

BEFORE THE HEARING EXAMINER
CITY OF MONROE, WASHINGTON

RE: SEPA Appeal
Preliminary Plat Approval for Eaglemont

Applicant: RAD Development,

Appellant: Sinclair Heights Homeowners'
Association

File No(s):
Preliminary Plat PL2012-03
Appeal AP2012-04
SEPA MDNS 2012-12

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION, AND RECOMMENDATION

I. INTRODUCTION

The Applicant is seeking approved for a residential subdivision of eight existing lots into 146 single-family lots on approximately 35 acres, in accordance with the provisions of the City of Monroe Comprehensive plan and the Monroe Municipal Code. The Sinclair Heights Homeowner Association filed an appeal of the SEPA Mitigated Determination of Non-significance issued for the proposal.

As Hearing Examiner for the City of Monroe, I held a public hearing on January 24, 2012 at approximately 10:00 a.m. at the City of Monroe's offices located at 806 W. Main St. in Monroe. The SEPA appeal matter was combined into a single hearing together with the public hearing on Preliminary Plat PL2012-03, as required by WAC § 197-11-680(3) and MMC § 20.04.200(2). The Hearing Examiner has jurisdiction to hear the matters pursuant to Monroe Municipal Code § 17.12; § 18.84; § 20.04; § 21.20; and § 21.50. City staff recommended approval of the proposal, subject to conditions.

Ry McDuffy and Andy Reaves appeared and provided witness testimony, together with Exhibits E1, E1-A, and E2, on behalf of Applicant ("RAD Development"). Thomas Ayers of the Sinclair Heights Homeowners Association appeared and provided witness testimony, together with Exhibits D1 through D5 on behalf of Appellant, and as an interested citizen. Susan Davis and Meredith Mechling each own property near the proposed development site and appeared and provided witness testimony as interested citizens. Brad Feilberg, Monroe Public Works Director, and Paul Popelka, Monroe Planning and Permit Manager, appeared at the hearing on behalf of the City of Monroe ("Respondent" or "City") in this matter, presenting witness testimony, together with Exhibits M1 through M26 on behalf of Respondent.

The witnesses declared by oath or affirmation the truthfulness of their testimony. I did not receive any written or oral ex parte communication on a fact in issue during the pendency of the proceedings, and made a statement to that effect on the record. The City made a recording of the hearing. The evidence offered was received and all relevant evidence was admitted into the record. I reviewed and considered the written materials and witness testimony presented as evidence at the hearing, a record of which I incorporate in the decision in this matter. The record is on file with the City.

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II. FINDINGS OF FACT

Application and Notice: Proposed Use

1. Applicant RAD Development submitted a combined permit application for a Planned Residential Development (PRD) and Preliminary Plat, requesting approval of a residential subdivision of eight existing lots into 146 single-family lots on approximately 35 acres in accordance with the provisions of the City of Monroe Comprehensive Plan and the Monroe Municipal Code (MMC) (the "Eaglemont subdivision"). Applicant's proposal includes removing all existing structures prior to development, with each lot served by public water and sewer systems, with access to the proposed subdivision through the extension of 199th Avenue SE from the south and 197th Avenue SE from the north. The Applicant may develop the proposal in up to three phases, of 63 lots, 41 lots, and 42 lots, respectively, providing for open spaces and park areas. The proposed project includes grading of approximately 135,000 cubic yards, and logging to clear home sites and roadways. On October 17, 2012, the City determined the application complete. (Exhibits M1; M3; M8; M9; M10)
2. The site for Applicant's proposed Eaglemont subdivision is located west of Chain Lake Road approximately one mile north of US 2 at 13611 197th Ave. SE in Monroe. (Snohomish County Assessor's Tax Parcel Numbers: 28073100201000, 28073100203300, 28073100203400, 28073100201100, 28073100203200, 28073100504000, 01010300050200, and 01010300050100). The City of Monroe's Comprehensive Plan designates the site as Residential 2 to 5 Dwelling Units per Acre (R 2-5). The proposed site is within the Residential 4 Dwellings per acre (R4) Zoning District. (Exhibit M1)
3. The proposed site is largely forested with some clearings to the north and south portions, with an overall slope from a high of 400 feet elevation in the north to a low of 265 feet in the south, with slope predominantly ranging from 0% to 25%. Surrounding properties are large-lot single-family homes with an existing subdivision of single-family homes to the south (the Sinclair Heights Development). (Exhibits M1; M3)
4. Applicant submitted an October 10, 2012 Environmental Checklist for the Eaglemont proposal, together with Preliminary Plat, Wetland Report, Drainage Report, Preliminary Grading, Traffic Report, Geo Report (Earth Sciences Report), and Landscape report. Applicant's Environmental Checklist notes that soil erosion may occur during construction, but asserts this will be minimal due to the gentle site grade within the building envelopes and soil type (Weathered Vashon Lodgement Till, and Vashon Lodgement Till). Applicant's proposal covers approximately 39.8% of the proposed site with impervious surfaces. The proposed site does not include any wetlands, but there is a wetland south of the proposed project with the existing Sinclair Heights Development. Applicant's proposal includes roadway work, a detention pond, and bio swales within 200 feet of the existing wetlands area). Applicant's water run-off design provides for local modification, through construction of residences and driveways, of the existing run-off patterns. Applicant states that it will install temporary erosion control

devices during construction, and that ground and run-off water impacts will not occur. (Exhibit M3)

