



Appeal


Appeal of a Determination of a Responsible County Official

Name: Spanaway Concerned Citizens
Phone: (253) 627-1091 Email: gabe@smithalling.com
Address: 1501 Dock Street
City, State: Tacoma, WA Zip: 98402

Identify the decision or order that is being contested **and attach a copy of the decision and order along with the applicable fee.**

Spanaway Concerned Citizens appeals the Mitigated Determination of Non-Significance issued in Pierce County Application Number 1013477. A copy of that decision is attached as Exhibit 1.

Your statement explaining why the decision or order was in error. (Attach a separate sheet if necessary)
Please see Spanaway Concerned Citizens' formal SEPA Appeal attached as Exhibit 2.



Property Owner Signature

12-14-23

Date

Gabriel Hinman

Print Name For Spanaway Concerned Citizens

For Office Use Only	
App or Case Number	
Parcel Number	
Last Day to File	

EXHIBIT 1



Mitigated Determination of Nonsignificance (MDNS)

Environmental Application Number: 1013477

Project ID Number: 603960

Related Application Numbers: 1013002, 1013003, 1013476, 1013480, 1013482, 1013483, 1013560, 1018652

Parcel Numbers: 031929-3002, -3004, -4046 and -4135

Action: Planned Development District (PDD)/Conditional Use Permit: Pierce County Village

Proposal: The applicant requests Planned Development District (PDD)/Conditional Use Permit approval for development of a shared housing village. The shared housing village will consist of a mix of sleeping and dwelling units along with support and administration buildings for the residents and Tacoma Rescue Mission (TRM) staff.

The shared housing village will consist of the following elements:

- 189 - park model style recreational vehicles (399 sq. ft. max. size)
- 96 - micro sleeping units (300 sq. ft. max. size)
- 3 - single-family dwellings for volunteers (800 sq. ft. max. size)
- 1 - existing single-family dwelling for volunteers or staff
- 10 - bath/laundry buildings
- 2 - communal kitchens
- Community support buildings, i.e., living room, art, aquaponics, market, village commons, and agriculture buildings
- Administrative building
- 3 - maintenance buildings
- Community farm
- Community garden
- Dog park
- Civic building
- Security building
- Associated access drives, 331 parking spaces, and pedestrian walkways.

The density of the shared housing village will be 3 dwelling units per net developable acre, i.e., 217 dwelling units. There are 72.71 net developable acres.

The project is to be developed in four phases:

Phase 1A: 24 park models, 33 micro sleeping units, 1 volunteer unit, 1 existing home for staff, 2 bath/laundry buildings, 1 communal kitchen, aquaponics, market, village commons, agriculture buildings, civic building, community farm, associated access drives, parking and pedestrian walkways.

- Phase 1B: 40 park models, 14 micro sleeping units, 2 bath/laundry buildings, associated access drives, parking and pedestrian walkways.
- Phase 1C: 37 park models, 16 micro sleeping units, 1 volunteer unit, 1 bath/laundry building, dog park, associated access drives, parking and pedestrian walkways.
- Phase 2: 88 park models, 33 micro sleeping units, 1 volunteer unit, 5 bath/laundry buildings, 1 communal kitchen, living room and art buildings, community farm, associated access drives, parking and pedestrian walkways.

TRM will provide onsite wrap-around services for the Village residences. Since the Village residents will pay rent, TRM will provide employment opportunities for the residents such as onsite micro enterprises and community gardening/low-scale agriculture. The civic building and future agriculture building will also provide employment opportunities for the residences while also providing a means of income generation for the TRM and connection with the community.

The project is located on a four-parcel, 86.32-acre site. The site will be served by sanitary sewers and public water and will be accessed from Spanaway Loop Road South.

Location: The site is in the Residential Resource (RR) zone classification of the Parkland Spanaway Midland Communities Plan area, located at 1609 176th Street South and 17320 Spanaway Loop Road South, Spanaway, WA, within the South ½ of Section 29, T19N, R3E, W.M., in Council District #3.

Proponent: Tacoma Rescue Mission

Conclusions of Responsible Official:

The Responsible Official concludes that a Mitigated Determination of Nonsignificance (MDNS) may be issued for this proposal. This is based upon staff review of the environmental checklist and attachments, other information on file with Pierce County, and County regulations governing the project.

