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CITY OF MONROE
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COMMUNITY DEVELOPMENT

BEFORE THE HEARING EXAMINER
FOR THE CITY OF MONROE, WASHINGTON

In Re: Anderson Appeal

File #AP2012-01

EAST MONROE ECONOMIC
DEVELOPMENT GROUP LLC'S
REQUEST FOR RECONSIDERATION OF
THE HEARING EXAMINER'S
GRANTING OF APPEAL OF THE FINAL
PHASED ENVIRONMENTAL IMPACT
STATEMENT

I. RELIEF REQUESTED

Applicant East Monroe Economic Development Group LLC's ("East Monroe"), respectfully requests the Examiner's reconsider his granting of the appeal of the Final Phased Environmental Impact Statement ("FPEIS").

Specifically, East Monroe requests:

1. That the Examiner reverse entirely or, in the alternative, modify his decision to find that the FPEIS is appropriate and legally sufficient provided that the City of Monroe condition future development on additional specific environmental review including, but not

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1 limited to, a development agreement pursuant to RCW 36.70B.170 (formerly referred to as
2 concomitant or contact re-zones agreement) with specific land owners.

3
4 **II. EVIDENCE**

5 This Motion relies upon and incorporates the evidence and materials submitted in
6 these proceedings to date.

7 **III. AUTHORITY**

8
9 Requests for reconsideration of the Examiner's decision are authorized pursuant to
10 MMC 21.50.080.

11 **IV. ANALYSIS**

- 12 **A. The FPEIS does assess the broad impacts of a range of potential future**
13 **development; it appropriately permits the City to condition future**
14 **approvals on more intensive environmental analysis and conditions,**
consistent with WAC-197-11-060(5)

15 The Examiner's decision states of the FPEIS, "It fails to assess any impacts, broad or
16 otherwise." Hearing Examiner Decision p. 16, Section 6. While the decision correctly
17 observes the FPEIS repeatedly states that land use designation changes (in and of themselves)
18 have no immediate environmental impact, it is simply not accurate to state that there is *no*
19 assessment of impacts in the document. The FPEIS correctly states, "Potential future
20 development actions that will be allowed with the changed land use designation and
21 concomitant¹ rezone may have the following impacts...". FPEIS p.1. The FPEIS then goes on
22 to list, and throughout the document assesses, potential impacts at a high level of detail

23 ¹ It is worth briefly addressing the discussion of "concomitant" zoning. The fact that a development agreement
24 pursuant to RCW 36.70B.170 (which prior to 1995 was more often known as a "contract" or "concomitant"
25 zoning) is not part of the FPEIS does not mean that such an agreement could not be part of the additional
26 environmental review and mitigation contemplated by the FPEIS, Mr. Fielberg was simply correctly observing
that changes in zoning classifications cannot proceed without a concomitant change in the comprehensive plan
designations. A development agreement with individual property owners might be precisely the vehicle to
address more specific environmental impacts and mitigation of the same and would be entirely consistent with
the FPEIS.

1 appropriate for a phased impact statement without specific development proposals. A Phased
2 review under SEPA, "...assists agencies and the public to focus on issues that are ready for
3 decision and exclude from consideration issues already decided *or not yet ready*." WAC 197-
4 11-060(5)(b) [emphasis added]. The Examiner is requesting a level of detail not required by
5 the law at this point. For example, the decision states as a "Conclusion of Law" that:

6 "Commercial development that would logically locate along the arterial highway are
7 usually land intensive and would want to maximize use of the available, non-NGPA-
8 restricted portions of the site. That would require fill – lots of fill. The FPEIS is
9 inadequate as a matter of law for failing to include any analysis of the impact of
10 extensive filling of the Project Area" Hearing Examiner Decision p. 17, Section 9.

11 But this type of analysis is entirely appropriate once a specific agreement or development
12 proposal is before the City, and the FPEIS includes the identification of potential impacts to
13 the earth and water systems (as well as potential mitigation for the same) that are consistent
14 with filling required for a range of land uses. An FPEIS is not inadequate as a matter of law
15 because it fails to play out in detail every potential impact under different specific
16 development scenarios. The legal standard is whether the council has sufficient information
17 to make a reasoned decision, not that it have every potential impact spelled out in detail under
18 every development scenario possible under the zoning. The lack of specific discussions of the
19 amount of fill required for a particular land use which may or may not ever occur, is not
20 required for a FPEIS and is much more appropriate for development specific review.