5. Applicant submitted subsurface exploration, geologic hazard, and geotechnical engineering studies with recommendations in support of the proposed Eaglemont project. The Applicant also submitted detailed reports concerning storm water management, noting that the proposed site has two drainage basins: one that drains to the south toward the Sinclair Heights Development, and one that drains to the north, towards Chain Lake Road, with supporting engineering and design work by SDA Engineering. (Exhibits M4; M5)
6. There are no known threatened or endangered species of plants or animals on or near the proposed site, and no critical areas. Applicant intends to clear the majority of the building site development area, noting that cleared and graded areas will be re-vegetated with an approved hydroseed mixture and native species commensurate with City requirements. Applicant's Environmental Checklist reports that various birds and mammals are known to be on or near the proposed site, including: hawks, songbirds, deer, bear, and rabbit, and that the site lies within the Pacific Northwest Flyway. Applicant provided a supporting report by Wetland Resources, Inc. stating that no wetlands or streams were observed on-site or in the immediate vicinity of the proposed site. (Exhibits M3; M7)
7. Applicant's Environmental Checklist notes that noise levels will be intermittently high during construction and residential activity and traffic noise created by daily trips will increase ambient noise in the vicinity, but that construction will be in accordance with the City noise ordinance. Access for the proposed Eaglemont development is through the Sinclair Heights Development via 199th Avenue SE and 197th Avenue SE from Chain Lake Road. Applicant's report assumes 9.57 daily trips per lot, equaling 1397 daily trips from the 146 new single-family residences. Necessary utilities and services are currently available at the site, and will be provided to the proposed project. (Exhibit M3)
8. Gibson Traffic Consultants performed a traffic impact analysis for the proposed Eaglemont development. This report was based on an initial estimate of 149 new single-family residences, resulting in an assumption of 1,426 daily trips. The report describes detailed analysis of the traffic impact by a licensed civil engineer using accepted methodologies to analyze impacts to levels of service of congestion at intersections. The report notes that the City has a level of service threshold of LOS C for collector road intersections and LOS D for arterial road intersections, and that the City has various applicable interlocal agreements. The report concludes that the level of service analysis shows that all of the study intersections are anticipated to operate within acceptable thresholds. (Exhibit M6)
9. The City posted notice on October 19, 2012 of Applicant's land use application, publishing the notice on October 23, 2012. The notice states that the City had reviewed the proposed project for probable adverse environmental impacts and expected to issue a determination of non-significance for the project. The notice describes the location and scope of the proposed project, permits, and required

studies, and states that written comments must be received by November 8, 2012. The notice was published a second time on October 30, 2012. The City provided a notarized affidavit stating that on October 19, 2012, copies of the notice of application for the preliminary plat of Eaglemont, with prepaid postage, were deposited with the United States Post Office to mail on October 20, 2012, to adjacent property owners and various individuals and businesses. (Exhibits M11-A; M11-B; M11-C; M11-D; M11-E)

Public Comment

10. On November 6, 2012, the City received a letter from Mr. Michael Terry, a resident of the Sinclair Heights development, with comments on the proposed Eaglemont development. Mr. Terry expresses concerns in his letter with respect to the expected traffic flow during and after construction and during emergencies, concerns with adding an additional 146 homes to the existing utility infrastructure supporting the Sinclair Heights development, and concerns with additional storm water adding to the Sinclair Heights storm water system. Mr. Terry disagrees with the traffic analysis report provided by Applicant, asserting that the impact will be greater than stated and requires mitigation. (Exhibit M14)
11. On November 8, 2012, the City received an email from Robert M. Sas Baermann and Teri L. Baermann, residents of the Sinclair Heights development. The email expresses concerns with the increased traffic that will result from the addition of 146 new homes utilizing Rainier View Road as their main access. The email reports that a second access road to the Sinclair Heights development was closed leaving Rainier View Road as the only road, creating a problem in the event of emergencies such as a house fire emergency that occurred in 2006. The email also contends that Chain Link Road is unable to support the increased traffic flow during construction. The email further discusses the issue of storm water drainage within the Sinclair Heights development, reporting that the existing drainage system is inadequate to handle the current water flow volume, and will be unable to absorb any additional water resulting from the proposed development. (Exhibits M15; M19)
12. The City received a November 8, 2012 letter from Alyssa Magnotti, a resident of the Sinclair Heights development, expressing concerns that, during construction, storm water could accumulate at the bottom of the Sinclair Heights detention pond and could fill the crawlspace (under her home) with ponding water. (Exhibit M16)
13. The City received a November 8, 2012 letter from Richard S. Branson and Dr. Maria Kashani-Branson, residents of the Sinclair Heights development, concurring with the comments with respect to water runoff issues made by Michael Terry, and expressing critical comments concerning the traffic impact analysis report submitted by Applicant. The letter contends that current and proposed development along Chain Lake Road already exceeds the traffic use that Chain Lake Road can support, and contends that Chain Lake Road should be improved from a two-lane road to a five-lane road with a dedicated turn lane and roundabouts at major intersections. (Exhibit M17)