Reliance on Existing Plans, Laws, and Regulations

Pierce County has determined that the requirements for environmental analysis, protection, and mitigation measures have been addressed in the development regulations and comprehensive plan adopted under Chapter 36.70A RCW, and in other applicable local, state, or federal laws or rules, as provided by RCW 43.21C.240 and WAC 197-11-158. Pierce County will require additional mitigation measures under SEPA to address development impacts that are not adequately addressed in the County's existing development regulations and comprehensive plan adopted under Chapter 36.70A RCW, or in other applicable local, state, or federal laws or rules, as provided by RCW 43.21C.240 and WAC 197-11-158.

Findings:

1. A Floodplain Evaluation Memo dated May 9, 2023, by AHBL, Inc. was submitted for review. Floodplain Services has reviewed the memo and determined that a flood study permit was not required.
2. A Traffic Impact Analysis, revision date of November 8, 2023, was prepared by Heath & Associates. This study was determined acceptable by Pierce County Planning and Public Works, Traffic Engineering Section.
3. A preliminary storm drainage report, dated May 2023, was prepared by AHBL, Inc. This study was determined acceptable by Pierce County Planning and Public Works, Development Engineering Division.
4. A Geotechnical Report and Landslide Hazard Assessment, dated June 12, 2023, was prepared by Migizi Group, Inc. The report and assessment were determined acceptable by Pierce County Planning and Public Works, Development Engineering Division.
5. A wetland and fish and wildlife habitat assessment report titled; "Shoreline, Wetland and Fish and Wildlife Habitat Assessment, Tacoma Rescue Mission," dated May 15, 2023, and "Tree Conservation Plan," dated August 7, 2023, was prepared by Soundview Consultants. The report and plan have been reviewed by the Environmental Biologist Section of the Land Use and Environmental Review Division and have been found to meet the requirements of Title 18E Development Regulations - Critical Areas, subject to Final Wetland and Regulated Fish and Wildlife Species and Habitat Conservation Area Approval.
6. A Cultural Resource Assessment of the Planned Development District at 1609 176th Street South (Parcels 0319293004, 0319293002, 0319294135, and 0319294046), Spanaway, Pierce County, Washington, dated October 3, 2023, and prepared by Drayton Archaeology has been submitted on October 4, 2023, and routed to affected tribes and the Washington State Department of Archaeology & Historic Preservation (DAHP) for review on October 4, 2023. Comments were received from the Nisqually Indian Tribe, Puyallup Tribe of Indians, Squaxin Island Tribe and the Washington State Department of Archaeology and Historic Preservation. Neither the Tribes nor State requested changes to the cultural assessment.

Mitigation:

The Responsible Official has determined that the proposal will not have a probable significant impact on the environment, and an Environmental Impact Statement (EIS) will not be required under RCW 43.21C.030(2)(c), only if the following conditions are met. This decision was made after review of a completed environmental checklist, other information on file with Pierce County, and existing regulations. This information is available to the public on request. These mitigation measures are required as authorized under the Substantive Authority of SEPA in accordance with the guidelines contained in Chapter 18D.10 of the Pierce County Code and shall be implemented by the applicant.

Prior to final occupancy approval of the first building in Phases 1A, 1B or 1C, the following mitigation measures are required:

1. *The Applicant shall be required to restrict the northern driveway to left-turn and right turn movements inbound and right-turn only outbound. The design and installation of the driveway and infrastructure to restrict left-turns outbound shall be coordinated with Pierce County. The left-turn outbound driveway restriction shall be installed when the northern driveway is installed. The Applicant shall be required to install illumination and interconnect conduit and adequate Right-of-Way as required under Pierce County Code.*
2. *For mitigation of traffic impacts to Pierce County roadways, the proposed building site shall pay a traffic impact fee (TIF) pursuant to Pierce County Code. The exact TIF amount will be determined at the time of application review by Development Engineering for the building permit and is subject to rates in effect at the time payment is made, there is no vesting of TIF to the building permit application date.*
3. *Applicant is required to work with Sewer Utility during pretreatment review to produce an education plan to avoid illicit discharges into the public sewer system. This will include signage to be posted in communal areas and educational material reviewed with each tenant prior to occupancy.*

