

BEFORE THE HEARING EXAMINER
CITY OF MONROE, WASHINGTON

Respondent: City of Monroe,

Applicant/Proponent: East Monroe
Economic Development Group. L.L.C., and
Heritage Baptist Fellowship,

Appellants: Lowell Anderson and Jeffrey W.
Rogers

File No(s): 13-APHE-0001
SEPA¹ Appeal of the Final
Environmental Impact Statement (FEIS)
for the East Monroe Comprehensive
Plan Amendment and Rezone

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

I. INTRODUCTION

Heritage Baptist Fellowship is seeking a comprehensive plan amendment and related zoning change for certain property located within the City of Monroe. Lowell Anderson and Jeffrey W. Rogers filed an appeal of the Final Environmental Impact Statement issued for the proposal.

As Hearing Examiner for the City of Monroe, I held a public hearing on November 7, 2013 at approximately 10:00 a.m. at the City of Monroe's offices located at 806 W. Main St. in Monroe. The Hearing Examiner has jurisdiction to hear the matter pursuant to Monroe Municipal Code § 21.20. City staff recommended approval of the East Monroe Comprehensive Plan Amendment.

Susan Boyd of PACE Engineers, Inc. appeared and provided witness testimony, together with Exhibits M1 through M15, on behalf of East Monroe Economic Development Group. L.L.C., and Heritage Baptist Fellowship. (The "Applicant" and/or "Proponent"). Lowell Anderson and Jeffrey W. Rogers appeared and provided witness testimony, together with Exhibits L1 through L32, as Appellants, and provided additional testimony as interested citizens. Douglas Hamar, Anna Groeneveld, Dr. Chuck Strub, Bob Martin, Chad McCammon, and Margaret Ohlsen appeared and provided witness testimony on behalf of Appellants, and additional testimony as interested citizens.

Kristin Eick, attorney at law, appeared at the hearing and represented the City of Monroe ("Respondent" or "City") in this matter, presenting witness testimony, together with Exhibits M1 through M31, and legal argument. Melissa Sartorius, Monroe Senior Planner/SEPA Responsible Official, appeared and provided witness testimony on behalf of Respondent.

Wiard and Jean Groeneveld provided a written statement on behalf of themselves as interested citizens.² (Exhibit GC1) Darlene Wolfe-Setzer appeared and provided testimony as an interested citizen as part of the general public.

¹ "SEPA" refers to the Washington State Environmental Policy Act, Chapter 43.21 RCW. SEPA requires preparation of the Environmental Impact Statement that is the basis of the appeal brought in this matter.

² Wiard and Jean Groeneveld were present for the first part of the hearing, bringing the written statement with them to present, but were unable to stay and asked me to accept their written statement. I reviewed

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. Applicant and Appellant each submitted a written statement. I reviewed and considered the written materials and witness testimony presented as evidence at the hearing, and the written statements submitted by each party, a record of which I incorporate in the decision in this matter. The record is on file with the City. In addition, I reviewed and considered applicable laws, ordinances, plans and policies, the positions and arguments made by the parties and interested citizens present at the hearing, and the written statements submitted.

Exhibits: The following exhibits were admitted at the open record hearing:

Respondent/City:

- Exhibit M1: Final EIS for the East Monroe Comprehensive Plan Amendment and Rezone, issued September 27, 2013
- Exhibit M2: Draft EIS for the East Monroe Comprehensive Plan Amendment and Rezone, issued August 14, 2013
- Exhibit M3: Appeal/Reconsideration Application and Appeal Letter, dated October 18, 2013
- Exhibit M4: Draft EIS Notices and Affidavits
- Exhibit M5: Final EIS Notices and Affidavits
- Exhibit M6: Notices and Affidavits of the Appeal Hearing on November 7, 2013
- Exhibit M7: Determination of Significance and Request for Comments on Scope of Environmental Impact Statement, issued July 21, 2011
- Exhibit M8: Citizen Initiated Comprehensive Plan Amendment Application dated July 23, 2010
- Exhibit M9: Rezone Application dated April 10, 2012 and May 1, 2012
- Exhibit M10: Hearing Examiner's Decision on the issue of the 2012 SEPA Appeal dated July 24, 2012
- Exhibit M11: Order Granting Reconsideration in Part by the Hearing Examiner dated August 8, 2012
- Exhibit M12: Hearing Examiner's Decision Revised after Reconsideration on the issue of the August 8, 2012 SEPA Appeal dated August 9, 2012
- Exhibit M13: Growth Management Hearings Board Case No. 12-3-0007 (Anderson) Order on Dispositive Motion
- Exhibit M14: Chronology of East Monroe Project
- Exhibit M15: Letter from Paul Anderson (Department of Ecology) to Scott Brainard (Wetland Resources) dated October 10, 2013
- Exhibit M16: City of Monroe Floodplains and Shoreline Boundary Map dated October 8, 2013

the brief statement, noted that it did not allege any new facts or information not contained in the comments already in the record, determined that accepting the statement did not prejudice the parties to the proceeding, and agreed to accept the statement.

Appellants:

- Exhibit L1: Anderson-Rogers letter dated September 13, 2013
- Exhibit L2: Douglas Hamar letter dated September 9, 2013
- Exhibit L3: Department of Ecology Letter dated September 13, 2013
- Exhibit L4: The Tualalip tribes letter dated September 13, 2013
- Exhibit L5: Dr. Charles and Susan Strub letter Dated September 11, 2013
- Exhibit L6: Anna Groeneveld letter dated September 13, 2013
- Exhibit L7: WSDOT letter dated September 13, 2013
- Exhibit L8: Anderson-Rogers letter dated March 5, 2010
- Exhibit L9: US 2 Safety Coalition dated July 17, 2012
- Exhibit L10: Anderson-Rogers PowerPoint presentation of Limited Open Space pgs 14 & 15 October 27, 2010
- Exhibit L11: Ruth Realty Letter dated October 14, 2013
- Exhibit L12: 2005 Citizen-Initiated Comp Plan pg.7
- Exhibit L13: Photograph 2006 Flood from the East by McCammon
- Exhibit L14: Photograph 2006 Flood from the East by McCammon
- Exhibit L15: Photograph 2006 Flood from the East by McCammon
- Exhibit L16: Photograph 2006 Flood from the West by Anderson
- Exhibit L17: Photograph 2006 Flood from the West by Anderson
- Exhibit L18: Photograph 1990 Flood from the Center by Martin
- Exhibit L19: Photograph 1959 Flood from the Center by Martin
- Exhibit L20: FEMA Map 53061C1377G dated effective Date(s) of Revision(s) September 16, 2005, revised January 12, 2007
- Exhibit L21: Topographical survey for HBP dated May 25, 1999
- Exhibit L22: Section at approx lot line 4 from S/B, topographical survey May 25, 1999
- Exhibit L24: Telephone calls to Feilberg to go over information from PACE Engineering
- Exhibit L25: History of Zoning – Tribune March 31, 2010
- Exhibit L26: History of Zoning – Tribune April 7, 2010
- Exhibit L27: History of Zoning – Tribune September 22, 2010
- Exhibit L28: Department of Ecology October 10, 2013
- Exhibit L30: Flood Safety Snohomish Co. October 2013
- Exhibit L31: Cut & Fill Disparity
- Exhibit L32: Five photographs (April 30, 2009; June 25, 2009)

II. PREHEARING

I held an October 30, 2013 prehearing conference with the parties. At the prehearing conference I considered a request by Appellants for postponement of the November 7, 2013 public hearing. Appellants requested the postponement in order to have additional time to prepare for the public hearing. I noted that the matter is substantially similar to a previous appeal hearing involving the same property and parties, determined that there was insufficient cause to postpone this matter, and denied the request.

III. FINDINGS OF FACT

Application and Notice: Rezone

1. Heritage Baptist Fellowship owns five contiguous parcels of property (42.81 acres) located within the eastern portion of the City of Monroe, north of the Skykomish River along the north side of State Route 2 (the “Property”). Heritage Baptist Fellowship requested an amendment to the Monroe Comprehensive Plan to change the land use designation for the Property from Limited Open Space (LOS) to General Commercial (GC). The proposal is a non-project action, requesting the zoning change without seeking approval for any specific development project. The Property is entirely within the established Urban Growth Area. (Exhibit M1)
2. The application to rezone this Property was first received by the City on July 23, 2010. The City reviewed the application, determined that the proposal was likely to have a significant adverse impact on the environment, and issued a July 21, 2011 Determination of Significance (DS). The DS issued by the City required preparation of an EIS, identifying the following three alternatives for discussion: No Action; Limited redesignation; and, Full redesignation. The DS also required that the EIS provide discussion of eleven environmental elements: Earth; Water, surface; Water, ground; Animals; Noise; Land and shoreline use; Aesthetics; Light and glare; Transportation; Public services; and, Utilities. The DS issued by the City was not appealed. (Exhibits M7; M10)
3. The application and related April 23, 2012 Final Phased Environmental Impact Statement (FPEIS) is the subject of a July 19, 2012 public hearing conducted by Monroe Hearing Examiner John E. Galt. The July 19, 2012 hearing concerned an appeal alleging the inadequacy of the April 23, 2012 FPEIS issued for the East Monroe Comprehensive Plan Amendment and associated rezone.³ Based upon the Findings of Fact, Conclusions of Law, and the testimony and evidence presented at the open record hearing, Mr. Galt granted the appeal in an August 8, 2012 decision, determining the April 23, 2012 FPEIS for the East Monroe Comprehensive Plan Amendment inadequate as a matter of law. The Hearing Examiner determined that the April 23, 2012 FPEIS provided no analysis of environmental impact, putting off all impact analysis of this non-project proposal until specific development proposals were put forth in the future. The Hearing Examiner determined, therefore, that the April 23, 2012 FPEIS did not give the City sufficient information to make a reasoned decision because it contained no analysis and considered no alternatives to changing the comprehensive plan designation for the Property from LOS to GC, lacking the required “reasonably thorough discussion of the significant aspects of the probable environmental consequences.”⁴ (Exhibit M10)

³ See *Lowell Anderson, et al. vs. City of Monroe*, Case no. AP2012-01 (*Revised after reconsideration, August 8, 2012*). [Note: this is the “substantially similar” matter referenced with respect to request for postponement considered at the October 30, 2013 prehearing conference.]