14. The City received an email on November 8, 2012 with comments by Meredith Mechling, who owns property adjacent to the site of the proposed Eaglemont development. Ms. Mechling expressed concerns with the ground water seepage and drainage impacts from the proposed development, noting that her property utilizes a shallow (40 foot) well, and wants to ensure that any development of nearby property will not adversely affect her water quality. (Exhibit M18)
15. Andrew Reaves of SDA engineers responded by November 26, 2012 letter to the City (on behalf of Applicant) to public comments submitted to the City regarding storm water runoff and drainage issues, and possible related issues to adjacent properties, resulting from the proposed Eaglemont development. Mr. Reaves addressed specific concerns with respect to the proposed drainage for the project, including the pond berm, and included a new French drain above specific homes in the Sinclair Heights development as an additional precaution. Mr. Reaves also noted that water from the proposed Eaglemont development would not affect the well on Ms. Mechling's property. Mr. Reaves further stated that the Eaglemont project includes constructing a secondary access road to the north that will connect with Chain Lake Road, providing a secondary access point for residents of both the Eaglemont and Sinclair Heights developments. (Exhibit M20)

State Environmental Policy Act (SEPA) Determination

16. Brad Feilberg is the City's SEPA Responsible Official. Mr. Feilberg reviewed the proposal pursuant to SEPA¹ and, on December 6, 2012, issued a Determination of Nonsignificance with Mitigation, with a number of conditions and proposed mitigations, including a required condition of payment of a traffic mitigation fee of \$29,353.86.² The notice states that the decision was made after review of a completed environmental checklist and other information on file with the City. In making this determination the City concluded that the Applicant's proposal does not have a probable significant adverse impact on the environment and, therefore, Applicant is not required to submit an environmental impact statement (EIS). The notice issued by Mr. Feilberg includes detailed mitigation requirements including, among other things, specific mitigation to address transportation and storm water management. (Exhibit M10)
17. On December 7, 2012, the City posted and mailed notice of the SEPA determination, publishing the notice on December 11, 2012. The City also mailed copies of the notice to adjacent property owners and various individuals and businesses. (Exhibits M12-A; M12-B; M12-C; M12-D; M12-E; M12-F)
18. The City also issued two letters to the Applicant dated December 7, 2012 concerning review of the application materials, making a number of comments concerning required corrections and requirements, including addition of a note that the project is to comply with the current edition of the Department of Ecology Storm Water Management Manual for Western Washington (requiring revision of

¹ State Environmental Policy Act (SEPA)

² This fee was per the Washington State Department of Transportation Interlocal Guidelines for Coordination with the City of Monroe for mitigation of development impacts.

drainage, and answers to specific questions), requiring that all interior roads have sidewalks for safe walking to bus stops, and requiring clarity concerning numerous specific details of the project. (Exhibits M21; M22)

19. On January 8, 2013, the City posted and published notice scheduling a January 24, 2013 public hearing concerning the proposed preliminary plat approval, and appeal of the City's SEPA determination, and mailed copies of the notice adjacent property owners and various individuals and business. (Exhibits M13-A; M13-B; M13-C; M13-D)

Appeal Pursuant to State Environmental Policy Act (SEPA)