Prior to final occupancy approval of the first building in Phase 2, the following mitigation measures are required:

4. *The Applicant shall be required to construct a roundabout at Spanaway Loop Road South and 174th Street South. The roundabout design shall conform to Pierce County and WSDOT standards. The design vehicle for the roundabout shall be a WB-40. Roundabout design elements shall include a center island, a truck apron, raised splitter islands with cut pedestrian refuge area, Rectangular Rapid Flashing Beacons (RRFB's) for the marked crosswalks on each leg, illumination and interconnect conduit and adequate Right-of-Way as required under Pierce County Code. The roundabout shall be constructed prior to the 101st occupant or occupancy of the 101st tiny home, whichever comes first. In addition, the roundabout shall be constructed prior to occupancy of the proposed agricultural/ community building or civic building.*
5. *The Applicant shall be required to restrict the southern driveway to right-in/right-out movements. The design and installation of the driveway and infrastructure to restrict the driveway to right-in/right-out movements shall be coordinated with Pierce County. The right-in/right-out driveway restriction shall be installed when the southern driveway is installed. Provide illumination and interconnect conduit and adequate Right-of-Way as required under Pierce County Code.*
6. *The Applicant may be required to dedicate additional Right-of-Way to maintain Entering Sight Distance sight lines within County Right-of-Way. Right-of-Way dedication will be determined during plan review.*
7. *For mitigation of traffic impacts to Pierce County roadways, the proposed building site shall pay a traffic impact fee (TIF) pursuant to Pierce County Code. The exact TIF amount will be determined at the time of application review by Development Engineering for the building permit and is subject to rates in effect at the time payment is made, there is no vesting of TIF to the building permit application date.*

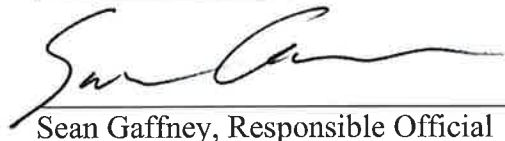
This Mitigated Determination of Nonsignificance (MDNS) is issued under WAC 197-11-350. The lead agency will not act on this proposal for 14 days from the date of issue. Comments must be submitted by close of business on the comment deadline date. The Responsible Official will reconsider the MDNS based on timely comments and may retain, modify, or, if significant adverse impacts are likely, withdraw the MDNS. If the MDNS is retained, it will be final after the expiration of the comment deadline. No permits may be issued, and the applicant shall not begin work, until the comment deadline has expired and any other necessary permits are issued.

- ☐ This MDNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the MDNS. Appeals must be filed within 14 days of the issue date.
- ☒ This MDNS is issued under WAC 197-11-350; the lead agency will not act on this proposal for 14 days from issue date. Appeals must be filed within 14 days of the end of the comment period.

Responsible Official: Sean Gaffney
Position/Title: Manager, Land Use and Environmental Review, PPW
Address: 2401 South 35th Street, Room 2, Tacoma, WA 98409

Staff Contact: Robert Jenkins, Current Planning Supervisor
rob.jenkins@piercecountywa.gov | (253) 798-7016

Issue Date: November 16, 2023


Sean Gaffney, Responsible Official

Appeal:

Pursuant to RCW 43.21C.075, Section 18D.10.080 of Title 18D, Pierce County Development Regulations-Environmental and Chapter 1.22 of Title 1, General Provisions, decisions of the Responsible Official may be appealed. Appeals are filed with appropriate fees and Notice of Appeal at the Planning and Public Works Department, located at the Development Center, in the Public Services Building, 2401 South 35th Street, Room 2, Tacoma, WA 98409 or filed electronically at this link: <https://www.co.pierce.wa.us/903/Apply-for-a-Permit>. You should be prepared to make specific factual objections. Appeals must be filed within 14 days of the expiration of the comment deadline.

Note: The issuance of this MDNS does not constitute project approval. The applicant must comply with all other applicable requirements of Pierce County, federal, and state agencies, and/or the Hearing Examiner prior to receiving construction permits.

