



Community Development Department
 Building | Planning | Code Enforcement
 P.O. Box 9, 230 Davidson Avenue
 (360) 225-7299, www.ci.woodland.wa.us

STAFF REPORT & RECOMMENDATION

Logan's Landing - Appeal of SEPA Threshold Determination

Appeal Hearing Date: April 21, 2022 1:00 pm

Land Use Application Nos.:	APP 22-001 (Appeal) SEP-22-003 (Case subject to appeal) SPR-22-001/CAP-22-001 (Associated Cases – not subject to this appeal)
Appellant/Applicant/Property owner:	Logan Partners, LLC Shayne Olsen P.O. Box 1940 Bend, OR 97709
Contact Person:	LeAnne M. Bremer, P.C. Miller Nash LLP 500 Broadway Street, Suite 400 Vancouver, WA 98660
Date SEPA Threshold Determination issued:	March 8, 2022
Appeal deadline:	March 22, 2022
Date appeal submitted:	March 16, 2022
Notice of Appeal issued:	April 5, 2022 Appeal hearing notice published, The Reflector, March 30, 2022
Site Location:	Parcels 50680023, 50714, 50729 and 50730, in Woodland, WA 98674.
Zoning Designation:	C-2, Highway Commercial I-1, Light Industrial
Public Hearing:	April 21, 2022. 1:00 p.m. Join from your computer, tablet or smartphone: https://meet.goto.com/656851093 More info below
Staff Report Date:	April 8, 2022
Staff Recommendation:	Uphold the SEPA threshold Determination of Significance dated March 8, 2022.

I. DESCRIPTION OF REQUEST

Logan's Landing LLC. is proposing a phased development of 8 similar buildings (total 354,640 s.f.) in the Highway Commercial (C-2) zoning district. Each building will have 972 square feet of commercial space and approximately 10,000 square feet of parking on the ground floor. Each building will have 51 residential units on the three upper floors (for a total of 408 units for the project). The entire project will be approximately 20 acres in size, including Parcel #50714 and which is zoned Light Industrial (I-1).

Based on the applicant's projections and representation provided so far, the City of Woodland issued a State Environmental Policy Act (SEPA) Determination of Significance (DS), which requires the applicant to prepare an Environmental Impact Statement (EIS) for the project. The applicant has filed an appeal of that determination.

II. LOCATION OF PROPOSED DEVELOPMENT

The property is located at the southern end of Franklin Street (Loop) off of Belmont Loop, and fronts on Old Pacific Highway, and includes tax parcels 50680023, 50714, 50729 and 50730, in Woodland, WA 98674.

III. REVIEW AUTHORITY

Chapter 2.08 (Departments Created) of the Woodland Municipal Code (WMC) created the Community Development Department (CDD) with the authority to administer the Building, Code Enforcement, and Planning divisions. WMC Title 19 is the administration chapter for the development code and WMC 19.02 authorizes CDD with the administration of the zoning code (Title 17) under its rules. In addition, WMC 19.02.030(B) authorizes the CDD director to prepare a staff report for all matters for which the planning commission or hearing examiner is reviewing or has decision making authority. This document is that staff report.

Per WMC 19.06.040(C), the *"appeal of SEPA related determinations shall be reviewed as set forth in WMC 19.06.050, 19.08.030, and 17.81.110 through 17.81.150."*

WMC 19.08.030 states:

Key:	R	=	Recommendation to Higher Review Authority	D	=	Decision
	OP	=	Open Record Predecision Hearing	SR	=	Staff Recommendation with Staff Report
	C	=	Closed Record Appeal Hearing	A	=	Appeal Decision
	ORH	=	Open Record Hearing			

	Public Works Department Staff	Development Review Committee	Hearing Examiner	Planning Commission	City Council
ENVIRONMENTAL					
CRITICAL AREAS PERMIT	D		A (ORH)		
SEPA PROCEDURAL DETERMINATION					
1. DNS	D		A (ORH) **		
2. MDNS	D		A (ORH) **		
3. DS/EIS	D		A (ORH) **		

WMC 19.06.050 authorizes the appeal of SEPA threshold determinations. Under WMC 19.06.050(A)(2), this appeal is NOT consolidated with the hearing for the underlying government action because this appeal is only an appeal of the determination of significance (DS). This SEPA appeal of the DS was initiated by a written notice of appeal, as required by WMC 19.06.050.