20. On December 28, 2012, Michael R. Terry, acting as Vice-President of the Sinclair Heights Homeowners' Association, submitted an appeal to the City of the December 6, 2012 SEPA determination. Mr. Terry provided a supporting written statement with an appendix of submitted concerning storm water and traffic calculations. (Exhibits D1; D2)
21. Firstly, Mr. Terry asserts that the proposed storm water management plan for the Eaglemont preliminary plat is insufficient to address anticipated drainage from the proposed development site. Appellant raises concerns that existing storm water management within the Sinclair Heights development is inadequate, and will be negatively impacted by the Eaglemont development. Appellant seeks modification of the storm water management plan submitted by Applicant to additionally require installation of three separate emergency overflow pipes to convey overflow drainage directly to Sinclair Heights Tract Nos. 996 and 997, and under the Sinclair Heights bike/walkway area. (Exhibit D2)
22. Secondly, Mr. Terry contends that the required traffic mitigation plans for the project are inadequate and should be supplemented to require: completion of the north access road; installation of signal controls at the Rainier View Road/Chain Lake Road intersection; and, increased impact fees. (Exhibit D2)
23. On January 15, 2013, Mr. Reaves wrote directly to Mr. Terry regarding the concerns of the Sinclair Heights Homeowners' Association, the SEPA appeal, and comments submitted to the City. Mr. Reaves provided additional detail concerning the storm water drainage plan for the Eaglemont development; including description of the planned detention pond and French drain system, and including descriptions of redundancy features to prevent any additional storm water runoff or drainage to the Sinclair Heights development. Mr. Reaves also provided updated preliminary road and drainage plans showing the additional detail. (Exhibits E1; E1A)
24. On January 17, 2012, the City received a letter from Gibson Traffic Consultants on behalf of Applicant, in response to the SEPA appeal. The letter addresses comments concerning the proposed Eaglemont development's impact on traffic. Firstly, the letter addresses concerns regarding parking along Rainier View Road SE and 199th Avenue SE at the Rainier View Park may conflict with traffic turning from Chain Lake Road. The letter notes that these are Local Roads constructed

pursuant to the City of Monroe Comprehensive Plan, with 6-foot parking lanes as required, and that the traffic impact analysis shows that the study intersections will continue to operate at better than City of Monroe acceptable level of service standards. The letter also notes that the proposed development has secondary access to the north to Chain Lake Road, providing secondary access to emergency vehicles. The letter further addresses disputes with respect to the validity of the initial traffic impact analysis, describing methodology and noting that the analysis was performed to industry and City of Monroe standards. (Exhibit E2)

25. Mr. Thomas Ayers, President of the Sinclair Heights Homeowner's Association, wrote to the City concerning the appeal and referencing the January 15, 2013 letter written by Mr. Reaves. In this letter, Mr. Ayers states that the Sinclair Heights Homeowners' Association is satisfied with the additional detail concerning the storm water drainage plan for the Eaglemont development and additional measures described by Mr. Reaves to prevent runoff to properties within the Sinclair Heights development and therefore withdraws that portion of the appeal. The letter further states that the Sinclair Heights Homeowners' Association does not agree with Mr. McDuffy concerning traffic mitigation requirements, including using the Eaglemont North access road for construction. Mr. Ayers also contends that the City should prohibit parking on the north side of Rainier View Road near the southern entrance to Rainier View Park, directing visitors to park along the east side of 199th Ave. SE by the west park entrance, and if the City will agree, this portion of the appeal will also be withdrawn. (Exhibit D5)
26. Ry McDuffy of Land Resolutions provided a January 24, 2013 letter on behalf of Applicant also addressing concerns raised in the SEPA appeal and by public comment. Mr. McDuffy notes that the Eaglemont project provides for a future road stub from the south from 199th Avenue SE, and several other future road stubs including (upon completion of Phase III) a future road stub to the north towards Chain Lake Road from 197th Avenue SE. Mr. McDuffy asserts that, once completed, the development will provide for a greater traffic circulation pattern for the residents in the area. Mr. McDuffy also addressed other concerns, noting that the drainage for the proposed project is designed by SDA Engineers and, once completed, should reduce existing flooding or ground water, and noted that the proposed Eaglemont development provides for future parks and open spaces. (Exhibit E3)

Testimony and Public Comment

27. Ry McDuffy of Land Resolutions provided testimony describing the proposed Eaglemont development and presented exhibits on behalf of Applicant. Mr. McDuffy noted that there are no critical areas located on the site, with no steep slopes or wetlands present. Mr. McDuffy presented information concerning the project, including analysis of traffic circulation and drainage requirements. Mr. McDuffy testified that he met with concerned residents of the nearby Sinclair Heights development and provided details concerning plans for storm water drainage that satisfied their concerns in this area.