Pierce County Online Permit Information:

<https://palsonline.co.pierce.wa.us/palsonline/#!/permitSearch/permit/departmentsStatus?applPermitId=1013477>





PierceCountyWa.gov/PPW

Jen Tetatzin, PE, PMP - Director

November 16, 2023

AHBL, Inc.
Attn: Todd Sawin, P.E.
2215 North 30th Street, Suite 300
Tacoma, WA 98406
TSawin@ahbl.com

**RE: Planned Development District (PDD)/Conditional Use Permit: Pierce County Village
SEPA Application Number: 1013477
Related Application Numbers: 1013002, 1013003, 1013476, 1013480, 1013482,
1013483, 1013560, 1018652**

Dear Mr. Sawin:

Enclosed/attached you will find a Mitigated Determination of Nonsignificance (MDNS) issued by Pierce County on the above referenced proposal.

The MDNS is also being sent to agencies other than Pierce County Departments that may be requiring permits for this proposal, in accordance with WAC 197-11-350.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Jenkins".

Robert E. Jenkins
Current Planning Supervisor

RJ:sl
11 Pierce County Village PDD MDNS-RJ.docx

Enclosure/attachment

cc: Tacoma Rescue Mission, Applicant, Attn: Duke Paulson, Exec. Director, dukep@trm.org
Reviewing agencies that received Environmental Checklist/site plan on July 6, 2023

PIERCE COUNTY
NOTICE OF MITIGATED DETERMINATION OF NONSIGNIFICANCE

Action: Planned Development District (PDD)/Conditional Use Permit: Pierce County Village
Proponent: Tacoma Rescue Mission
Application: 1013477

Notice is hereby provided in accordance with PCC, Chapter 18.80 and Section 18D.40.050, and WAC 197-11-510 that Pierce County has issued a Mitigated Determination of Nonsignificance (MDNS) on the following proposal:

The applicant requests Planned Development District (PDD)/Conditional Use Permit approval for development of a shared housing village. The shared housing village will consist of a mix of sleeping and dwelling units along with support and administration buildings for the residents and Tacoma Rescue Mission (TRM) staff.

The shared housing village will consist of the following elements: 189 park model style recreational vehicles (399 sq. ft. max. size); 96 micro sleeping units (300 sq. ft. max. size); 3 single-family dwellings for volunteers (800 sq. ft. max. size); 1 existing single-family dwelling for volunteers or staff; 10 bath/laundry buildings; 2 communal kitchens; Community support buildings, i.e., living room, art, aquaponics, market, village commons, and agriculture buildings; Administrative building; 3 maintenance buildings; Community farm; Community garden; Dog park; Civic building; Security building; Associated access drives, 331 parking spaces, and pedestrian walkways.

The density of the shared housing village will be 3 dwelling units per net developable acre, i.e., 217 dwelling units. There are 72.71 net developable acres. The project is to be developed in four phases.

TRM will provide onsite wrap-around services for the Village residences. Since the Village residents will pay rent, TRM will provide employment opportunities for the residents such as onsite micro enterprises and community gardening/low-scale agriculture. The civic building and future agriculture building will also provide employment opportunities for the residences while also providing a means of income generation for the TRM and connection with the community.

The project is located on a four-parcel, 86.32-acre site. The site will be served by sanitary sewers and public water and will be accessed from Spanaway Loop Road South.

Pierce County, acting as lead agency, has determined that the proposal will not result in significant adverse impacts on the environment, if the conditions in the MDNS are met. Pursuant to RCW 43.21C.030(2)(C) an Environmental Impact Statement (EIS) will not be required. This decision was made after the review of a completed environmental checklist and other information on file. This information is available to the public on request.

This MDNS is issued under WAC 197-11-350. Pierce County may not act on this proposal prior to December 1, 2023. Comments must be submitted by close of business on November 30, 2023.

An appeal of this determination must be filed no later than December 14, 2023 online at www.co.pierce.wa.us, or at the Development Center, Planning and Public Works Department, Pierce County Public Services Building, 2401 S. 35th St., Room 2, Tacoma, WA 98409 by filing the appropriate fee and Notice of Appeal. You should be prepared to make specific factual objections. Review Chapter 1.22 of Title 1, General Provisions for additional information on the appeal process, including Content of Notice of Appeal (1.22.090.C). Contact the Development Center, 798-7210 to read or ask about the procedure for appeals.