⁴ *Lowell Anderson, et al. vs. City of Monroe*, Case no. AP2012-01 (*Revised after reconsideration, August 8, 2012*) citing *Klickitat Cnty. Citizens Against Imported Waste*, 122 Wn.2d at 633.

4. Following issuance of the August 8, 2012 Hearing Examiner decision, the applicant reduced the scope of the proposal, and hired PACE Engineering, Inc., to perform the necessary environmental impact analysis. PACE Engineering, Inc. assigned Susan Boyd, who is Vice President/Senior Principal Planner for PACE Engineering, Inc., to the project. Ms. Boyd has 33 years of experience, including extensive experience in environmental documentation and analyses, civil engineering projects, comprehensive plans, engineering reports, environmental assessments, biological assessments, permit acquisitions, emergency response and hazard mitigation planning, including NEPA/SEPA compliance. Ms. Boyd noted the insufficient level of detail in the April 23, 2012 FPEIS, and the comments made by the Hearing Examiner in the related order, and focused on deficient areas in drafting a new EIS for the proposal. (Exhibit M1; witness list; testimony)
5. Pace Engineering, Inc., worked with a team of sub-contractors and consultants specializing in wetlands and surface water, traffic, and geotechnical evaluations, to provide analysis of potential environmental impacts, mitigation measures, and significant unavoidable impacts that would likely result from a zoning change and development of the five parcels comprising the Property.⁵ (Testimony; Exhibit M1)
6. The consultant team prepared a Draft Environmental Impact Statement, issued by the City on August 14, 2013 to the public and to specific interested citizens, affected agencies, and other stakeholders for comment. The City received and responded to numerous comments concerning the draft EIS, held a September 5, 2013 public hearing concerning the draft EIS, and provided additional clarification and analysis addressing these comments and concerns in the Final Environmental Impact Statement (the "September 27, 2013 FEIS"). Among other things, the September 27, 2013 FEIS: clarified existing site conditions, current use of the Property and its location within the Urban Growth Boundary; described a range of potential development activities that could occur on the Property under existing LOS zoning; analyzed site access and traffic impacts in relation to potential improvements to SR-2; described the purpose of compensatory flood storage as a flood management tool, and associated regulations; and clarified that no work or ground disturbance is contemplated within the designated boundaries of streams and wetlands. (Testimony; Exhibits M1, M2)
7. The Department of Ecology is among the affected agencies that received notice of the proposal, and an opportunity to comment on the August 14, 2013 draft EIS. Paul Anderson is a Wetland Specialist in the Department of Ecology's Shorelands and Environmental Assistance Program, and issued comments expressing concern with respect to the proposal and related draft EIS. Scott Brainard of Wetland Resources, Inc. (WRI), part of the team working with Pace Engineering, Inc., met with Mr. Anderson at the Property on September 30, 2013 for verification of the wetland boundaries in the proposed East Monroe rezone site, and with respect to a critical areas study of the Property dated July 18, 2013 by WRI. Mr. Anderson stated in an October 10, 2013 letter that: "I concur with the WRI wetland

⁵ The original proposal included an additional parcel.

delineation as flagged in the field and as shown on Sheets 1 through 4 in the delineation summary...Development activities that only affect the wetland buffers outside of shoreline jurisdiction may be regulated by the City of Monroe.” (Exhibit M15)

8. The team that developed the September 27, 2013 FEIS relied on the earlier April 12, 2012 phased EIS and related August 8, 2012 Hearing Examiner decision in developing the new September 27, 2013 FEIS, noting the insufficient level of detail in the earlier EIS and comments by the Hearing Examiner. The team was represented at the November 7, 2014 hearing by Susan Boyd, who provided testimony concerning the September 27, 2013 FEIS. (Exhibit M1; testimony)
9. The Property is significantly impacted by critical areas and related environmental regulations identified in the September 27, 2013 FEIS, including steep slopes (40% grade), streams, shorelines, wetlands, floodplains (flood-prone lands), and heavily wooded natural areas.⁶ The steep slope runs approximately 100-120 feet high bordering the west and north edges of the Property, with the toe of the slope extending to an oxbow slough corridor that runs in an arc through the Property. This oxbow slough was once a channel of the Skykomish River on the other side of SR-2 adjacent to the Property, with culverts on each end of the oxbow extending under the road to connect these areas. A Native Growth Protection Area runs across a portion of the steep slopes of this area, extending to the toe of the slope along the oxbow of the slough. (Exhibit M1; testimony)
10. An Urban Conservancy shoreline designation also exists along portions of the Property. A lower pasture area covers most of the Property, lying between the slough and SR-2. The Property is not currently served by public water or sewer service, but is within the water and sewer service areas of the City. A pullout driveway provides access to the Property from SR-2. There are utility and transportation easements along the east and south of the Property. There are railroad tracks on the south side of SR-2 (opposite side from the Property). The Property lies about three-quarters of a mile east of the main commercially developed area of the City, separated from that area by a bridge. (Exhibit M1; testimony)
11. The Property’s history includes past agricultural use described as grazing and hay production. Heritage Baptist Fellowship has owned the Property for approximately 15 years, and has not used the Property for agriculture. The owner permitted a test planting of canola one year during this period, but there is no evidence whether or not this crop was successful or harvested. (Exhibit M1; Testimony)
12. A residential neighborhood is adjacent to the Property, on the bluff at the top of the steep slope that runs along the north and west edge of the Property. This area at the top of the bluff is zoned R3-5 and fully developed with single-family residences. (Exhibit M1; testimony)

⁶ See Monroe Municipal Code (MMC) § 20.05 for related definitions.

September 27, 2013 FEIS

13. The September 27, 2013 FEIS for the Proposal considers potential impacts of three different development alternatives. Alternative 1 presents a potential development scenario that considers development of the Property under the current LOS land use and zoning designation. Alternative 2 presents potential development of the Property under GC land use and zoning designation as allowed under the Monroe Municipal Code and is the proposed action. Alternative 3 presents potential development of the Property under a comprehensive plan designation of Mixed Use (MU) and Mixed Use Commercial (MUC) as allowed under the Monroe Municipal Code. (Exhibit M1; testimony)
14. The September 27, 2013 FEIS describes and analyzes environmental impacts and potential mitigation measures for the following twelve elements of the environment: Earth; Land & Shoreline Use; Groundwater; Aesthetics; Surface Water; Light & Glare; Plants; Transportation; Animals; Public Services; Noise; and, Utilities. The September 27, 2013 FEIS identifies one Class II and two Class III wetlands on the site, describing approximately 75% of the area of the Property as undevelopable or designated for protection as critical areas or buffers. The September 27, 2013 FEIS identifies approximately 11.3 acres of the Property as developable. The September 27, 2013 FEIS uses both current maps of the jurisdictional area of the Shoreline Management Act, and FEMA maps of the floodplains in the area, and newer 2007 Preliminary FEMA Flood Insurance Rate Maps (FIRMs) for these areas showing more detail and greater impact to the Property. Ms. Boyd provided testimony that, using either set of maps, the 100 year floodplain does not affect the developable area of the Property as described in the September 27, 2013 FEIS, and described possible ways to provide 1:1 compensatory flood storage as part of any development proposal for Property, and ways to mitigate other, cumulative impacts to the Property resulting from development. (Exhibit M1; testimony)
15. The September 27, 2013 FEIS includes maps and studies providing detail and analysis concerning cumulative impacts to the Property from any of the three development alternatives considered, including specific and detailed analysis of the compensatory flood storage areas and their location, as well as cut and fill requirements for the Property. Ms. Boyd provided testimony concerning the maps and studies, pointing out areas the September 27, 2013 FEIS identifies as developable, and areas where compensatory flood storage is available, without infringing the identified critical areas. (Exhibit M1; testimony)
16. For Alternative 1 (Keep LOS zoning), the September 27, 2013 FEIS provides discussion and analysis of impacts and potential mitigation concluding that, under current LOS zoning, the 11.3 acres of developable area on the Property could be developed to include a fitness club, daycare, and/or church, among other allowable uses that could include government and education facilities such as a fire station or school, industrial uses and infrastructure uses, some requiring special or conditional use permits. The September 27, 2013 FEIS supports the application to rezone the Property to GC, providing analysis and discussion of

impacts and potential mitigation related to Alternative 2 (rezone to GC) that assert a lack of undeveloped commercial property within the City, opportunities to enhance the critical areas located on the Property and support flood management systems. Discussion of Alternative 2 contemplates a high-volume discount store with associated strip-mall retail establishments. The September 27, 2013 FEIS also provides analysis and discussion of impacts and potential mitigation related to Alternative 3 (rezone to Mixed Use Commercial), that allows for potential residential, professional office, medical clinic, restaurant, and other retail and commercial uses. The September 27, 2013 FEIS provides maps, conceptual drawings, proposals for fill and flood mitigation, protections for critical areas, etc. concerning essentially the same 11.3 acre developable area. In other words, the September 27, 2013 FEIS identifies an 11.3-acre area on the Property that could be developed under any of the three alternatives, and meet regulatory requirements. (Exhibit M1; testimony)