28. Thomas Ayers of the Sinclair Heights Homeowners' Association, and a resident of this adjacent development, testified on behalf of Appellant. Mr. Ayers testified that residents of the Sinclair Heights Homeowners' Association have experienced storm water and drainage issues, particularly affecting several homes near the east end, and have worked with the City to alleviate the situation, including installation of French drains, but the problem continues. Mr. Ayers agrees that the updated storm water plans detailed by Mr. McDuffy addressed these concerns.
29. Mr. Ayers testified that Rainier View Road is the only access to the Sinclair Height development, and this access is across the street from an entrance to Rainier View Park. Mr. Ayers testified that people often park vehicles along the road near the park entrance, and this creates a hazard to drivers entering and leaving the Sinclair Heights development. Mr. Ayers expressed safety concerns with construction vehicles also utilizing this single entrance, and the additional use of this single road required by residents of the proposed Eaglemont development. Mr. Ayers asserts that the City should designate a "No Parking" area at this entrance, and should also look to complete a second entrance to the development. Mr. Ayers further testified regarding a school bus stop, and concerns of residents for the safety of children using this area.
30. Brad Feilberg is the Public Works Director for the City, and is the City's designated SEPA Responsible Official. Mr. Feilberg testified that the City is considering temporarily designating a "No Parking" area during construction.
31. Paul Popelka is the Planning and Permit Manager for the City. Mr. Popelka testified that the proposed Eaglemont development project is in compliance with the City's comprehensive plan and applicable provisions of the Monroe Municipal Code (Chapter 17 Subdivisions; Chapter 18 Planning and Development; Chapter 20 Environment; and Chapter 21 Development Review Procedures), including compliance with newly revised standards for a Planned Residential Development. Mr. Popelka recommends approval of Applicant's proposal, subject to conditions, noting that the proposal also provides for parks and open spaces well beyond the minimum City requirements and effectively meets the growth goals for the City.
32. Susan Davis owns property adjacent to the site of the proposed Eaglemont development. Ms. Davis described the access road area intended for emergency access and future completion through to the Eaglemont development, noting that this is now a gravel road with a school bus stop area where children stand in the mud. She notes that the proposed development will require more people to drive through Chain Lake Road, as there is no other access. Ms. Davis contends that Applicant has no plan for additional water and drainage and affects to her property, located downhill, and is concerned that her property will be inundated.
33. Meredith Mechling owns property adjacent to the site of the proposed Eaglemont development, and provided written comment regarding her concerns with respect to the proposed Eaglemont development. Ms. Mechling appeared and the hearing to reiterate her concern that ground water seepage and drainage impacts from the proposed development may impact the shallow (40 foot) well she utilizes on her

property, and wants to ensure that construction of the proposed Eaglemont development will not adversely affect her water quality.

34. Andrew Reaves with SDA Engineers testified on behalf of Applicant with respect to the storm water drainage plans for the proposal. Mr. Reaves testified that construction of the two drainage basins and implementation of the storm water management plan will improve drainage for the area, improving the situation for the adjacent Sinclair Heights development. Mr. Reaves testified concerning Ms. Mechling's property and well, stating that the proposal will not affect her property or her well.

Staff Report and Recommendation

35. The City's staff report states that the Eaglemont proposed development is consistent with the City's Comprehensive Plan, and with zoning for this location, and effectively addresses City efforts to meet population growth targets developed by Snohomish County and assigned to the City. City staff report sufficient utility capacity to serve the proposed subdivision, with all lots connecting to the City's water and sewer system and storm water management designed to meet the City's current requirements. The staff report states that impacts to the city transportation system are mitigated through the collection of traffic mitigation fees and required improvements, and impacts to the City's schools are likewise mitigated by a standard fee amount per dwelling unit. The streets within the subdivision will include sidewalks on both sides of the street, providing for safe walking conditions for students who walk to and from school. (Exhibit M1)
36. Staff reports that improvements to 197th Ave. SE north to Chain Lake Road will meet requirements for fire apparatus access roads. Staff reports that in addition to park impact fees, the proposal includes areas for private parks that meet or exceed all requirements for a Planned Residential Development. Police and Fire Departments raised no concerns regarding level of service standards. The City has adequate capacity and the development does not lower the level of service for: potable water, wastewater, storm water drainage, police protection, fire protection, parks and recreation, arterial roadways, and public schools. (Exhibit M1)
37. Staff recommended that the Hearing Examiner forward a recommendation of approval to the City Council for the Preliminary Plat/Planned Residential Development for PL2012-03 (Eaglemont) subject to the following conditions:
 - The applicant shall dedicate right-of-way for streets as shown on the approved preliminary plat map. Frontage improvements, including curb, gutter, sidewalk, and street trees shall be provided for all streets within the subdivision. Traffic control devices and street signs shall be installed prior to final plat approval, and all public roads within the subdivision shall be constructed in accordance with the City's Public Works Design and Construction Standards and installed by the developer to the satisfaction of the City prior to final plat approval.
 - Improvements to 197th Ave. SE north to Chain Lake Road will meet the requirements of the International Fire Code (as amended by the MMC) for fire apparatus access roads.
 - Traffic impact fees in the amount of \$29,353.86 per the Washington State Department of Transportation Interlocal Guidelines for Coordination with the City of Monroe for Mitigation of Development Impacts shall be required and paid prior to final plat approval.