THANK YOU for your legal submission!

Your legal has been submitted for publication. Below is a confirmation of your legal placement. You will also receive an email confirmation.

ORDER DETAILS**Order Number:**

IPL0148744

Order Status:

Submitted

Classification:

Legals & Public Notices

Package:

TAC - Legal Ads

Final Cost:

\$79.20

Payment Type:

Account Billed

User ID:

IPL0019393

ACCOUNT INFORMATION

PIERCE COUNTY IP

2401 S 35TH ST RM 2

TACOMA, WA 98409-7960

253-798-7200

jeff.luxton@piercecountywa.gov

PIERCE COUNTY

TRANSACTION REPORT**Date**

November 16, 2023 4:21:18 PM EST

Amount:

\$79.20

SCHEDULE FOR AD NUMBER IPL01487440

November 20, 2023

The News Tribune (Tacoma) Print

PREVIEW FOR AD NUMBER IPL01487440**PIERCE COUNTY
NOTICE OF MITIGATED DETERMINATION OF NONSIGNIFICANCE**

Action: Planned Development District (PDD)/Conditional Use Permit:

Pierce County Village

Proponent: Tacoma Rescue Mission

Application: 1013477

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Publication Dates

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EXHIBIT 2

BEFORE THE HEARING EXAMINER FOR PIERCE COUNTY

SPANAWAY CONCERNED CITIZENS

Application No. 1013477

Appellant,

SEPA APPEAL

v.

PIERCE COUNTY,

Respondent,

and

THE RESCUE MISSION,

Applicant.

I. INTRODUCTION AND RELIEF REQUESTED

Spanaway Concerned Citizens (“SCC”), by and through its counsel of record, Gabriel Hinman of Smith Alling, P.S., submits this State Environmental Policy Act (“SEPA”) Appeal from Pierce County (the “County”)’s Mitigated Determination of Non-Significance (“MDNS”) entered in Application Number 1013477. SCC appeals the County’s decision to the Pierce County Hearing Examiner pursuant to Pierce County Code (“PCC”) 1.22.080(B)(1)(k).

Project Applicant The Rescue Mission (“TRM” or “Applicant”) proposes to construct what it calls the “Community First Village” (the “Village” or the “Project”), a Planned Development District (“PDD”) consisting of a numerous permanent residences, civic and recreational buildings and other structures, and agricultural facilities in a wooded wetland zoned

1 and regulated for particular environmental sensitivity. The State Environmental Policy Act
2 (“SEPA”) does not prohibit the Applicant from proceeding with its Project. But it does require
3 that it do so with eyes wide open to the environmental impacts and consequences of its Project.
4 “SEPA demands a ‘thoughtful decision-making process’ where government agencies
5 ‘conscientiously and systematically consider environmental values and consequences.’” *Wild*
6 *Fish Conservancy v. Dep’t of Fish & Wildlife*, 198 Wn.2d 846, 873, 502 P.3d 359 (2022)
(quoting *ASARCO, Inc. v. Air Quality Coalition*, 92 Wn.2d 685, 700, 601 P.2d 501 (1979)).

7 In this case, Pierce County, as lead SEPA agency for the Project, failed to carry out its
8 statutory and regulatory duty to study, evaluate, and analyze the likely adverse environmental
9 impacts stemming from this Project. Instead of reviewing the Project’s environmental impacts,
10 it issued an MDNS and excluded any necessary mitigation requirements relating to endangered
11 species on the property, old growth forests, on-site wetlands, and many other adverse impacts.
12 A full Environmental Impact Statement (“EIS”) is necessary to evaluate this Project’s adverse
13 environmental impacts. Accordingly, the Hearing Examiner should remand the County’s
MDNS to the County for a Determination of Significance (“DS”) and require that an EIS be
prepared.

14 II. FACTS

15 On May 23, 2023, Applicant submitted various documents to Pierce County, requesting
16 authorization from the County “to construct a Planned Development District (PDD) consisting
17 of a shared housing village with community support buildings and gathering spaces, a civic
building, and agriculture building to support the staff and residences of The Village and allow
for public interaction with the residences.” PDD Application (May 23, 2023) at 1.