WMC 19.81 governs the Hearing Examiner’s purpose and authority. WMC 19.18.110 - .150 govern the preparation of the staff report, publishing notice, the open record public hearing, and the examiner’s decision.

Please note, at the time of the appeal (APL-22-001), Ordinance 1494 had been adopted and changed the above table wherein decisions by the Hearing Examiner will no longer be appealable to the City Council. Ordinance 1494 makes decisions by the examiner appealable to the Cowlitz County Superior Court with jurisdiction in accordance with RCW 36.70C, the “Land Use Petition Act” (LUPA). This update to the Woodland code has not been made to the on-line version of the WMC.

IV. FINDINGS OF FACT

Review Process | WMC 19.02 and 19.10

Finding 1: The development was determined to be subject to a Type II site plan review, a critical area permit, and SEPA. The applicant submitted documents for the land use cases on July 7th, 2021 and January 27th, 2022 and the project was determined to be not fully complete (NFC) on February 4th, 2022. The NFC letter is attached as Attachment 23.

Finding 2: Under WMC 19.02.090(D)(1), the applicant then has ninety (90) days to submit the necessary information in order to be determined to be fully complete.

Environmental Review | WMC 15.04

Finding 3: During the review of the application material, the SEPA checklist was reviewed and considered in context of the application packet and NFC letter. As lead agency, the city SEPA responsible official (SRO) had to balance the fact that a complete SEPA checklist had been submitted, but that only a NFC site plan packet had been submitted. Specifically, the missing items in the NFC packet might be considered cosmetic rather than substantive. (I.E. missing information about a boundary line adjustment, a critical area permit application form, fees, etc.)

Finding 4: Under WMC 15.04.080(B), the responsible official, has twenty-eight (28) calendar days to request additional information.

Finding 5: Based on his review of the information provided, the SRO issued a Determination of Significance (DS) on March 8th, 2022. This threshold determination was issued with a four-page cover letter outlining the reasoning for the issuance and timing of the DS. See Attachment 29.

Finding 6: While not specifically stated in the threshold determination letter, the SRO had to balance that he only had twenty-eight days to request additional information for SEPA while the applicant had no obligation to submit this additional information for ninety days.

Conclusion: The SRO therefore issued the threshold determination for the reasons discussed above and expressed in the DS letter.

Fully Complete Letter

Finding 7: The applicant submitted additional information for review with the final submittal being received on March 22nd, 2022. The city issued a Fully Complete (FC) letter on March 23rd, 2022. See Attachment 40.

Appeal Narrative

On March 16th, 2022 the appellant submitted an appeal package and a narrative outlining the appeal. That appeal narrative is attached as Attachment #46. Therein the following issues are raised and requests made:

- The DS is not supported by facts or law.

The proposal will not have a potential, significant adverse impact on the environment, which is a requirement for a DS. WAC 197-11-360. The fact that the proposal will add multi-family units to the City does not justify the DS. The proposal is a permitted use in the zone and can fully comply with all code requirements. All impacts of the proposal can be fully mitigated through application of current regulations. SEPA allows the City to make a determination that a project's impacts can be adequately addressed and mitigated for under existing development regulations. WAC 197-11-158. The pre-application report did not note any deficiencies in public facilities or infrastructure necessary to serve the project that cannot be mitigated, nor was there any hint that an EIS would be required. None of the items noted in the DS require further study. Additional argument and evidence on this point will be presented at the hearing.

- **Premature issuance**

The DS is premature because the City has not yet determined that the application to which the DS attaches is fully complete. WMC 19.06.010.D. states that within 14 days after the city has made a determination of completeness of a project permit application, the city will issue a notice of application. WMC 19.06.010.E. states: "A SEPA threshold determination may be made at the same time the notice of application is issued and the comment periods run concurrently." In addition, all public comments received on the notice of application must be received by City by the end of the comment period. WMC 19.06.010.F.

The threshold determination— in this case a DS—accompanies the notice of application, and the notice of application is not issued until the application is fully complete. In addition to this being the required order in code, it also makes sense. Otherwise, those commenting on the application will be commenting on an incomplete proposal. The applicant is entitled to supplement the application to respond to the not-fully-complete determination and the proposal could change in more than insignificant ways to become fully complete. At the very least, additional information will be provided by the applicant that the public and agencies should have the benefit of reviewing before responding to a notice of application and DS.