17. The September 27, 2013 FEIS discusses local planning and regulatory requirements including: the Washington State Growth Management Act (GMA), GMA planning for Snohomish County, the City's Urban Growth Boundary Area, the City of Monroe Comprehensive Plan, City of Monroe Municipal Code, City of Monroe Critical Areas Ordinance, City of Monroe Shoreline Master Program, City of Monroe Water System Plan, and City of Monroe Sanitary Sewer System Plan. (Exhibit M1; testimony)
18. The September 27, 2013 FEIS provides discussion of the benefits and disadvantages of reserving, for a future time, implementation of the proposal. The FEIS notes that delaying development of the Property would delay new commercial activity and related traffic in the area, keep the existing aesthetic environment, with no disturbance to animal and plant habitat, or temporary impacts associated with construction. Noted disadvantages of delaying development of the Property include: not addressing demand for additional developable commercial property along the SR-2 corridor; loss of opportunity to develop under favorable market conditions; loss of employment opportunities for City and area residents; loss of economic growth and tax base for the City; missed opportunity to attract development opportunities to the City; delay in expansion of municipal utility services to the un-served eastern parts of the City; and, missed opportunity to provide enhancement for shoreline plant environment and fish habitat on the Property. (Exhibit M1; testimony)
19. The "Earth" section of the September 27, 2013 FEIS describes the Property and analyzes environmental impacts and potential mitigation measures, providing information that includes discussion, analysis, maps, surveys and diagrams concerning the topography and soils, landslide and erosion hazard, and wetlands. The discussion notes that the biggest impact of development to the topography and soils on the Property is the amount of cut and fill required to meet regulatory requirements associated with grading within a floodplain area, including providing for compensatory flood storage. The discussion notes that this impact is similar for all three alternatives considered in order to raise the elevation of the developable acreage on the Property, and notes that compensatory flood storage

must be equal to or greater than the volume displaced by fill (a 1:1 minimum ratio), estimating that 46,500 cubic yards of fill is required. The discussion provides explanation of how the Property permits this, and discussion of impacts and potential enhancements and benefits of excavating along wetland and shoreline buffer areas. The discussion notes that no work is proposed for areas north of the identified stream/slough and therefore, no work will be done along the toe of the sloped area. (Exhibit M1; testimony)

20. Ms. Boyd testified concerning the use of LIDAR data and a 2012 field survey in performing calculations to estimate cut and fill requirements, and to meet compensatory flood storage requirements. Ms. Boyd asserted that the use of LIDAR data and technology is more accurate than the field survey, permitting use of the “latest and greatest computer simulation” to provide precise calculations. Ms. Boyd also agrees, however, that more survey work will be necessary. Ms. Boyd further asserts, however, that use of the setback area for compensatory flood storage is appropriate, and will meet regulatory requirements without excavation within the wetlands themselves. Ms. Boyd does not dispute that the Property has flooded in the past, and could be caused by a number of factors, but notes that any proposal for development of the Property must include plans to reduce flooding. (Testimony)
21. The “Earth” section of the September 27, 2013 FEIS provides discussion and analysis of issues related to providing access to the northeastern portion of the site, including impacts to the stream and wetland areas of accomplishing the access by a bridge extending from the main developable area. The discussion notes that impacts could be minimized or avoided by constructing abutments outside of the wetlands and shoreline areas. The FEIS provides additional discussion and analysis of flood hazard management within the area, with analysis of shoreline modifications related to environmental restoration, suggestions for mitigation and enhancement measures, likely temporary impacts during construction and development of the Property, and use of Best Management Practices such as use of silt fences and perimeter berms. The FEIS states there are no significant permanent unavoidable adverse impacts to the soils and topography associated with the proposed development of the Property, but discusses several temporary unavoidable impacts such as dust and temporary erosion on the south side of the stream/slough area due to construction activities. (Exhibit M1; testimony)
22. The “Earth” section of the September 27, 2013 FEIS also provides analysis of the sloped area, noting that signs of slope instability were observed, noting that any work within the NGPA must be approved by the City and adhere to the City’s critical area guidelines, and that flood hazard management work is permitted within the 200-foot boundary of the ordinary high water mark of the stream/slough, providing suggestions for mitigation and enhancement measures. (Exhibit M1; testimony)
23. The “Ground Water” section of the FEIS references the Snohomish County Groundwater Management Plan identifying the Property as within the Snohomish

County Groundwater Management Area. Discussion notes that the area has a high ground water level and is considered to have high aquifer sensitivity, but also notes that the Property lies within the City's Urban Growth Area and an urban level of service is proposed for all alternatives considered, with public water and sanitary services; therefore, the report states that sewage contamination is not an impact. The FEIS discusses additional runoff due to impervious services associated with any of the proposed development alternatives, but notes that use of the Property for permitted agricultural purposes would also affect ground water quality due to animal waste, fertilizer, and pesticide residues. The FEIS states that: "further geotechnical exploration would need to be performed at the time of building permit application to determine the groundwater elevation and any buoyancy issues." The FEIS further notes, however, that such buoyancy analysis is common for below grade structures and does not pose unusual issues. (Exhibit M1; testimony)

24. The "Surface Water" section of the September 27, 2013 FEIS notes that the Property is located approximately 400 feet north of the Skykomish River, which is a shoreline of the State, with a Type 1 stream/slough extending northeast from the river and onto the Property via large box culverts under SR-2 and the Burlington Northern – Santa Fe railroad tracks. The FEIS provides detailed descriptions and analysis of on-site critical areas, including a Critical Areas Study and Habitat Conservation Report by WRI. Discussion notes the presence of fish in the stream and the presence of several anadromous and salmonid fish species, including federally listed threatened and endangered species, and the requirement of a 200-foot buffer from the ordinary high water mark for this stream. The FEIS provides descriptions and discussion concerning three wetlands identified on the Property, and required buffers for these areas. The FEIS bases delineation of the flood hazard area on the Property on revised preliminary FIRM maps issued January 12, 2007, noting that these maps are not yet adopted, but also noting that use of these maps provides a more conservative view of the base flood elevation of the Property. The FEIS states that analysis of the Property relying on use of the currently adopted FEMA/FIRM maps (effective September 1999) would result in a slight increase in the developable area of the Property. (Exhibit M1; testimony)
25. The discussion in the "Surface Water" section notes that each of the three alternatives has potential to impact the on-site stream and, essentially, the greater the size of any development footprint on the Property, the greater the potential resulting impact. (For example, different types of development result in varying amounts of impervious surfaces that could result in increased runoff to the stream.) Current LOS zoning permits maximum lot coverage of 30%, whereas GC zoning permits 100% lot coverage and Alternative 3 is exempt from lot coverage requirements. The FEIS discusses a number of potential indirect impacts to the Property in this area, such as habitat loss within the buffer areas of the wetlands as human activity increases, provides discussion of opportunities to mitigate these impacts. The FEIS provides discussion of requirements for fill and grading related to the Property's location in a flood hazard area, and provides flood elevation imagery showing historical peaks for flooding in the area. The FEIS provides guidance for mitigating measures associated with development activities occurring

under any of the three alternatives considered, to ensure protection of critical areas, and use of Best Management Practices to provide protection of these areas during construction. The FEIS notes that all alternatives include provisions for on-site compensatory flood storage, created by excavation of soils immediately adjacent to the stream. The FEIS concludes that: “No significant adverse environmental impacts associated with surface water are expected from any of the proposed alternatives.” (Exhibit M1; testimony)

26. The “Surface Water” section of the FEIS includes flood elevation imagery from a 2006 flood event, with four photographs showing some surface water flooding present on the Property, but stating in the report that: “Even when flood waters reached their highest elevations, the site remained above water.” The City received several comments concerning this section and this statement, essentially reporting that this information is not accurate and the Property was underwater during the 2006 flood event. The City provided responses to these comments, largely referring to the strategies described within the FEIS for development within a floodplain. (Exhibit M1)
27. The “Plants” section of the September 27, 2013 FEIS addresses the effects of proposed development alternatives on plants within or in the vicinity of the Property. This section describes land use of the Property as abandoned pasture, with a mix of native and non-native grasses, and various other plants described in detail in a Critical Area Study and Habitat Conservation Report prepared by WRI. The FEIS notes that there are three primary vegetation types located within the project area of the Property: Plustrine Emergent wetland, Himalayan blackberry dominated upland/riparian interface, and regularly maintained upland grasses, with plants in the project area generally comprised of pasture, invasive Himalayan blackberry and reed Canary grass, with small areas of native species, and no rare, sensitive, or threatened plant species, or high-quality ecosystems, observed on-site. (Exhibit M1; testimony)
28. The FEIS “Plants” section notes that the likely development activity under any of the three alternatives will be within the grass coverage area of the Property, resulting in conversion of the maintained grassy area to an impervious surface (removal of the grass), and the grassy area is the entire area contemplated for development. The FEIS concludes: “Therefore the additional potential loss of vegetative cover created by the GC and MU scenarios is not expected to significantly degrade functions within the project area.” The FEIS provides suggestions for mitigating the impact to plants on the Property, including by removing invasive vegetation such as the Himalayan blackberry and reed canary grass, removing invasive species along the wetland, stream and shoreline areas, and by planting native trees, shrubs, and emergent plants throughout. (Exhibit M1; testimony)
29. The “Animals” section of the September 27, 2013 FEIS addresses the effects of proposed development of the Property on animals located within or in the vicinity of the project area, and includes primary and secondary source information assembled, reviewed, and provided by WRI. WRI included reconnaissance level

wildlife observations, but not site-specific wildlife inventories, in this information. WRI also provided secondary information concerning threatened or endangered species provided by the Washington Department of Fish and Wildlife SalmonScape interactive mapping tool, Priority Habitat and Species viewer, and Fish Passage Program Maps. The FEIS provides discussion and analysis of the affected environment, noting that the Property is disconnected from other animal habitats, as the City, SR-2, and residential development border it, limiting access to many mammals (while not affecting avian access). The FEIS notes that low to moderate quality habitat exists on the Property, with the stream/slough, wetlands, adjacent upland forested area, and steep slopes, describing the area as having moderate potential to provide quality wildlife habitat. (Exhibit M1; testimony)