18 On August 8, 2023, the Applicant submitted a SEPA Environmental Checklist to the
19 County, which stated, among other things, the following:

- 20 • The Project is located in a possible “landslide and erosion hazard area[]”
- 21 • The Project intends to move approximately 50,000 cubic yards of soil and pave more
than 12.5 acres
- 22 • Construction will result in increased air pollution

- Four regulated wetlands and two regulated streams are all on the planned development site
- The regulated streams contain known endangered salmon and trout
- The applicant is not aware whether additional endangered or threatened species reside on or make use of the site
- The Project will include construction of a bridge across and through these wetlands and streams
- The site lies within a mapped flood area
- Wetlands and creeks on the site are hydrologically connected to nearby Spanaway Lake, which has historically faced known water quality challenges
- Significant Oregon White Oak trees are present on the site
- Power and sewer lines will be expanded onto the site
- The project proposes construction of a pedestrian bridge across the protected wetlands
- At least five separate agencies have designated the site as a critical area¹
- The Project will include “257 full time residences” as well as live-in staff
- The Project will include agricultural facilities and at least one dog park

Unmentioned in the Checklist are the additional facts that the Project has openly stated its intent to welcome known drug-users as residents and that its new sewer lines will inevitably run directly beneath the regulated streams on-site.

On November 16, 2023, the County issued its MDNS “under WAC 197-11-350.” MDNS. The MDNS listed seven mitigation factors:

- (1) Applicant must restrict traffic onto Spanaway Loop Road
- (2) Applicant must pay a Traffic Impact Fee
- (3) Applicant must produce an education plan to avoid illicit discharges into the public sewer system
- (4) Applicant must construct a traffic roundabout

¹ These agencies are the United States Fish & Wildlife Service, the National Wetlands Inventory, the Washington Department of Fish & Wildlife, Priority Habitat & Species, and the Pierce County Stream & Wetland Inventory.

- (5) Applicant must install additional traffic infrastructure
- (6) Applicant must dedicate additional traffic infrastructure
- (7) Applicant must pay an additional Traffic Impact Fee

The MDNS included no mitigation requirements with regard to endangered fish or other species at the site, wetlands on the site, cutting of old growth trees including Oregon White Oaks on the site, the construction itself, or the impacts of moving hundreds of homeless individuals into a forested wetland. Instead, six of the seven mitigation factors all related to traffic impacts and payment of fees to Pierce County.

III. ARGUMENT

A. Pierce County's SEPA Obligations

Pierce County's implementation of SEPA directs the Responsible Official² to "make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the 'lead agency'" under SEPA. PCC 18D.10.060(B). The County must, under the Code, "supervise compliance with threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS." PCC 18D.10.060(F). SEPA does not permit a supervising agency to defer to a project applicant's own speculations about the environmental impacts of its project. The requirements and responsibilities of a lead agency under SEPA are detailed below.

"An EIS is required for . . . major actions significantly affecting the quality of the environment." WAC 197-11-330. In making a threshold determination of whether an applicant's project meets this standard, the responsible official must "[r]eview the environmental checklist, . . . [i]ndependently evaluating the responses of any applicant and indicating the result of its evaluation" in any determination of non-significance. WAC 197-11-330(1)(a)(i). The responsible official must then "[d]etermine if the proposal is likely to have a probable significant adverse environmental impact, based on the proposed action, the information in the checklist, and any additional information furnished." WAC 197-11-

² The Responsible Official for this project is the "Director of Planning and Public Works and/or his/her designee," which, in this case, is Sean Gaffney. PCC 18D.10.050; MDNS at 5.

1 330(1)(b). The responsible official must consider that “[t]he same proposal may have a
2 significant adverse impact in one location but not in another location,” that the “absolute
3 quantitative effects of a proposal are also important, and may result in a significant adverse
4 impact regardless of the nature of the existing environment,” and that “[s]everal marginal
5 impacts when considered together may result in a significant adverse impact.” WAC 197-11-
6 330(3). Critically, the responsible official “shall not balance the beneficial aspects of the
7 proposal,” but “shall consider whether a proposal has any probable significant adverse
8 environmental impacts” entirely irrespective of the benefits of the project. WAC 197-11-
9 330(5).