- Traffic impact fees assessed in accordance with MMC 20.12 shall be required and paid prior to building permit issuance.
- Park impact fees in accordance with MMC 20.10 shall be required and paid prior to final plat approval, or the applicant may defer payment to prior to building permit issuance.
- School impact fees assessed in accordance with MMC 20.07 shall be required and paid prior to building permit issuance.
- The water system capital improvement charge in accordance with MMC 13.04.272 shall be required and paid prior to building permit issuance.
- The wastewater system capital improvement charge in accordance with MMC 13.08.272 shall be required and paid prior to building permit issuance.
- Streetlights shall be installed as required under the City of Monroe Public Works Design and Construction Standards and as directed by the City Engineer.
- Street trees shall be included in the street planter strips. Tree type, spacing, quantity, and location shall be determined by the City. Street trees shall be planted when a street frontage is fully owner occupied and as directed by the Parks Department. The City will coordinate tree plantings to the most favorable time of the year. All street frontage landscaping/irrigation improvements shall be bonded until such time that housing construction is completed and bonded work may be completed without risk of construction damages.
- Mail routes shall be approved by the Postmaster, including mailbox types and locations.
- If any wells are located on the site, they shall be abandoned prior to final plat approval in accordance with the requirements and criteria set forth by the Washington State Department of Ecology.
- The Preliminary Plat/Planned Residential Development shall comply to the general requirements of a planned residential development in accordance with MMC 18.84.080. (Exhibit M26)

38. The City requested the Hearing Examiner deny the appeal and uphold the City's SEPA determination. (Exhibit M25)

III. CONCLUSIONS

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters.

A. SEPA Appeal

State law emphasizes that the procedural determinations of an agency's SEPA Responsible Official are entitled to "substantial weight" in any appellate proceeding,³ and the City of Monroe's Code adopts this same standard of review.⁴ Under this standard, the party appealing the SEPA Responsible Official's determination bears the burden of proving that the decision is "clearly erroneous."⁵ Under this standard of review, the Hearing Examiner must be left with the definite and firm conviction that a mistake has been committed.⁶ The City of Monroe has adopted procedures providing for the administrative appeal of determinations relating to SEPA.⁷ These procedures

³ RCW 43.21C.090; *OPAL v. Adams County*, 128 Wn.2d 869, 913 P.2d 793 (1996); *Brinnon Group v. Jefferson County*, 159 Wn.App. 446, 245 P.3d 789 (2011).

⁴ MMC 20.04.200(C).

⁵ *Brown v. Tacoma*, 30 Wn.App. 762, 637 P.2d 1005 (1981).

⁶ *Couger Mt. Assoc. v. King County*, 111 Wn.2d 742, 747, 765 P.2d 264 (1988).

⁷ WAC 197-11-680 provides administrative guidance for implementing the SEPA appeal provisions in RCW 43.21C.060, 43.21C.075, and 43.21C.080. These regulations provide that:

are codified at Chapter 20.04 of the Monroe Municipal Code. The relevant portions provide:

If the appeal has been timely filed and complies with the requirements of subsection (A)(1) of this section, the hearing examiner shall conduct a public hearing into the merits of the appeal. The hearing examiner shall hear and receive testimony, documentary evidence, and arguments from the appellant(s) solely on the issues raised or identified by the appeal. Appeals of threshold determination shall be consolidated in all cases with any public hearing on the merits of the proposal held by the hearing examiner, except for appeals of a DS, which shall be heard separately from the underlying project proposal.

- a. The person(s) filing the appeal shall have the burden of going forward with the evidence and the ultimate burden of persuasion.⁸

Thus, as Appellant, the Sinclair Heights Homeowners' Association bears the burden of proof in this matter concerning the issues has raised in the appeal, and the Hearing Examiner may only consider evidence and argument on the issues raised in the appeal.

A mitigated determination of non-significance is a procedural determination made by the SEPA Responsible Official that a proposal, with conditions and mitigation requirements, has no probable significant adverse environment impacts for which an environmental impact statement (EIS) should be prepared.⁹ SEPA does not require any particular substantive result with respect to the underlying proposal; rather, the statute ensures that environmental factors are afforded due consideration in the decision-making process.¹⁰ Whether a particular impact is "significant" under SEPA involves context and intensity, varies with the physical setting, and depends on the magnitude and duration of an impact.¹¹ "Significant" as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality.¹² In reviewing a decision under the clearly erroneous standard, the [hearing examiner] is required to "examine the entire record and all the evidence in light of the public policy contained in the legislation authorizing the decision."¹³ The record and evidence must demonstrate that "environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA, "and that the decision to issue an MDNS was based on information sufficient to evaluate the

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- (a) Agencies may provide for an administrative appeal of determinations relating to SEPA in their agency SEPA procedures. If so, the procedures must comply with the following:
 - (i) The agency must specify by rule, ordinance, or resolution that the appeals procedure is available.
 - (ii) Appeal of the intermediate steps under SEPA (e.g., lead agency determination, scoping, draft EIS adequacy) shall not be allowed.
 - (iii) Appeals on SEPA procedures shall be limited to review of a final threshold determination and final EIS. These appeals may occur prior to an agency's final decision on a proposed action.