30. The “Animals” section of the FEIS describes a wide variety of animal life expected to utilize the project area, including species such as: black-tailed deer, North American beaver, mouse, Pacific mole, American bullfrog, Pacific tree frog, garter snake, and many others. The FEIS describes a large variety of birds either directly or indirectly observed on the Property, or expected to utilize the area, including bald eagles, red-tailed hawks, Pileated woodpeckers, and many others. The FEIS states that many varieties of fish are presumed present in the stream/slough, including Chinook salmon, Chum salmon, Steelhead trout, Coho salmon, Rainbow trout, Bull trout, and others. The FEIS discusses implications of the presence of federally listed threatened and endangered species on the Property, including requirements for specific habitat protections. (Exhibit M1; testimony)
31. The “Animals” section of the FEIS discusses potential “impacts to wildlife of “a full build-out” scenario for each of three proposed alternative zoning designations for the project area.” The FEIS notes that impacts of development to the species utilizing the Property will include habitat loss, and will particularly affect small mammals residing in the grassy pasture areas and the predators feeding on them. The FEIS notes that development under any of the three alternatives will result in increased human disturbance within the project area, but not within the wetland and buffer areas, or outside the project area. The FEIS provides discussion of measures to mitigate the potential impact of any of the proposed land uses, including incorporation of specific government guidelines to minimize impacts to wetlands. The FEIS also asserts that the proposed compensatory flood storage and suggested enhancement activities will result in long-term benefit for wildlife habitat on the Property. The FEIS concludes: “Build-out of the project area under any scenario will have limited impact to wildlife through habitat loss and fragmentation by impacting the lowest quality habitat on-site...Similar impacts are likely to be realized from each of the development alternatives.” (Exhibit M1; testimony)
32. The “Noise” section of the September 27, 2013 FEIS notes that the current, undeveloped/vacant condition of the Property currently produces minimal noise, and that the proximity of SR-2 and the adjacent railroad tracks largely influence noise levels on the site. The FEIS reports that approximately 23 locomotives pass through the area each day, blowing their horns for each public crossing, with the

horns ranging from 110-150 decibels. The FEIS references the residential neighborhoods immediately to the north and adjacent to the Property as most likely to be affected by any additional noise from the Property. The FEIS describes these residential properties as primarily on lots ranging in size from 0.5 acres to 1.78 acres, with homes located approximately 100 to 120 feet above the project area and 200 to 300 feet horizontally from the north property line of the Property. (Exhibit M1; testimony)

33. The “Noise” section of the FEIS provides comparisons for different types of noise-generating activities that may be associated with development of the Property, or should be expected under any of the three alternatives considered. The FEIS discusses temporary noise associated with construction activating impacting the Property, and requirements to comply with the City code (MMC), and state regulations concerning maximum environmental noise levels. The FEIS identifies increased noise levels as having a significant unavoidable adverse impact during construction activities and an increase in background and traffic noise during operation following any development of the Property. (Exhibit M1; testimony)
34. The September 27, 2013 FEIS includes a “Land and Shoreline Use” section that notes the current LOS zoning for the Property, that the Property was used for agriculture in the past, and the Property is unused presently. The FEIS provides comparison tables for land uses under LOS, GC, and MU designations, and a summary of land inventory in the City. The summary notes that single-family residential zoning comprises 43% of the City’s land use designation, with 7% zoned for commercial land use, 3% for mixed use, and 38% designated LOS zoning (total for LOS, LOS Airport, Parks and Open Space, Public Facilities – City/School, and Special Regional Use). (Exhibit M1; testimony)
35. The “Land and Shoreline Use” section of the FEIS references the City’s description of the purpose for LOS zoning:

“The purpose of the limited open space zoning district is to provide for low density residential uses on lands that lack the full range of public services and facilities necessary to support urban development and that are severely impacted by critical areas. This zone also provides a buffer between urban areas and transitional land uses on the urban growth boundaries of the city, and/or may also provide for enhanced recreational facilities and linkages to existing trails or open space systems.”⁷
36. The “Land and Shoreline Use” section of the FEIS also references the City’s description of the purpose for GC zoning:

“The purposes of the commercial districts are to provide opportunities for the enhancement of existing commercial uses and for the location of new commercial development. General commercial uses (GC) should be located on traffic corridors that have adequate capacities for traffic flow. Such location assures that uses do not generate traffic through residential areas. Uses located in this (GC) class should be designed into planned

⁷ MMC Section 18.10.045

centers with safe and convenient access to minimize curb cuts and facilitate better parking and traffic flows⁸.”

37. The “Land and Shoreline Use” section of the FEIS references the City’s description of the purpose for Mixed Use Commercial zoning:

“The purposes of the mixed use zoning districts are to integrate a mix of office, retail, light industrial, institutional, public facilities, and attached residential units throughout the district, within the same property, or inside a single building. Mixed use commercial (MUC) should be located on corridors with available public services and adequate traffic capacities. The mixed use commercial district allows high-intensity development and requires that new developments provide safe and convenient access, minimize curb cuts, and facilitate better parking and traffic flow. This district permits residential, commercial, office, and light industrial land uses.”⁹
38. The September 27, 2013 FEIS “Land and Shoreline Use” section discusses the City’s shoreline designations, and the involvement of the Washington State Department of Ecology (DOE) in approving environmental designations in the Shoreline Master Program planning process. The FEIS notes that the City’s Shoreline Master Program was approved by DOE and adopted by the City in August 2008, and the City’s related shoreline designations map (included in the FEIS) designates a portion of the Property as an Urban Conservancy Shoreline Environment. Essentially, this designation requires that new development does not result in net loss of ecological function or further degradation to the shoreline, does not permit significant vegetation removal and shoreline stabilization unless certain exceptions criteria are met. The FEIS states that: “In these areas, the shoreline jurisdiction extends 200 feet from the slough. The eastern portion of the slough and the associated wetlands are also included in the shoreline environment, but do not have the 200-foot setback.” (Exhibit M1; testimony)
39. The “Land and Shoreline Use” section of the FEIS describes environmental impacts of each of the three alternatives. This section contains guidance concerning permissible and prohibited activities within Urban Conservancy shoreline environments, providing a copy of the matrix showing allowable uses. The FEIS notes that one allowable use within the UC designation is flood management, stating that all three alternatives considered include activity within the shoreline environment on the Property to maximize the developable area by using the area within the UC designation for provision of compensatory flood storage. The FEIS provides further guidance with respect to required permitting and approvals, noting that the work will require excavation, grading, and planting, but that no structures should be proposed within the shoreline area. The FEIS describes benefits, including enhancement of fish and wildlife habitat through clearing, grading and planting in the shoreline area adjacent to the stream/slough and wetlands, anticipating that habitat improvements will occur in these areas.

⁸ MMC Section 18.10.030

⁹ MMC Section 18.10.030

The FEIS notes that temporary construction impacts will occur to these areas under any of the three alternatives considered. (Exhibit M1; testimony)

40. The “Land and Shoreline Use” section of the FEIS discusses mitigating measures, noting that compliance with critical area regulations and City requirements will mitigate potential land use impacts, and mitigation measures for alternatives 2 and 3 are similar to those for development under the current LOS zoning. The FEIS describes the proposed excavation area as containing little or no wildlife habitat, asserting that excavating and restoring this area as planned for flood protection and habitat will result in improvement to this area. (Exhibit M1; testimony)
41. The September 27, 2013 FEIS “Land and Shoreline Use” section identifies the permanent change in the character of the land use of the Property as a significant unavoidable adverse impact of the proposal, noting the resulting increase in the intensity and type of development. The FEIS also states, however, that development activities under any of the three alternatives will avoid significant impacts to the shoreline areas by complying with existing regulatory requirements and guidelines, and implementing proposed flood hazard management and habitat enhancement. The FEIS notes that temporary impacts from construction can be mitigated through use of best management practices, and states that: “No permanent adverse impacts to the shoreline environment or the slough are expected.” (Exhibit M1; testimony)
42. The “Aesthetics” section of the September 27, 2013 FEIS describes the current condition of the Property, as visible to motorists along SR-2 and as visible to adjacent residential properties, noting that development of the Property under any of the three alternatives considers will necessarily alter the current visual condition of the Property. The FEIS discusses how development of the Property will include removal of the grassy cover area, replacing it with impervious surfaces, including buildings and parking lots, but the majority of the Property will remain undeveloped, with open spaces and natural vegetation, and portions of the developed area will have landscaping. Of more significance, the FEIS notes that: “A change in views from residences on the ridge above and north of the project area could include blocking SR-2 and Skykomish River views.” (Exhibit M1; testimony)
43. The “Aesthetics” section of the FEIS discusses mitigating measures to lessen the impact of potential development, such as enhancing wetland buffers, providing for an appealing architectural treatment of structures on the Property, screening glare from the Property, and providing for landscape planting to aesthetically break up impervious surfaces. This section identifies for the reader that a significant unavoidable adverse impact of any development of the Property is that visual aesthetics will change for motorists on SR-2, and there will be significant visual changes for the residences adjacent to the Property on the north. (Exhibit M1; testimony)
44. The “Light & Glare” section of the September 27, 2013 FEIS notes that current vacant and undeveloped condition of the Property, with no light or glare producing

structures or objects. The FEIS informs the reader that development of the Property under any of the three alternatives considered is likely to result in an increase in glare and light spill onto adjacent Properties, and onto SR-2. The FEIS also informs the reader that development under alternative 2 (rezoning to GC) "...may provide the worst case light and glare scenario of all alternatives only due to the potential of a large box store with skylights. At night, light could escape from the skylights and potentially create glare for the properties above." (Exhibit M1; testimony)