The City recognizes on page 2 in the DS that SEPA review should occur once a notice of application is issued:

Should the Logan's Landing site plan and other land use applications become fully [complete] during the SEPA process, a notice of application for those applications shall be issued so that the land use and SEPA processes can be completed concurrently.

By issuing the threshold determination early, and forcing this appeal, the City is unnecessarily, and without authority, complicating the application process, not to mention requiring the applicant to incur significant additional cost.

- Withdrawal requested

The applicant respectfully requests that the Hearings Examiner require the City to withdraw the DS as not supported by the facts or law, and because it is premature.

DS is not supported by facts or law.

Finding 8: In the narrative, the appellant argues that the proposal will not have potential significant adverse impacts as required for a DS per WAC 197-11-360. In reply, staff notes that WAC 197-11-360 says the responsible official “shall” issue a DS if the proposal “may” have a probably significant adverse environmental impact.

Finding 9: SEPA DS’s are rare because generally projects are of a scope and nature where they can be reviewed and mitigated for as part of the normal regulatory process. However, this is a type of project that may have probable significant adverse impacts.

Finding 10: In the pre-application conference, during a later phone call to the applicant’s consultants prior to issuing the DS, and in the DS letter itself, staff outlined a series of concerns about the probability of this project having significant adverse environmental impacts.

Finding 11: The applicant’s pre-application conference, was held on June 17th, 2021 and staff discussed its concerns with the applicant at that meeting, including the fact that these concerns had been brewing because of a number of similar applications by other applicants, and the SEPA concerns for the staff was so great, the City Council denied those applications and agreed on the need for a moratorium to resolve these issues in a reasonable way.

Finding 12: At its regularly scheduled City Council meeting on June 21st, 2021, the City issued an emergency moratorium on accepting applications for projects that involved residential uses in commercial zones. This moratorium was adopted as Ordinance 1486 on June 21st, 2021 (Ordinance 1486). See Attachment 42.

A video recording of that hearing can be viewed at:

[City Council Regular Meeting - 3rd Monday - 21 Jun 2021 - Agenda - Html \(civicweb.net\)](#)

The ordinance is Action Item G at about 1:40:00 of the video (Part 2).

Finding 13: Ordinance 1486 acknowledged that an emergency existed because of a plethora of permits involving residential uses in commercial zones and the concern that they impact the city’s ability to meet comprehensive goals and policies. It further outlines the probable impacts that could result from such developments.

Finding 14: A required public hearing for the moratorium was held on August 2nd, 2021 where Ordinance 1491 affirmed the findings of Ordinance 1486. See Attachment 44.

A video recording of that hearing can be viewed at:

[City Council Regular Meeting - 02 Aug 2021 - Agenda - Html \(civicweb.net\)](https://www.civicweb.net/Meeting/ViewMeeting.aspx?MeetingID=1491)

At approximately 15:50 of that video the appellant's attorney gave testimony in opposition to the ordinance. During that testimony it was acknowledge that the city had concerns about this type of commercial development which involved residential components in otherwise commercially zoned areas. See Attachment 54 for written comment letter dated August 16th, 2021.

Finding 15: The city adopted the moratorium ordinance, Ordinance 1491, on September 7th, 2021, after the Planning Commission had held a workshop on August 19th, 2021. The appellant's attorney submitted comments at the hearing regarding the city's code amendment workplan, so they were clearly aware that the city had concerns about the likely significant adverse impacts from this type of project in this type of area. See Attachments 43 and 45.

Finding 16: The appellant further implies that because a use is permitted, that it should not justify a DS. Staff does not agree with this assumption. This assumption precludes the idea that a development can cause impacts beyond those simply caused by the use. Not only does the city have concerns about the use, the scope of the impacts from the size, scope and location of a project, can be significant and adverse. These concerns have been clearly stated and discussed in multiple public forums in addition to the preapp, emails, and phone conversations that were held with the applicant's team.

Conclusion: Staff cannot assume that all impacts can be fully mitigated through the application of current regulations. The entire purpose of the moratorium and code amendment process is to evaluate the impact of potential impacts, as mandated by SEPA, and to seek a regulatory avenue to addressing those concerns.

Finding 17: Staff also notes that SEPA reviews are a regulatory process the city uses as part of its development review process. So, compliance with current regulations would include compliance with SEPA, and the SRO has the authority to evaluate the project for probable significant adverse impacts.