10 Regulations also provide of potential significant adverse environmental impacts to
11 guide responsible officials, including whether a proposal “may to a significant degree”
12 “[a]dversely affect environmentally sensitive or special areas, such as loss or destruction of
13 historic, scientific, and cultural resources, parks, prime farmlands, wetlands, wild and scenic
14 rivers, or wilderness” or “[a]dversely affect endangered or threatened species or their habitat.”
15 WAC 197-11-330(3)(e)(i), (ii).

16 Pierce County issued an MDNS in this case, indicating that it believes its list of
17 mitigating measures will “eliminate [the project’s] significant adverse environmental impacts”
18 entirely and therefore there is no need for an EIS. *Anderson v. Pierce County*, 86 Wn. App. 290,
19 301, 936 P.2d 432 (1997). “For the MDNS to survive judicial scrutiny, the [agency] must
20 demonstrate that it actually considered relevant environmental factors before reaching that
21 decision. Moreover, the record must demonstrate that the [agency] adequately considered the
22 environmental factors ‘in a matter sufficient to a prima facie compliance with the procedural
23 dictates of SEPA.’” *Boehm v. City of Vancouver*, 111 Wn. App. 711, 718, 47 P.3d 137 (2002)
(quoting *Lassila v. City of Wenatchee*, 89 Wn.2d 804, 813, 576 P.2d 54 (1978)).

Because developing a shared housing village in a forested wetland will have clear
adverse environmental impacts, an EIS is required for this Project. A partial list of some of
those impacts are detailed below.

1 **B. Impacts to Threatened and Endangered Species**

2 The applicant states in its Environmental Checklist that “specific species were not
3 present at the site of surveys,” but that “general habitat conditions for rural wildlife including
4 bear, coyote, deer, raccoons, opossums, squirrels, chipmunks, amphibians, songbirds, ducks,
5 birds of prey, and woodpeckers were observed.” Environmental Checklist ¶ B.5.a. It continues:
6 “These lists are not meant to be all-inclusive and may omit species that currently utilize or could
7 utilize the site.” *Id.* The applicant also informed the County that the Washington Department of
8 Fish & Wildlife (“WDFW”) Salmonscape and the Priority Habitats and Species (“PHS”) Program
9 have identified the historic documented use of winter steelhead, and coastal cutthroat,
10 as well as potential presence of coho in Spanaway and Coffee Creek, both located at the site.
11 *Id.* The “majority of the site” is a “biodiversity area and corridor.” *Id.* “Special care must be
12 taken in the management of lands that support critical fish and wildlife species to ensure that
13 development occurs in a manner that is sensitive to their habitat needs.” PCC 18E.40.010.

14 The County included no response whatsoever to the Applicant’s frank acknowledgment
15 that it wishes to clear much of this biodiversity area, without confirming what species are and
16 are not present, and without taking any mitigation measures with regard to the known presence
17 of endangered salmon. *See generally* MDNS. Instead, the County deferred to a document
18 prepared by the Applicant, titled “Shoreline, Wetland and Fish and Wildlife Habitat
19 Assessment, Tacoma Rescue Mission,” dated May 15, 2023. *Id.* at 3.

20 Based on the available record, Pierce County’s independent evaluation appears to have
21 consisted of a single “joint visit” to the site on June 12, 2023, after which it found in a single
22 sentence, without any elaboration, explanation, or statement of how Code Requirements are
23 met, that “the plans . . . meet the requirements of Title 18E Development Regulations – Critical
Areas.” Memo (Sept. 11, 2023); Sissons Letter (Sept. 11, 2023). This failing alone constitutes
a clear violation of WAC 197-11-330(1)(a)(i), which directs the County to “[i]ndependently
evaluat[e] the responses of any applicant.” The County has not stated what investigation it
performed, what species it attempted to identify or locate, or what measures it required the
Applicant to take to determine the presence or absence of threatened or endangered species.