45. The "Light & Glare" section of the FEIS describes mitigating measures to alleviate the impact of light spill and glare, such as shielding light and glare sources, using landscaping to reduce light and glare, and meeting the requirements that exist in the City code concerning lighting standards. (For example, City code restricts the height of parking lot light fixtures, requires use of non-glare light fixtures, requires use of shields, etc.) An increase in glare and light spill onto neighboring properties, and lightening of the night sky when illuminated, are identified as significant unavoidable adverse impacts. (Exhibit M1; testimony)
46. The September 27, 2013 FEIS "Transportation" section describes the location of the Property on the north side of SR-2, east of Old Owen Road and west of Calhoun Road. The FEIS reports that WSDOT purchased the access rights, and therefore the Property does not have direct access to SR-2. The FEIS reports that the Property is likely to have access through an easement with the parcel to the east at the southeast corner of the site. Additional information concerning WSDOT was added to the FEIS following a comment received from WSDOT, noting that the site does not have direct access, and making several comments about the proposal including analysis of use of a roundabout. The response to WSDOT stated that the access issue would be resolved as part of an application to develop the site, an analysis of use of a round-about was performed and included in the FEIS, and WSDOT was informed. The FEIS informs the reader that the intersections significantly impacted and analyzed for traffic impact include: SR-2 at Chain Lake Road; SR-2 at Old Owen Road/E Main Street; and, SR-2 at Access. (Exhibit M1; testimony)
47. The "Transportation" section of the FEIS described environmental impact analysis performed by Gibson Traffic Consultants, Inc. for each alternative considered in the FEIS, including baseline data taken for comparison, projecting future volumes over a ten-year period. Transportation impact studies were performed for Alternative 1, with development increasing trip generation anywhere from 501 daily trips (13 PM peak-hour) to 1,602 new average daily trips (169 PM peak hour), depending on the uses developed. The FEIS reported that Alternative 2 (GC zoning) would increase this trip generation to 5,230 average daily trips (459 PM peak-hour), an increase of 3,628 average daily trips over current LOS zoning (increase of 290 PM peak-hour trips). Alternative 3 would increase trip generation to 3,427 daily trips (318 PM peak-hour) over the current LOS zoning. (Exhibit M1; testimony)

48. The transportation studies were performed based on methodology from the Highway Capacity Manual: 2010 Edition, and intersection levels were evaluated based on level of service, with future volumes calculated based on the growth rate for the area, and in accordance with standard methodology for City developments. These studies show that development under any of the alternatives will result in level of service delays at the Chain Lake Road and Old Owen Road/E Main Street intersections with SR-2, concluding that the: "...analysis shows that the off-site intersections will operate at an acceptable level of service without the requirement for improvements. The access to the site will warrant an inbound left-turn lane." The FEIS also discusses proposals for separate outbound lanes and outbound left-turn acceleration lanes, or a 2-lane roundabout, to improve level of service, as potential mitigating measures. (Exhibit M1; testimony)
49. The "Transportation" section of the FEIS described several significant unavoidable adverse impacts associated with any development of the Property, stating that the "...analysis shows that the traffic impacts for Alternatives 1, 2, and 3 do not vary significantly." Significant traffic analysis conclusions in the report were: off-site intersections will operate at acceptable levels of service; access to the Property will require inbound left-turn channelization; access to the Property will operate at an acceptable level of service, regardless of the alternative considered; WSDOT will require an acceptable access location. In summary, Gibson Traffic Consultants, Inc. concluded that: "Based on these results, the change in zoning is not anticipated to result in a significant impact to the access or the surrounding off-site intersections." (Exhibit M1; testimony)
50. The September 27, 2013 FEIS "Public Services" section describes impacts of development of the Property on police, fire, and schools. The FEIS notes that the City Police Station is approximately two miles from the Property, and there is a fire station located approximately two miles from the site; therefore, development of the Property is likely to increase demands on these public services. The FEIS describes the vacant Property as not requiring any police or fire department services, and notes that the site does not generate any students. The FEIS discusses environmental impacts of development under any of the three alternatives, describing various factors dependent on actual development. (For example, currently there is no water service at the Property, and no fire hydrants or fire flow, but development will result in water services that will include fire flow to the Property.) The FEIS also notes that, under Alternative 3, up to 90 multi-family residential units could be developed at the Property, and this could add up to 60 new students to the City school district. (Exhibit M1; testimony)
51. The FEIS describes mitigating measures for impacts to public services, including use of private security to lessen demands on City police, and use of environmental design standards to enhance public safety. The FEIS informs the reader that additional evaluations of source, storage, and distribution of water must be performed to ensure adequate fire protection. The FEIS further states, however, that: "Water system connection fees coupled with developer financed improvements will ensure that fire protection standards are maintained." The FEIS concludes that development of the Property under any of the alternatives, with

implementation of appropriate mitigation measures, will not result in any significant unavoidable adverse impacts. (Exhibit M1; testimony)

52. The September 27, 2013 FEIS “Utilities” section describes the current condition of the Property, with no public water or sewer services, and no municipal stormwater utility services. The FEIS reports that the Property is within the City’s service area, and that development of the site under any of the three alternatives will require extension of the City’s water and sanitary sewer services to the site, and compliance with the City’s stormwater management plan. The FEIS describes environmental impacts, required analysis to determine water and sanitary sewer system needs, increases to demands on City facilities, describes increases in stormwater runoff that will necessarily result from development on the Property, and describes pollutants that could result from development, impacting stormwater, plants, and animal life. The FEIS notes, however, that stormwater will be handled on-site and any increase will not impact City stormwater utility in the area. (Exhibit M1; testimony)
53. The “Utilities” section of the FEIS discusses mitigating measures for water, sewer, and stormwater utility services, reviewing applicable codes and regulations that apply to any development that requires utility improvements, discussing how compliance will mitigate impacts, and noting how the Property owner will pay for costs through connection charges. The FEIS provides detail for the reader concerning additional requirements for stormwater runoff, including requirements for compliance with applicable regulations, designed to mitigate impacts from development of the Property under any of the alternatives considered. The FEIS concludes that significant unavoidable adverse impacts are not anticipated if development follows the mitigation measures described in the FEIS and is in compliance with the regulations outlined in the FEIS. (Exhibit M1; testimony)
54. Pages 67-69 of the September 27, 2013 FEIS provide the reader with an executive summary of the cumulative impacts in each of the study areas, followed by a source bibliography, a section containing a compilation of summaries of the numerous comments received, and the responses given, and Appendix A-J, contained full copies of the referenced studies and reports, maps, surveys, and other information used in producing the FEIS. (Exhibit M1)
55. The City received many comments, including 22 comment letters, in response to issuance of the FEIS (and in response to the earlier draft EIS) and provided responses to these comments. In some cases, such as a comment that: “As acknowledged in the August 2013 DEIS, the East Monroe site presents with numerous critical areas, including steep slopes, streams, shorelines, wetlands and flood plains, further supporting its LOS status” the response was “Comment noted.” Comments that asked questions or made specific relevant statements received detailed responses, such as a comment that: “...having been one of the thousands of people injured in an automobile accident on Highway 2 due to the road conditions, I ask that the committee decline this rezone as opposed to escalate the hazardous road conditions.” Received the response: “Section 3.10.2

of the FEIS shows that additional channelization or a roundabout would allow the access to operate at an acceptable level of service.” (Exhibit M1)

Appellants

56. Lowell Anderson and Jeffrey W. Rogers filed a timely appeal of the FEIS. Their appeal identified the following twelve items: 1. The FEIS failed to consider under the no action alternative the site’s existing use for agricultural purposes; 2. The FEIS failed to adequately address the environmental impacts of securing compensatory flood storage; 3. The FEIS did not adequately address the issue of flooding on the Property including using the “best available science”); 4. The FEIS failed to adequately address environmental implications of extending sewer, water, and other utilities to the Property; 5. The FEIS failed to adequately address comments by the Washington State Department of Ecology and other commentators; 6. The FEIS failed to address the access to SR-2 issue and related traffic and public safety issues; 7. The FEIS failed to consider whether the developer has the “financial wherewithal to successfully conclude development”; 8. The FEIS failed to address many issues raised by commentators by simply noting that such comments were not applicable; 9. The FEIS does not include a correct FEMA map and fails to address the implications on increased flood insurance rates; 10. The FEIS uses a LIDAR methodology rather than the 1999 field survey; 11. The FEIS summary asserts that the proposed comprehensive plan amendment (zoning change to GC) would allow the site to be developed in an economically feasible manner; 12. The FEIS is inconsistent with the Growth Management Act goals by not adequately addressing protection of critical areas, retaining open space, conserving fish and wildlife habitat, and the site lack public facilities to support development. Additionally, the appeal asserts in this area that the process has not encouraged citizen participation nor coordination with other agencies.
57. Jeffrey W. Rogers owns one of the properties adjacent to the Property, and provided testimony concerning past flooding of the Property, asserting that there is inadequate fill on the Property to meet flood elevation requirements for development of the Property, and that flooding will continue to occur. Mr. Rogers points to the steep slopes that lie between the residential properties to the north, and lie on the border of the Property, and asserts that cut and fill activities, or development of the Property, will result in risks to these homes, including increased risk of landslides. Mr. Rogers points to the many identified critical areas on the Property, asserts that City staff have given insufficient scrutiny to the many environmental challenges present on the Property, and contends that the Property fits the description for LOS zoned property, is correctly zoned LOS and should remain so.
58. Mr. Rogers contends that FEMA discourages high-intensity development within floodplains, and that the Property lies within a floodplain. Mr. Rogers asserts that the LIDAR technology used in developing the FEIS is not as accurate as a topographical survey, and not the “best available science.” Mr. Rogers further

contends that the FEIS does not adequately detail the risk of cut and fill activity, or compensatory flood storage, to the contiguous properties.

