

BEFORE THE CITY COUNCIL OF THE CITY OF CAMAS, WASHINGTON

**FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER**

**SEPA APPEAL #18-03, #18-04, AND #18-06**

**Grass Valley Master Plan Development (City File No. DA18-01, SPRV18-01, SP18-01)**

**A. SUMMARY**

On June 18, 2018, at 7:00 p.m., the Camas City Council held a consolidated hearing for a proposed Mixed-Use Master Plan development known as the Grass Valley Development and two SEPA appeals filed by Jiri Vasat and Mitchell Copp, challenging the Determination of Non-significance (DNS). Pursuant to Camas Municipal Code 18.55.165, the SEPA appeals shall be consolidated with the open record hearing, or appeal, if any, on the underlying project application. CMC 18.55.200(F) calls for a closed record hearing; however, because this matter involves SEPA and is consolidated into an open record hearing on the underlying permits, the City Council elected to hold a consolidated open record hearing on all issues.

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, storm water 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 and that Fisher Creek is mapped for Steelhead and Rainbow trout. 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 a DNS.

SEPA appeals were filed by Jiri Vasat and Mitchell Copp, challenging the Determination of Non-significance. The two SEPA appeals raised certain informational issues relating to the birds and animals on site and the Pacific Flyway. The Applicant submitted supplemental SEPA information during the comment period addressing these issues. In addition to the informational issues raised in the SEPA appeals that 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?

## **B. REVIEW STANDARD**

In considering this appeal, the Camas City Council is guided by 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).

*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.

## **C. RECORD AND HEARING HIGHLIGHTS**

The Camas City Council considered the specific probable adverse environmental impacts of the proposed action based upon the entire record in reaching its decision. Specifically, the Camas City Council considered the following evidence: The application, including the following materials:

project narrative, environmental studies, engineering reports, preliminary short plat drawings, site and landscaping plans, preliminary civil drawings, and all other materials as required for a complete application pursuant to Camas Municipal Code (CMC) 18.55.110 and 17.09.030, including but not limited to the SEPA Checklist and supplemental SEPA Checklist submitted by the applicant. The Camas City Council also considered the SEPA appeals that were filed and all of the written comments received on the application by the City Clerk at 616 NE 4th Ave., Camas, WA 98607, prior to 4:00pm., on June 18th, 2018, to be included in the record. Finally, the Camas City Council considered all of the oral and written testimony since that time and what was provided at the hearing.

#### **D. FINDINGS**

The Camas City Council has considered the specific probable adverse environmental impacts of the proposed action. The specific issues raised in the SEPA appeals relate to emissions, erosion, wetlands, riparian areas, stormwater, noise, glare, and design review. These are the types of issues that are addressed by the City's development regulations and other applicable state and federal standards.

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 Camas City Council finds that the issue of emissions is adequately addressed by the existing laws and regulations.

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 Camas City Council finds that the issue of fuel spills is adequately addressed by the existing laws and regulations.

Noise and glare are 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 Camas City Council finds that the issue of noise and glare is adequately addressed by the existing laws and regulations.

Erosion is adequately addressed by the applicant's erosion control plan, which is in the consolidated 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 Camas City Council finds that the issue of erosion control is adequately addressed by the existing laws and regulations.

Storm water is adequately addressed by the applicant's storm water control plan, which is in the consolidated record. Storm water is adequately regulated by 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 storm water report in the consolidated SEPA record complies with all applicable requirements. Therefore, the Camas City Council finds that the issue of stormwater is adequately addressed by the existing laws and regulations.

Issues related to riparian and wetland habitat are also adequately 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. Rainbow trout and Steelhead are mapped as being present in Fisher Creek. Steelhead are threatened but not endangered, 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. 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.

Additionally, as evidenced by documents in the consolidated SEPA record, there is a high point on subject property and project's storm water flows both north and south from this high point. Based on the evidence in the record and in applicant's supplemental SEPA information submitted on May 24, 2018, the vast majority of the applicant's treated stormwater will flow north where it will ultimately reach La Camas Lake; a small portion will flow 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.

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 of Fisher Creek. The project has been designed so that no development or construction activities occur in wetlands, and only limited activities occur in wetland buffers, as expressly allowed by the City's 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. Therefore, based on the above and since the application will comply with all applicable laws and regulations relating to wetlands and riparian areas, the Camas City Council finds that 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. The Camas City Council therefore finds that the application complies with all of the City's design review provisions of the City's codes and the City's Design Review Manual. The Camas City Council further finds that the issues related to design review are adequately addressed by the existing laws and regulations, including but not limited to Camas Municipal Code Chapter 18.19 and the Camas Design Review Manual.

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. Finally, one of the 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.

#### **E. CONCLUSION**

Based on the above findings and consideration by the Camas City Council of all the specific probable adverse environmental impacts of the proposed action, the Camas City Council concludes 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. The Camas City Council 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, other than compliance with these laws and regulations. The appellant failed to meet its burden that the SEPA official's determination was clearly erroneous.

#### **F. DECISION**

Therefore, the Camas City Council denies the Appeal filed under Appeal 18-02 and 18-03 and affirms the Determination of Non-significance (DNS) as issued and imposes the following condition on the project approval for this application:

##### **Condition of Approval**

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