Finding 18: The appellant further argues that the preapp report did not note any deficiencies in the facilities or infrastructure. This is not exactly correct. The meeting notes do show that these issues were raised, and the conversation at the preapp conference expanded on staff concerns. It also needs to be noted that preapplication conferences are early in the development process and are general in nature. Especially when project scopes are subject to change as project plans are adjusted and developed. See Attachment 53.

Conversational advice and comments specific to project changes are not normally reflected in notes because the preapp staff report is primarily focused on regulatory and permit process issues, not with technical review and evaluation of a project. Project review at the technical level is performed at the time of preliminary application, not the preapp. But the conference notes do note the concern about the scope of the proposal in a commercial district (zoning) as well as impacts to critical areas, engineering/fire issues regarding access, traffic, and utilities. The staff discussed these issues with the Applicant, including the scope of the city's concerns about impacts for this type of use in the commercial zone.

The discussion included a warning about zoning and the moratorium that the city had been working on, which ultimately led to the applicant's attorney giving testimony and submitting comments at the council meeting four days later (as discussed above). The moratorium was not in the preapp notes but the applicant's team participation occurred specifically because it was raised during the conversation at the preapp.

Finding 19: One final point raised by the appellant is that there was no hint that a DS would be issued. However, staff confirm that the potential need for additional information was repeatedly expressed to the Applicant, and the Staff warned that the need to address these concerns was serious.

Given the time constraints to make a determination and the NFC status of the site plan, staff gave the applicant's consultants a call and again raised these issues. The consultants assured that they were working on providing the additional information needed.

Whether the consultant was working on getting the application to a fully complete status, or whether they understood the implications of the call, staff cannot say for sure. This is why the DS letter went into such detail on the timing and scope of the determination.

By submitting applications, the applicant was pressing for review to start as a means to avoid the moratorium. If there wasn't a concern about vesting the application submittal would have been more complete and have addressed the city's concerns about impacts.

Premature issuance.

Finding 20: The timing for the DS has been discussed above and is a fundamental part of the DS letter that accompanied the SEPA DS form. See Attachment 29.

Finding 21: As stated, SEPA encourages agencies to integrate agency activities and reviews at the earliest possible time, citing the relevant WACs. The DS letter goes on to state, as quoted by the appellant in the appeal narrative, that additional information will

be accepted and that, if possible, the project would be determined fully complete if provided in a timely manner.

Finding 22: SEPA clearly provides for the SRO to be able to review and reevaluate the information available when making a SEPA threshold determination. Staff can and will continue to evaluate information that is submitted as part of this SEPA review. In fact, the appellant quoted the exact section which authorizes that authority.

WAC 197-11-360(4) authorizes the lead agency to withdraw a DS and to issue a Determination of Non-Significance (DNS) at any time if in their judgement that the proposal has been changed to result in no probable significant adverse environmental impacts.

Finding 23: Staff reviewed the information submitted subsequent to the SEPA DS issuance and determined that the site plan application and the critical area permit were fully complete. Staff accordingly issued a fully complete letter to reflect this change in status. See Attachment 40.

However, staff then had to place the site plan review on hold pending the outcome of the SEPA appeal. Staff did this because the outcome of the appeal will affect the Notice of Application that is required by code. See Attachment 41.

Finding 24: Staff also reviewed the fully complete submittals to determine whether it would affect the SEPA threshold determination but is still not convinced that a different determination should have been issued.

While the site plan is now “fully complete,” staff concerns about the technical analysis remain, and the discussed but unresolved issues continue to make the SRO believe that a DS must be issued before the project moves forward. Furthermore, the SRO is not confident that there is adequate information presently before him that would allow him to otherwise formulate mitigation that would warrant a Mitigated Determination of Non-Significance (MDNS).

Finding 25: The appeal narrative implies that the SEPA determination should have waited for the rest of the fully complete submittals to be received. Staff would disagree with that assertion because none of the information on the NFC list of items for the project could convince the SRO that a DNS is warranted for the project based on the evidence thus far provided. The city’s concerns about adverse impacts are not directly related to items on the NFC list. If additional documents were provided in the future, staff would reevaluate that item as part of the scoping and EIS process.

Finding 26: The problem that staff has is that the information submitted by the applicant thus far does not address the city’s concerns about significant adverse

impacts, as to this application. This opinion is based on the concern about the lack of adequate information, even after the project has been determined as fully complete.

Finding 27: The appeal narrative further asserts that the threshold determination cannot be made until all of the information has been submitted and the Notice of Application (NOA) issued. This assumes that the NOA and SEPA threshold determination have to be issued at the same time. However, as discussed in the DS letter, that is not a correct assumption. The regulatory demands of the state Administrative Code is as stated above and in the DS letter.