59. Mr. Rogers points out that City water and sanitary sewer utility lines are located at least ½ mile from the Property, will require crossing environmentally sensitive areas in order to reach the Property, and that the FEIS is deficient by not addressing this issue. Mr. Rogers further contends that comments made to the FEIS were not adequately responded to and not addressed by the FEIS, or not fully or completely responded to. Mr. Rogers points to comments by WSDOT concerning access to the Property, and asserts that the response does not adequately answer the question of where the access to the Property will be located. (Exhibit M1)
60. Mr. Rogers asserts that the FEIS does not adequately consider the access issue to the Property, describing SR-2 as already subject to gridlock levels of traffic, with accidents and public safety issues, and disagrees with the proposed round-about. Mr. Rogers further disagrees with rezoning the Property, asserting that development will preclude future use of the Property for agricultural purposes.
61. Lowell Anderson also owns one of the properties adjacent to the Property, and provided testimony referencing the existing condition of the Property (past agricultural use, no public water/sewer services, no access, etc.), and provided copies of photographs showing past agricultural use of the Property. These photographs show plowing marks in the pasture areas of the Property indicating past agricultural use. Mr. Anderson disputes reports in the FEIS concerning historic flooding in the area, presenting photographs of the Property showing flooding of the area. (Exhibits L32; L13-L18)
62. Mr. Anderson also contends that use of LIDAR to determine elevation is not the “best available science.” Mr. Anderson contends that the 1999 topographical survey provides more complete information concerning the elevations on the Property, wetlands, etc. and does not support cut and fill calculations provided in the FEIS. Mr. Anderson asserts that the FEIS is deficient in discussing impacts caused by extending City utilities to the Property, noting that the utility lines will have to cross the stream/slough to reach the Property. Mr. Anderson testified to concerns by the US Safety 2 Coalition regarding accidents, and deaths, along SR-2, testifying that there are sirens from emergency vehicles traveling along SR-2 “every day.” (Exhibits M1; L9)
63. Anna Groeneveld appeared as a witness on behalf of Appellants, lives east of the Property and drives past it daily, and is involved in agriculture in the area. Ms. Groeneveld asserts that the Property is “...three acres shy of the average size Snohomish County farm” and contends that the Property was used for Agricultural purposes as recently as 2009, and should remain available for agricultural uses.
64. Dr. Chuck Strub has lived in a residence adjacent to the Property for the past 42 years, has a view of the Property, and has witnessed of the Property on at least four separate occasions. Dr. Strub testified that he has witnessed flooding that left

most of the area of the Property underwater, and has seen someone rowing across the Property in a boat following a flood.

65. Bob Martin also resides on the ridge above the Property and has witnessed at least three major floods, including a 1990 flood that left approximately 2/3 of the Property, including major portions of the area considered for development, underwater. Mr. Martin provided testimony concerning photographs of flooding of the Property, and slide events that occurred along his property.
66. Chad McCammon has lived adjacent to the Property since 1999, and has seen standing water on the Property. He took photographs in November 2006 showing major portions of the Property underwater, including the area along the slough and extending into the developable area of the Property. Mr. McCammon asserts that the culverts connecting the stream/slough to the nearby river are only four feet, and restrict the flow of water. Mr. McCammon is an electrical engineer with experience conducting sound calculations. He reviewed the FEIS section on noise, and contends that fully developing the Property as GC will necessitate use of HVAC equipment that will generate noise levels not adequately reported in the FEIS, with the potential to violate relevant noise abatement codes. (L13-L17)
67. Margaret Ohlsen has lived east of the Property since 2001, and on other nearby property prior to that, and witnessed a 2006 flooding event that left water covering the Property. Ms. Ohlsen reports that the river overflows its banks during flooding.
68. Doug Hamar has lived on nearby property since 2005, testifying that he was in the area in 1990 and saw a pickup on the Property submerged by flooding, with only the roof visible above the water. Mr. Hamar asserts that the Property's location within an oxbow of the Skykomish River makes it particularly susceptible to flooding, particularly since the Property is within the FEMA identified 100-year flood plain. Mr. Hamar is concerned that development of the Property will worsen the effect flooding has on the sloped area.
69. Mr. Hamar provided cut and fill calculations based on the topographical survey, indicating that there is not enough cut volume on the Property to meet the necessary elevation requirements. Mr. Hamar also provided testimony concerning the traffic in the area, describing it as "already terrible." He asserts that the City needs to know that there will be safe access for traffic before moving forward with the proposal. Mr. Hamar describes current traffic at the fairgrounds, which has a left-hand turn lane and acceleration lane, noting that police are still needed during events due to traffic congestion. Mr. Hamar asserts the FEIS should clearly reference use of a roundabout, and clearly depict the traffic access. (Exhibit M1)

SEPA Responsible Official/City

70. Melissa Sartorius, AICP, is a Senior Planner for the City and is the designated SEPA Responsible Official. Ms. Sartorius has a BS degree in Geography and a Masters in Regional Planning, with substantial past experience. Ms. Sartorius testified that she is familiar with the SEPA Official role and processes, and started

working on this proposal in June 2013. Ms. Sartorius reviewed the history of this proposal including the previous FPEIS and related Hearing Examiner decision, consulted with the previous SEPA Responsible Official, looked to the SEPA rules and SEPA Handbook to determine critical information for an EIS, and held a public meeting on the matter. Ms. Sartorius noted that the SEPA rules permit an applicant to hire a consultant to prepare an EIS, that the applicant hired Pace, and the City consulted with Pace and obtained guidance from the SEPA Handbook regarding the three alternatives analyzed in developing the FEIS.

71. Ms. Sartorius looked to the FEIS to provide information concerning current potential development uses of the Property, including analysis of the highest intensity use under existing zoning and the alternatives to show broadest impacts. Ms. Sartorius considered past agricultural use of the Property, and considered the “no action” alternative, asserting that in her opinion the FEIS provided analysis of both past agricultural use and the “no action” alternative that went “above and beyond” what was required. Ms. Sartorius notes that the City does not favor agricultural use of property within the Urban Growth Boundary, and the Property is not currently used for agricultural purposes.
72. Ms. Sartorius asserts that the FEIS went “above and beyond” SEPA requirements for an EIS in providing information and analysis. For example, she points to the extensive traffic and trip analysis performed in the “Transportation” section of the FEIS, stating that the information provided was more than she expected for this non-project proposal. Ms. Sartorius also points to responses made to comments the City received concerning the draft EIS and FEIS, noting that concerns expressed by the Washington State Department of Ecology were responded to with an on-site meeting, and comments by the WSDOT were responded to with additional information in the FEIS.
73. Ms. Sartorius noted that the FEIS included the 2007 FEMA preliminary maps, which she considers the best available science. Ms. Sartorius also stated that she is familiar with the use of LIDAR technology, and this technology is used in mapping, is accurate, and is widely accepted in use. She is satisfied that the methodology used to calculate cut and fill is accurate, noting again that the FEIS provides a reasonable discussion of impacts for this non-action proposal. Ms. Sartorius notes that actual excavation and within the buffer areas (critical areas) and restoration activity within ecological areas will be required to meet technical requirements in effect at the time of application.
74. With respect to flooding on the Property, and landslide issues, Ms. Sartorius stated she was satisfied by the geo-engineering evaluations, and noted that the developable area is quite a ways from the slope. Ms. Sartorius was satisfied with the discussion concerning impacts to utilities, noting that direct costs would be born by the developer, noting the discussion to impacts to city services, including temporary and permanent impacts.
75. Ms. Sartorius found that the FEIS acknowledged significant impacts related to the different alternatives discussed and analyzed, with all development activities

showing impacts. She explains that the economic feasibility of development of the Property was not a consideration because it is not required by SEPA, and is essentially an issue for the developer of the Property.

76. Ms. Sartorius reported that Pace prepared the response matrix used to respond to comments received, that she reviewed it and determined the responses were adequate, and that the use of “comment noted” is in accordance with SEPA guidance. Ms. Sartorius considered the “no action” alternative as the current baseline for the Property, with the “no action” alternative shaped by current zoning and guidance by the SEPA Handbook, to provide guidance concerning permanent impacts by the proposal.