21 Indeed, the FPEIS discusses in some detail: 1.) impacts to earth as well as potential
22 mitigation for the same (FPEIS p10-11), 2.) impacts to ground and surface water resources as
23 well as potential mitigation for the same (FPEIS p.11-16), 3.) impacts to animals, as well as
24 potential mitigation for the same (FPEIS p.16-18), 4.) noise impacts as well as potential
25 mitigation for the same (FPEIS p.18-19); 5.) land and shoreline use impacts as well as
26 potential mitigation for the same (FPEIS p. 19-24), 6.) aesthetic impacts as well as potential
mitigation for the same (FPEIS p. 24-25), 7.) light and glare impacts as well as potential

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1 mitigation for the same (FPEIS p. 25), 8.) transportation impacts as well as potential
2 mitigation for the same (FPEIS p. 25-27), 9.) public service impacts as well as potential
3 mitigation for the same (FPEIS p. 27-28) and 10.) utility impacts as well as potential
4 mitigation for the same (FPEIS p. 28-30).

5 It is a factual error to state that the FPEIS “fails to assess *any* impacts broad or
6 otherwise”, [emphasis added] and the Examiner should reverse or modify the earlier decision
7 to recognize this and/or provide some opportunity and guidance to staff to supplement the
8 FPEIS where he deems the discussion to be insufficiently detailed.

9 **B. The Decision is in error in stating that the process has avoided any
10 discussion of cumulative impacts.**

11 The decision ignores the reality that the discussion of potential impacts and mitigation
12 to the same (described in detail above) is entirely consistent with the development of the
13 entire Project Area. The FPEIS does not limit its discussion artificially to a single parcel or
14 property but rather included a broad description of impacts consistent with the development of
15 the entire area. Indeed the entire FPEIS is a high level review of *all* of the impacts to every
16 part of the Project Area. It assumes a development of the entire area without assuming the
17 specific contours and nature of individual development projects. The discussion in the FPEIS
18 is not avoiding cumulative impacts; it assumes them and discusses them at a level appropriate
19 for a phased review.

20 **C. The Decision is in error by failing to recognize the range of actions the
21 City Council may enact that the FPEIS provides sufficient information to
22 make a reasoned decision on.**

23 The City Council in Monroe may well require a Development Agreement pursuant to
24 RCW 36.70B.170 before permitting any rezone of the Project Area. Such an agreement
25 would afford the opportunity for the community, adjacent neighbors, outside environmental
26 groups and state agencies to weigh in on the particular details of specific land uses. Nothing
in the FPEIS precludes, and the FPEIS seems to contemplate such a result in that it restates

1 (as the Examiner has noted) that additional impact analysis and mitigation requirements will
2 be imposed when more specific proposals emerge.


3 The Examiner could conditionally deny the appeal contingent upon the City agreeing
4 to require a Development Agreement pursuant to RCW 36.70B.170. This would allow the
5 City to build on the work done to date, honor legitimate desires for additional information on
6 environmental impacts, and make sure that future applicants understood that a specific
7 agreement would be required before any development could occur. While this result might
8 seem unusual for an appeal, it is consistent with the de novo standard of review and is not
9 expressly prohibited by law. Moreover, this result would afford the appropriate "substantial
10 weight" to the City's determination by giving more definition and specificity to what the
11 FPEIS states repeatedly and consistently, more analysis and review is required before
12 individual parcels are developed. The City and the Council are well prepared to develop such
13 agreements and a conditioned denial of the appeal would afford staff and Council the
14 opportunity to spell out the additional work required to the satisfaction of the Examiner and
15 the Appellant.

16 V. CONCLUSION

17 For the foregoing reasons, East Monroe respectfully requests that the Examiner reverse
18 his decision and Deny the Appeal of the FPEIS outright or, in the alternative, provide a
19 conditional denial with additional direction to the City on specific subsequent steps (like a
20 Development Agreement) that would permit the FPEIS to stand.

21 DATED this 3rd day of August, 2012.

22 THE NORTH CREEK LAW FIRM

23
24 By: 
25 Mark C. Lamb, WSBA #30134
26 Attorney for Applicant East Monroe

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