⁸ MMC 20.02.200(2)

⁹ WAC 197-11-350; *Anderson v. Pierce County*, 86 Wn. App. 290, 303, 936 P.2d 432 (1997)

¹⁰ *Moss v. City of Bellingham*, 109 Wn. App. 6, 31 P.3d 703, *rev. denied*, 146 Wn.2d 1017 (2011).

¹¹ WAC 197-11-794(2).

¹² WAC 197-11-794(1)

¹³ *Cougar Mountain Associates v. King County*, 111 Wn. 2d 742, 755 P.2d 264 (1988).

proposal's environmental impact."¹⁴ Use of the MDNS process as an alternative to requiring a full Environmental Impact Statement (EIS) is expressly encouraged by Washington State Law, the Washington State Supreme Court, and the Washington Department of Ecology.¹⁵

The City required the Applicant to prepare and submit several reports, including a Geotechnical Engineering Report, a Technical Information Report, a Transportation Impact Analysis, and a Wetland and Stream Evaluation, in addition to the required Environmental Checklist, for use in making the determination whether the Applicant's proposal would have a probable significant adverse environment impact, and therefore require preparation of an EIS. No critical areas were identified on the subject property and Appellant has not alleged that any such areas exist. Mr. Feilberg, the City's SEPA Responsible Official, considered this information in making the SEPA Mitigated Determination of Non-significance. This information included a description of the proposal with relevant and detailed information concerning the project, describing the Applicant's plan for storm water and runoff management, and describing impacts to the community and transportation system.

Appellant provided a written statement by Mr. Michael Terry disputing both the storm water management engineering, and the traffic impact analysis provided by Applicant. Appellant also provided testimony by Mr. Thomas Ayers in support of the assertion that the traffic impact analysis is inadequate and the City should require additional mitigation in this area. I understand that, following additional explanation by Mr. McDuffy and Mr. Reaves, Appellant is no longer disputing the storm water management engineering design submitted by Applicant. However, Appellant continues to dispute the traffic impact analysis and seeks additional mitigation for traffic impacts associated with the Eaglemont proposal.

I find that the evidence provided by the Appellant does not support a finding that the proposed Eaglemont development has any probable significant adverse environment impacts for which an environmental impact statement (EIS) should be prepared. I find that the evidence provided by the Appellant is insufficient to overcome the "substantial weight" accorded to the SEPA Responsible Official that the proposed Eaglemont development will not result in a "significant impact." I carefully considered the evidence and argument presented in this matter, and do not find the SEPA determination "clearly erroneous."

B. Preliminary Plat

Preliminary Plat approval shall be granted only when the proposal is consistent with the provisions of City of Monroe Comprehensive Plan, applicable provisions of the Monroe Municipal Code (Subdivisions, Planning and Zoning, Environment, and Development and Review Procedures).

¹⁴ *Anderson v. Pierce County*, 86 Wn. App. 290, 303, 936 P.2d 432 (1997)

¹⁵ *Anderson v. Pierce County*, 86 Wn. App. 290, 303, 936 P.2d 432 (1997); *Moss v. City of Bellingham*, 109 Wn. App. 6, 31 P.3d 703, *rev. denied*, 146 Wn.2d 1017 (2011).

I found persuasive the testimony and evidence presented concerning the proposed development's provisions for storm water management, and provision for additional access by emergency vehicles such as fire apparatus. I was persuaded by the presented testimony and evidence that storm water and runoff from the Eaglemont development will be effectively addressed, and will not negatively affect the neighboring Sinclair Heights development or adjacent properties, or the well on Ms. Mechling's property. The proposed development will necessarily result in additional traffic, which will impact the community and particularly residents of the adjacent Sinclair Heights development. I found persuasive, however, the traffic impact analysis submitted by Applicant and accepted by the City, finding that the level of service for the impacted roads and intersections will continue within acceptable thresholds.

I make the following specific conclusions based on the record:

1. The preliminary plat proposing the Eaglemont development of single-family homes served by public utilities, as conditioned, is consistent with the City of Monroe's Comprehensive Plan for this R2-5 comprehensive plan designation, within the residential 4 dwellings per acre (R4) zoning district, and meets the requirements and intent of the Monroe Municipal Code.
2. As conditioned, the development makes adequate provisions for open space, drainage ways, streets, water supply, sanitary wastes, parks, open spaces, and playgrounds, and provides for required mitigation for schools and school grounds, recreation facilities, and transportation.
3. As conditioned, the development provides for payment of traffic impact mitigation fees, park impact mitigation fees, school impact mitigation fees, water system capital improvement charges, wastewater capital improvement charges.
4. The development is in the public interest, effectively addressing the City's efforts to meet population growth targets developed by Snohomish County.
5. As conditioned, the development does not lower the level of service below the minimum standards established within the comprehensive plan for: potable water; wastewater; storm water drainage; police and fire protection; parks and recreation; arterial roadways; and public schools.