Other Testimony by Interested Citizens

77. Douglas Hamar lives along the ridge adjacent to the Property and contends that the FEIS fails to provide sufficient information concerning the “no action” alternative. In other words, Mr. Hamar asserts that the FEIS is deficient because it does not provide sufficient information concerning keeping the LOS zoning, and not developing the Property, as any development is a significant departure from the current condition of the site. Mr. Hamar points to the development footprint of all three alternatives considered in the FEIS, notes that they are substantially identical, and contends that none of the considered alternatives provides a baseline of the current site use. Further, Mr. Hamar contends that the FEIS does not provide an adequate comparison of the differences between the alternatives considered, and fails to consider the purpose of designating LOS property within the City’s comprehensive plan.
78. Mr. Hamar is concerned that there is a bias by City decision-makers in this matter, asserting that the City already has an excess of available GC zoned property. He disputes the accuracy of the traffic calculations used in the FEIS, and disputes the estimates for fill requirements on the Property.
79. Darlene Wolfe-Setzer has lived in the area above the Property since 1968, stating that there is a lot of drainage from the hillside into the slough area, and through a culvert. Ms. Wolfe-Setzer has witnessed substantial flooding on the Property, including rescue of trapped people by helicopter, and use of rowboats to cross the flooded Property. She describes the area as swampy, mucky wetland.
80. Wiard and Jean Groeneveld provided a written statement in lieu of public testimony, contending that the Property should not be rezoned or developed for commercial purposes. Rather, they assert that the Property should remain available for agricultural pursuits consistent with its location within the floodplain, and outside the more generally developed commercial areas of the City. (Exhibit GC1)
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IV. CONCLUSIONS

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

SEPA Appeal of FEIS

State law requires preparation of an environmental impact statement on proposals for legislation and other major action having a probable significant, adverse environmental impact. An environmental impact statement is required to analyze only those probable adverse environmental impacts that are significant, but may also discuss beneficial environmental impacts. The SEPA Responsible Official consults with agencies and the public to identify such impacts and limit the scope of an environmental impact statement.¹⁰ Every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment must include a detailed statement by the SEPA Responsible Official that includes:

“(i) the environmental impact of the proposed action; (ii) any adverse environmental impacts which cannot be avoided should the proposal be implemented; (iii) alternatives to the proposed action; (iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;”¹¹

State law emphasizes that the procedural determinations of the City’s designated SEPA Responsible Official are entitled to “substantial weight” in any appellate proceeding,¹² and the City of Monroe’s Code adopts this same standard of review.¹³ The City of Monroe has adopted procedures providing for the administrative appeal of determinations relating to SEPA.¹⁴ These procedures are codified at Chapter 20.04 of the Monroe Municipal Code. The relevant portions provide that any agency or person may appeal the adequacy of a final environmental impact statement (FEIS) on forms provided by the SEPA responsible official, setting forth the specific reason, rationale, and/or basis for the appeal. The hearing examiner conducts a public hearing into the

¹⁰ RCW 43.21C.031(1); RCW 43.21C.030(2)(c).

¹¹ RCW 43.21C.030(2)(c).

¹² 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).

¹³ MMC 20.04.200(C).

¹⁴ 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:

- (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.

merits of the appeal, hearing and receiving testimony, documentary evidence, and arguments from the appellant(s) solely on the issues raised or identified by the appeal. The procedural determinations by the city's responsible official "shall carry substantial weight" in any appeal proceeding.¹⁵ Appellate courts have established the standard of review for a challenge to the adequacy of an FEIS.

We review an EIS's "adequacy"--i.e., the legal sufficiency of the environmental data in the EIS—de novo. *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wn.2d 161, 183, 979 P.2d 374 (1999); *Klickitat Cnty. Citizens Against Imported Waste v. Klickitat County*, 122 Wn2d 619, 633, 860 P.2d 390, 866 P.2d 1256 (1993). We assess the EIS's adequacy under the "rule of reason." *Citizens Alliance to Protect Our Wetlands v. City of Auburn*, 126 Wn.2d 356, 361, 894 P.2d 1300 (1995). An EIS is adequate under the rule of reason when it presents decision makers with a " 'reasonably thorough discussion of the significant aspects of the probable environmental consequences.' " *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council*, 165 Wn.2d 275, 311, 197 P.3d 1153 (2008) (internal quotation marks omitted) (quoting *Klickitat Cnty. Citizens Against Imported Waste*, 122 Wn.2d at 633). We accord substantial weight to an agency's determination of EI adequacy. See RCW 43.21C.090; accord *King County*, 138 Wn.2d at 183.¹⁶

The important, relevant part here is that the legal sufficiency of the analysis and data contained in the FEIS is judged by "the rule of reason," meaning that "an EIS is adequate if it contains a reasonably thorough discussion of the significant aspects of the probable environmental consequences" of the proposed action. Washington law requires that an EIS inform decision makers and the public of reasonable alternatives, including mitigation measures that would avoid or minimize adverse impacts or enhance environmental quality.¹⁷

The burden of proof in challenging the adequacy of an EIS is on appellants to prove that the EIS is inadequate by a preponderance of the evidence.¹⁸ Thus, as Appellants, Mr. Anderson and Mr. Jeffreys bear the burden of proof in this matter concerning the issues they have raised in their appeal.

1. No Action Alternative

Appellants allege that the FEIS failed to consider and analyze, under the no action alternative, the site's existing use for agricultural purposes. In other words, Appellants assert that the FEIS should have provided analysis and discussion considering the current use of the Property without further development.

The City responded to the proposal submitted by the applicant by issuing a Determination of Significance requiring preparation of an EIS, identifying the following three alternatives for analysis and discussion: No Action; Limited redesignation; and, Full redesignation. The DS also required that the EIS provide discussion of eleven environmental elements: Earth; Water, surface; Water, ground; Animals; Noise; Land and shoreline use; Aesthetics; Light and glare; Transportation; Public services; and,

¹⁵ MMC 20.04.200(B)(2)

¹⁶ *Brinnon Grp. V. Jefferson County*, 159 Wn. App. 446, 480, 245 P.3d 789 (2011).

¹⁷ WAC 197-11-400(1)-(2).

¹⁸ *Juanita Bay Valley Community Ass'n v. Kirkland*, 9 Wn.App.59, 73-74, 510 P.2d 1140 (1973)

Utilities. I note that the DS was not appealed, but find that the DS issued by the City met its obligation to “discuss impacts and alternatives in the level of detail appropriate to the scope of the nonproject proposal and to the level of planning for the proposal.”¹⁹

The Washington State Department of Ecology’s SEPA Handbook provides additional guidance for agencies in meeting their obligations. Essentially, the lead agency (in this case the City) has some discretion in designing the “no action” alternative in a non-project proposal such as this, describing the “no action” alternative for a rezone proposal as the most likely development on the site under existing zoning.²⁰

I find the “no action” alternative the City required in the FEIS meets this description. Under the “Rule of Reason,” I conclude that the DS resulted in an FEIS designed to provide a reasonably thorough discussion of the significant aspects of the probable environmental consequences of the proposed action.

2. Compensatory Flood Storage

Appellants contend that the FEIS failed to adequately address the environmental impacts of securing compensatory flood storage on the Property. Appellants provided testimony, data, and calculations based on surveys of the site concerning “cut and fill” requirements to bring the developable area of the Property above the flood plain.

The FEIS contained detailed analysis of the compensatory flood requirements for development of the Property, under each of the three alternatives, with comprehensive analysis of environmental impacts and mitigating measures for each. The FEIS provides the reader with information concerning cut and fill requirements, and description of critical areas on the Property that impact development and must be considered. The FEIS included Geotechnical soils evaluations, and descriptions of protections for the critical areas on the Property, including the steep slopes. I understood the differences in calculations offered by the FEIS and by Appellants with respect to cut and fill requirements, but noted that there is no requirement that all the fill come from the Property itself, or from the area indicated by Appellants. I also found testimony by Ms. Boyd concerning the compensatory flood storage on the Property compelling. I found that the FEIS included sufficient discussion and analysis of compensatory flood storage requirements for development of the Property to reasonably inform the reader of the significant aspects of the probable environmental consequences of the proposed action.

Under the “Rule of Reason,” I conclude that the FEIS provides a reasonably thorough discussion of development impacts, mitigation, and alternatives regarding compensatory flood storage related to the proposal.

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¹⁹ WAC 197-11-442(2).

²⁰ SEPA Handbook, Appendix A.

3. Flooding

The Appellants contend that the FEIS does not adequately address the issue of flooding on the Property. Appellants also alleged that the FEIS failed to use the “best available science” in addressing the issue of flooding. I found testimony and evidence presented by Appellants and concerned citizens compelling, and have no doubt that the Property has seen serious flooding in the past. This includes photographic and testimony evidence that the subject area of the Property was completely underwater during a 2006 flood event, and also during other flood events.

I note that “Best available science” means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925.²¹ Here, I understand Appellants argument as meaning the best available information in describing flooding on the Property.

The FEIS included a description of the location of the Property within the floodplain, included both FEMA maps of the floodplains in the area, and newer 2007 Preliminary FEMA Flood Insurance Rate Maps (FIRMs) for the area. The FEIS also included photographs of flooding in 2006 indicating that the subject area of the Property was not underwater even during the high flood event. I found, however, the procedures used in obtaining data and providing analysis consistent with the requirements for an FEIS, even though the pictures and analysis of the condition of the subject area of the Property during the 2006 flood event imply that the Property was above water. Discussion and analysis in this section of the FEIS makes clear that significant work is required to elevate the developable area sufficiently above the floodplain level. The FEIS provides sufficient discussion and analysis for the reader concerning elevating the grade of the developable area on the Property to meet floodplain development requirements such as to reasonably inform the reader of the significant aspects of the probable environmental consequences of the proposed action.

Under the “Rule of Reason,” I conclude that the FEIS provides a reasonably thorough discussion of development impacts, mitigation, and alternatives regarding flooding in the area related to the proposal.