The applicant's opinion, as expressed in this appeal, is also based on the mere assertion that there will be no significant adverse environmental impacts from their project. Staff is not confident that that is true. Staff believes, based on the evidence thusfar, that it is likely there will be significant adverse environmental impacts while the WAC only requires the SRO to believe there "may" be "probable" impacts. The SRO therefore has the right and the duty, under SEPA, to ask for additional information.

Finding 28: Staff does however recognize that, as noted by the appellant in the appeal narrative, that additional supplemental information can and should continue to be reviewed and provided to reviewing agencies. Staff agrees and will accept supplemental information for this project whether it is in the form of an EIS analyzing the project, or additional submittals that can either address the city's concerns or demonstrate that impacts can be mitigated to non-significant levels.

Finding 29: Lastly, the appellant's narrative argues that the timing of the threshold determination was early and unnecessarily complicated, delaying the process at a significant cost to the applicant. As stated in the DS letter, the threshold determination was made in a reasoned manner based on the evidence provided by the Applicant so far and on the staff's best professional judgement at this time. In the scoping section, the letter lays out the areas of concern and the alludes to the areas of specific concern for causing significant adverse impacts to both the built and natural environment.

At the top of Page 2, the DS letter specifically opines that this information is provided in a manner as to facilitate a timely review (by circulating project documents before the application is fully complete). This was done not only to facilitate an early review by commenting agencies and get their input, but to also advise the applicant and their consultants about the issues of concern staff felt still needed to be addressed in the application. (In other words, these issues that were not addressed by the list of NFC items.)

Withdrawal requested

Finding 30: Finding that the DS was issued prematurely would only cause staff to re-start the threshold determination process.

Finding 31: The city would likely issue a new DS again, as mandated by SEPA, because there are still concerns about significant adverse environmental impacts. If staff did not have concerns about those impacts, staff would voluntarily withdraw the DS and issue a new threshold determination as allowed by WAC 197-11-360.

Finding 32: Staff notes that the project has not “changed” so a withdraw now of the DS under WAC 197-11-360 is not warranted. At present, the project is essentially the same as that submitted by the Applicant for the preapplication in 2021. The fact that they have provided additional information but not changed their project to address city concerns about its impacts, cannot, and should not, justify a different threshold determination.

Conclusion: Staff cannot conclude that withdrawal of the threshold determination would have a beneficial influence on the review of the project. It would only serve to delay the process by restarting the SEPA process.

Review & Appeal Authority | WMC 19.08.030

Finding 33: The table in WMC 19.08.030, as amended by Ordinance 1494, delegates authority to review appeals to the Hearing Examiner (as discussed in the review authority section above). WMC 19.08.030 also clearly states that all applicable administrative appeals shall be exhausted prior to initiation of judicial review.

Conclusion: This staff report and the scheduled appeal hearing before the hearing examiner comply with this standard. If the examiner’s decision is appealed per RCW 36.70C such appeal will also be consistent with this WMC standard.

Public Comment

None received at the time the staff report was published.

V. STAFF RECOMMENDATION

Based on WMC 15.04 and the WACs cited in the staff report and the SEPA threshold Determination of Significance, and letter issued by the city, staff recommends that the Examiner uphold the Determination of Significance issued by the city SEPA Responsible Official on March 8th, 2022.

VI. APPEAL PROCEDURE

Ordinance 1494 refers appeal actions to WMC 19.08 and specifically 19.08.030, where appeals of actions by the Hearing Examiner are appealable to the county superior court with jurisdiction in accordance with RCW 36.70C the Land Use Petition Act. Accordingly, parties with standing have 20 calendar days to file a timely appeal with the court per RCW 36.70C.

The City asks that appellants filing an appeal with superior court please submit a copy of the appeal packet to the City. Thank you.

Staff Contact: Travis Goddard, Community Development Director
City of Woodland
P.O. Box 9
230 Davidson Ave
Woodland, WA 98661
goddardt@ci.woodland.wa.us

Date: 8 April, 2022

Signature: 
Travis Goddard, Community Development Director

cc:

Hearing Examiner
Appellant
Property Owner
Development Review Committee
Parties of Record
Department Heads
Building Official
City Council
Mayor
File
Counter Copy
Website

ATTACHMENTS

See attached list