washington Department of Ecology under its delegated authority from the EPA, the NPDES permits issued by the Washington Department of Ecology (both the MS4 and the Construction General permit) and the Western Washington Stormwater Manual, as well as RCW Chapter 90.48. Therefore, the issue of erosion control is adequately addressed by the existing laws and regulations.

Many of these same laws and regulations applicable to erosion control also apply to stormwater, including, but not limited to the city regulations as well as the Clean Water Act, as implemented by the Washington Department of Ecology under its delegated authority from the EPA, the NPDES permits issued by the Washington Department of Ecology (both the MS4 and the Construction General permit) and the Western Washington Stormwater Manual, as well as RCW Chapter 90.48. The stormwater report in the SEPA record complies with all applicable requirements. Therefore, the issue of stormwater is adequately addressed by the existing laws and regulations.

Issues related to riparian and wetland habitat are also heavily regulated by local, state and federal regulations, including but not limited to the ESA, Clean Water Act, the Growth Management Act's provisions relating to critical areas, the Department of Ecology's regulations and the City of Camas critical areas regulations. The proposed development will comply with all applicable regulations pertaining to wetlands and riparian areas. The applicant is not proposing to fill or impact any regulated riparian areas or wetlands.

It should also be pointed out that, as evidenced by documents in the SEPA record, there is a high point on subject property and Fisher Creek flows both north and south from this high point. Based on the evidence in the SEPA record and in applicant's supplemental SEPA information submitted on May 24, 2018, 70% of the applicant's treated stormwater will flow north where it will ultimately reach La Camas Lake, rather than south where it will ultimately reach the Columbia River. That portion of the Applicant's storm water flowing north will receive additional nutrient treatment for phosphorous as required by applicable storm water regulations. There are no listed species in the waters to the north (*i.e.*, no Steelhead in La Camas Lake), and there are limited species to the south, with an existing fish barrier at Highway 14.

Additionally, the proposal has been designed to protect all riparian buffers by proposing no construction activities or trails in the riparian areas or the riparian area buffers. The project has also been designed so that no development or construction activities occur in wetlands, with only limited activities in wetland buffers, as expressly allowed by code. There are no construction activities in floodplains. Finally, Fisher Creek is not a shoreline of the state, so the Shoreline Management Act does not apply.



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Therefore, based on the above and since the application will comply with all applicable laws and regulations relating to wetlands and riparian areas, the issue of wetland and riparian habitat impacts is adequately addressed by the existing laws and regulations.

Design review is an issue of local code. As demonstrated by the applicant's design review applications and accompanying narrative and memorandum, as well as the Design Review committee's recommendation of approval, the application complies with all of the design review provisions of the City's codes and the City's Design Review Manual. Thus, issues related to design review are adequately addressed by the existing laws and regulations.

The remainder of the issues raised in the SEPA appeals relate to informational issues, which have been adequately addressed by the applicant's supplemental SEPA information submitted on May 24, 2018. As stated in applicant's supplemental SEPA information, it is likely that various hawks, Blue Herons, deer and coyotes periodically utilize the site or the Fisher swale. Hawks that are likely to be on site, such as the Red Tailed Hawk are not listed species. Rainbow trout and Steelhead are mapped as being present in Fisher Creek. Steelhead are threatened but not endangered, and as discussed above, are not present to the north of the property, only to the south, and there is a fish passage blockage at Highway 14, preventing Steelhead from migrating further than the highway up Fisher Creek from the Columbia River. Finally, one of the neighbor's SEPA comments mentioned the Canadian Greyback Goose, which is another name for Canada Goose, (*Branta spp.*), which do not have any WDFW designated habitat in the area.

In conclusion, since all SEPA issues have been addressed in the SEPA record and reviewed and analyzed by the responsible SEPA official, are adequately dealt with under existing laws and regulations, the SEPA appeal should be denied and the City Council should affirm the DNS.

## **5. Conclusion.**

Based on all of the above and the SEPA record, the City should make the following finding:

"The lead agency has determined that the requirements for environmental analysis, protection, and mitigation measures have been adequately addressed in the development regulations and comprehensive plan adopted under chapter 36.70A RCW, and in other applicable local, state, or federal laws or rules, as provided by RCW 43.21C.240 and WAC 197-11-158. The City will not require any additional mitigation measures under SEPA."

We further request the following condition of approval on the project land use permits that the project:

"The project must comply with all applicable development regulations, and any other applicable requirements of local, state, or federal rules or laws."

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With the above recommended finding and condition, the City Council should affirm the determination of DNS.

Sincerely,

LANDERHOLM, P.S.



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RBP/jsr

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