4. Utilities

Appellants contend that the FEIS fails to adequately address the environmental implications of extending sewer, water, and other utilities to the Property. Testimony on this issue provided by Appellants largely concerns the cost of bringing these public services to the Property, which is not as relevant to the purposes of an EIS as discussion of environmental impacts and efforts to mitigate them.

The FEIS included a description of the significant environmental impacts associated with extending public utility services to the Property (essentially the same for development of the Property under any of the three alternatives). The FEIS provides

²¹ MMC 20.05.030

analysis for how this would likely be accomplished, how impacts should be mitigated, and how the developer would bear direct costs. With respect to the discussion in the FEIS concerning impacts to public utilities, I found sufficient discussion and analysis to reasonably inform the City concerning the significant aspects. I noted discussion of temporary environmental impacts, and discussion of mitigating the impact of these probable environmental consequences by meeting regulatory requirements.

Under the “Rule of Reason,” I conclude that the FEIS provides a reasonably thorough discussion of development impacts, mitigation, and alternatives regarding bringing public utilities to the Property.

5. Specific Comments

Appellants allege that the FEIS fails to adequately address comments by the Washington Department of Ecology and other commentators. Here, the Washington Department of Ecology submitted a comment by letter, and the City provided both a response in the FEIS, and addressed the comment by providing additional clarification in the FEIS. Additionally, I note that the City met with a representative of the Washington Department of Ecology on-site at the Property, and the representative provided a follow-up letter indicating that his agency was satisfied. I reviewed the comment by WSDOT and the City’s response, noting that the response concerning the access issue indicated it would be resolved at the application stage, and noting that the FEIS was updated to include analysis of roundabout use as requested by WSDOT. Agency responses to comments are meant to: modify alternatives including the proposed action; develop and evaluate alternatives not previously given detailed consideration by the agency; supplement, improve, or modify the analysis; make factual corrections; and, explain why the comments do not warrant further agency response.²² The SEPA Handbook provides additional guidance concerning agency responses, stating that: “It may be appropriate to respond to a comment on the draft EIS with “comment noted,” when the comment lacks substance (e.g. “I don’t want the proposal”).

Here, the comments made by these agencies resulted in changes to the FEIS, providing additional clarification, resulted in analysis of round-about use, and direct responses by the City (including an on-site meeting). Under the Rule of Reason, I conclude that the City met its obligation to provide a response to these comments.

In its written response to this allegation the City also addressed notice issues that I did not find in issue here. I will note, however, that the record contains substantial documentation that the City’s public notice requirements were followed and met, that the record includes copies of the notices and related affidavits, and that additional public comment was gathered through a voluntary public hearing that was not required.

6. Access

Appellants allege that the FEIS fails to address access to Highway 2 (referred to also as SR-2, or US-2) issues and related traffic and public safety issues. Appellants

²² WAC 197-11-560.

provided evidence and testimony concerning existing traffic safety issues along this corridor, and I was persuaded that there are traffic safety issues along this road. The FEIS includes a detailed Traffic Impact Analysis by Gibson Traffic Consultants, and provides the reader with guidance concerning required improvements associated with obtaining access to the Property, including inbound left-turn channelization, separate outbound lanes, and an outbound left-turn acceleration lane. The FEIS also includes analysis of use of a roundabout as requested by WSDOT, analysis of impacts to affected intersections, and discussion of mitigation. Notably, the FEIS informs the reader that under any of the alternatives considered, traffic at the impacted intersections would remain within acceptable levels of service.

Under the “Rule of Reason,” I conclude that the FEIS provides a reasonably thorough discussion of development impacts, mitigation, and alternatives regarding access issues to the Property, including traffic impact analysis.

7. Economic Feasibility

The City correctly asserts that the issue raised by Appellants concerning the economic feasibility of developing the Property, and associated issues, is not relevant.

8. Comments on Flooding

Appellants allege that the FEIS fails to address many issues raised by commentators. Appellants provided as an example in their appeal that the FEIS fails to adequately respond to comments concerning the actual flooding on the Property in November 2006 flood and specifically that photographs provided in the FEIS do not accurately depict the true flooding that occurred. The City responded by referring to the strategies described within the FEIS for development within a floodplain. As discussed above, Agency responses to comments are meant to: develop and evaluate alternatives not previously given detailed consideration by the agency; develop and evaluate alternatives not previously given detailed consideration by the agency; supplement, improve, or modify the analysis; make factual corrections; and, explain why the comments do not warrant further agency response.²³ Here, the City’s response indicates that issues associated with development within the floodplain were analyzed and addressed within the FEIS. I understand that the photographs of the 2006 flood event contained in the FEIS do not fully depict the extent of flooding on the Property, and do not see an actual dispute concerning whether or not the Property is within the floodplain and subject to flooding. However, I conclude under the Rule of Reason that the City met its obligation to provide a response to these comments.

9. FEMA Map

Appellants contend that the FEIS fails to include a correct FEMA map, and fails to address the implications of increased flood insurance rates as a result of rezoning the Property to GC. Appellants essentially contend that use of the 2007 FEMA map is improper because it is a “preliminary” map. The City points out that the preliminary

²³ WAC 197-11-560.

FEMA/FIRM map issued by FEMA in 2007 gives a more conservative estimate of the floodplain area, then the effective 1999 map, and therefore considers the worst-case scenario for flooding by going above and beyond the FEMA maps currently used by the City. The City also contends that there is no evidence that the risk of flooding would change for either upstream or downstream properties, and essentially that no evidence exists to suggest any implications with respect to flood insurance rates. Ms. Boyd also provided persuasive testimony concerning the use of 2007 preliminary FEMA/FIRM maps to provide the most conservative view of the developable area of the Property. Ms. Sartorius also provided testimony concerning the 2007 FEMA preliminary maps, stating that she considers them the best available science.

Under the “Rule of Reason,” I conclude that use of the 2007 preliminary FEMA/FIRM maps in the FEIS is appropriate: the FEIS provides a reasonably thorough discussion of development impacts, mitigation, and alternatives regarding potential impacts from flooding, and of mitigating measures, and reasonably informs the reader of the significant aspects of the probable environmental consequences of the proposed action to the Property. Use of the effective 1999 maps in the analysis, or providing comparisons using both sets of maps, is not required.

10. Use of LIDAR

The Appellants assert that the FEIS should not have used LIDAR methodology, but should have relied upon a 1999 field survey, which they contend provides more accurate information. Appellants provided testimony and evidence concerning how cut and fill calculations based on the 1999 field survey vary significant from cut and fill calculations based on the LIDAR methodology used in the FEIS. Ms. Boyd also provided testimony on this issue, stating that the use of LIDAR data and technology is more accurate than use of data from the field survey, and permits use of the “latest and greatest computer simulation” to provide precise calculations. Ms. Sartorius corroborated this testimony, stating that she is familiar with the use of LIDAR technology, that this technology is used in mapping, is accurate, and is widely accepted in use. Ms. Sartorius testified that she is satisfied that the methodology used to calculate cut and fill is accurate, and noted that the FEIS provides a reasonable discussion of impacts for this non-action proposal.

Under the “Rule of Reason,” I conclude that the use of the LIDAR methodology in the FEIS provides sufficient discussion and analysis for the reader concerning potential impacts from development of the Property, and of mitigating measures, and reasonably informs the reader of the significant aspects of the probable environmental consequences of the proposed action.

11. Development of Property

The Appellants point to comments in the FEIS summary stating that the proposed comprehensive plan amendment would allow the site to be developed in an economically feasible manner, and dispute this conclusion. The Appellants came to the hearing prepared to present argument concerning the cost of developing the Property, asserting that the costs are prohibitive and development of the Property is too costly to

be economically feasible. The City, however, correctly asserts that the issue raised by Appellants concerning the economic feasibility of developing the Property, and associated issues, is not relevant.

12. GMA Goals

Appellants contend that the FEIS is inconsistent with the Growth Management Act goals and requirements, asserting that it does not adequately address: protection of critical areas; retaining of open space; conserving fish and wildlife habitat; and the site lacks public facilities to support development. Additionally, the appeal asserts in this area that the process has not encouraged citizen participation nor coordination with other agencies. The City correctly responds that the Hearings Examiner lacks jurisdiction to determine whether the proposal violates the GMA. I note here, however, that the FEIS contains data, analysis, and discussion pertaining to the protection of critical areas, and conserving of fish and wildlife habitat, as well as addressing the lack of public utilities and facilities to serve the Property, and note that the City met its notice requirements, solicited input from other agencies and from the public, responded to comments it received, made changes to the FEIS in response to comments it received, and provided an additional hearing to receive public input. I also note that retaining open space is not one of the areas the City identified as requiring in the EIS through the DS it issued. To the extent that these matters can be construed as involving SEPA, I find, based on the “Rule of Reason,” that the process followed by the City resulted in development of an FEIS that provides sufficient discussion and analysis for the reader concerning potential impacts to critical areas²⁴, and to fish and wildlife habitat, and of related mitigating measures, and reasonably informs the reader of the significant aspects of the probable environmental consequences of the proposed action in these areas.

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²⁴ “Critical areas” means any of the following areas or ecosystems: critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, and wetlands as defined by the Growth Management Act (Chapter 36.70A RCW) and this chapter. MMC 20.05.030

V. DECISION

The appellants failed to prove that the EIS is inadequate by a preponderance of the evidence, and the SEPA appeal is hereby denied.

Under the "Rule of Reason," the FEIS provides reasonably sufficient discussion and analysis for the reader concerning potential impacts from development of the Property and of mitigating measures, and reasonably informs the reader of the significant aspects of the probable environmental consequences of the proposed action.

Respectfully Submitted,

Dated: 12/05/2013

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.