IV. DECISIONS and RECOMMENDATION

1. The Appellant did not meet the standard of proof that the SEPA determination of MDNS is clearly erroneous. Therefore, the City's SEPA Determination of Nonsignificance with Mitigation is hereby affirmed.
2. The Hearing Examiner submits a recommendation of approval for the Preliminary Plat/Planned Residential Development for PL2012-03 (Eaglemont) subject to the conditions noted below.

Conditions:

1. The applicant shall dedicate right-of-way for streets as shown on the approved preliminary plat map. Frontage improvements, including curb, gutter, sidewalk, and street trees shall be provided for all streets within the subdivision. Traffic control

devices and street signs shall be installed prior to final plat approval, and all public roads within the subdivision shall be constructed in accordance with the City's Public Works Design and Construction Standards and installed by the developer to the satisfaction of the City prior to final plat approval.

2. Improvements to 197th Ave. SE north to Chain Lake Road will meet the requirements of the International Fire Code (as amended by the MMC) for fire apparatus access roads.
3. Traffic impact fees in the amount of \$29,353.86 per the Washington State Department of Transportation Interlocal Guidelines for Coordination with the City of Monroe for Mitigation of Development Impacts shall be required and paid prior to final plat approval.
4. Traffic impact fees assessed in accordance with MMC 20.12 shall be required and paid prior to building permit issuance.
5. Park impact fees in accordance with MMC 20.10 shall be required and paid prior to final plat approval, or the applicant may defer payment to prior to building permit issuance.
6. School impact fees assessed in accordance with MMC 20.07 shall be required and paid prior to building permit issuance.
7. The water system capital improvement charge in accordance with MMC 13.04.272 shall be required and paid prior to building permit issuance.
8. The wastewater system capital improvement charge in accordance with MMC 13.08.272 shall be required and paid prior to building permit issuance.
9. Streetlights shall be installed as required under the City of Monroe Public Works Design and Construction Standards and as directed by the City Engineer.
10. Street trees shall be included in the street planter strips. Tree type, spacing, quantity, and location shall be determined by the City. Street trees shall be planted when a street frontage is fully owner occupied and as directed by the Parks Department. The City will coordinate tree plantings to the most favorable time of the year. All street frontage landscaping/irrigation improvements shall be bonded until such time that housing construction is completed and bonded work may be completed without risk of construction damages.
11. Mail routes shall be approved by the Postmaster, including mailbox types and locations.
12. If any wells are located on the site, they shall be abandoned prior to final plat approval in accordance with the requirements and criteria set forth by the Washington State Department of Ecology.

13. The Preliminary Plat/Planned Residential Development shall comply to the general requirements of a planned residential development in accordance with MMC 18.84.080.

Respectfully Submitted,

Dated: 02/07/2013

A handwritten signature in blue ink that reads "Carl D. Cox". The signature is written in a cursive style with a large, stylized "C" and "X".

Carl D. Cox
Hearing Officer
PO Box 158
Bellevue, WA 98009
Tel: (425) 242-1504
Fax: (425) 615-7202

NOTICES

Appeal process for SEPA-related appeal issues: This decision of the Hearing Examiner is a final decision.

Judicial Appeals (MMC 21.60.030)

Appeals from the final decision of the city council, planning commission, or hearing examiner, or other city board or body involving MMC Titles 15 through 20, and for which all other appeals specifically authorized have been timely exhausted, shall be made to Snohomish County superior court within twenty-one days of the date the decision or action became final, unless another time period is established by state law or local ordinance.

Notice of the appeal and any other pleadings to be filed with the court shall be served on the city as required by law.

The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant. The appellant shall post with the city clerk prior to the preparation of any records an advance fee deposit in the amount specified by the city clerk. Any overage will be promptly returned to the appellant.

Reconsiderations (MMC 21.50.080)

MMC 21.50.080 allows a party of record to a public hearing or closed record appeal, to seek reconsideration of a recommendation or a decision by the Hearing Examiner or hearing body, by filing a written request for reconsideration with the Community Development Department within ten calendar days, following issuance of the written final decision.

All motions for reconsideration requests shall state the specific errors of law, fact, or procedure. Reconsideration will be granted only when an obvious legal error has occurred or a material factual issue has been overlooked that would change the previous decision. If a request for reconsideration is accepted, a decision or recommendation is not final until after a decision on the reconsideration request has been issued.

Appeals of shoreline permit decisions and decisions on shoreline permit revisions, letters of exemption and other approvals required by the Master Program shall be heard in accordance with Chapter 21.60 MMC and RCW 90.58.180.