1 Examples of threatened, endangered, and sensitive species known to live in the area that
2 may well exist on the site include, but are not limited to, the Western Gray Squirrel, Taylor's
3 Checkerspot Butterfly, the Streaked Horned Lark, and numerous bat species, in addition to the
4 known endangered salmon. The Applicant has also stated a Bald Eagle is known to live on the
5 site. The clearing of trees for development alone will have an adverse impact on many of these
6 species populations known to reside in the area, much less the paving and construction of a
shared housing village and continual residence by hundreds of individuals.

7 No analysis whatsoever has been done into how the development is likely to impact
8 endangered fish in Spanaway and Coffee Creek, which the Applicant agrees have been found
9 there. SEPA forbids the County from taking the Applicant's word that its project will not impact
these species—it must do its own independent analysis and supervise preparation of an EIS.

10 **C. Impacts to Old Growth Forest and Oregon White Oak**

11 Pierce County also designates habitats of local importance, which “include specific
12 habitat types, which are infrequent in occurrence in Pierce County and may provide specific
13 habitats with which endangered, threatened, sensitive, candidate, or monitor fish and wildlife
14 species have a a primary association.” PCC 18E.40.020(D). First and foremost among these are
15 “Oregon white oak trees and woodlands,” which are “priority habitat.” PCC 18E.40.020(D)(1).
16 The Applicant fully acknowledges that Oregon White Oak exists “throughout the property”
which “may require a Habitat Management Plan.” Environmental Checklist ¶ B(4)(c). Pierce
County additionally protects “Old growth/mature forests,” PCC 18E.40.020(D).

17 Despite that the Applicant has never prepared a “Habitat Management Plan,” the County
18 did not require any mitigating measures of any kind in its MDNS relating to the cutting of
19 hundreds of Oregon White Oaks and other trees. The Applicant prepared an Arborist Report
20 which acknowledged the applicant's plan to cut 672 trees deemed “significant” under the Pierce
21 County Code. As with other portions of the project, whether or not removal of 672 significant
22 trees is or is not independently permitted or authorized by other relevant authorities, Pierce
23 County is the lead agency under SEPA. That means it must supervise preparation of an EIS if
the project will probably have a significant adverse impact on the environment. The County's

1 MDNS ruling that cutting these trees will not have any adverse environmental impact is clearly
2 erroneous.

3 **D. Impacts to Protected Wetlands, Creeks, and Spanaway Lake**

4 Neither the Environmental Checklist nor the MDNS note any likely impacts from the
5 project to wetlands located on the project site. The applicant alleges that, because it will create
6 a buffer zone between its construction and the wetlands, its project will not impact the wetlands
7 in any way. The County does not appear to have conducted any independent analysis of the
8 relative likelihood of adverse impacts to the wetlands as a result of the development. The
9 applicant frankly acknowledges its intent to construct a pedestrian bridge across the wetlands
10 to connect various portions of its project, but deflects from SEPA analysis by alleging this will
11 be a later “phase” of development. *See* Environmental Checklist ¶ A.7; A.11. SEPA prohibits
12 phased review of a project where it would “merely divide a larger system into exempted
13 fragments or avoid discussion of cumulative impacts.” WAC 197-11-060(5)(d). Thus, at
14 minimum, the County must consider the impacts of the planned bridge to the wetland, water
15 quality, and endangered fish populations inhabiting the creeks.

16 The Project also has not shown how it will avoid constructing sewer lines directly
17 beneath the protected wetlands and streams known to be homes to endangered fish, nor has the
18 County addressed impacts as a result of this expansion.

19 Neither the Environmental Checklist nor the MDNS address potential water temperature
20 changes to the Creeks across the Property, nor to adjacent Spanaway lake, caused by canopy
21 loss, surface drainage, copper and zinc levels, fecal coliform (from humans and animals),
22 stormwater runoff, nutrient enrichment erosion, or sediments from construction and use as a
23 residence. Notably, the Washington State Department of Ecology has observed that “[i]llegal
disposal of garbage and human waste at homeless encampments is a major source of
contamination in Washington’s environment” and that the State allocated \$4 million for
“encampment cleanup” in fiscal years 2021 and 2022. No portion of any report prepared by the
Applicant or the County addresses whether the Project is likely to bring similar contamination
or the stope of that contamination to the water quality in this area. The Applicant state in its
Environmental Checklist the “known concern” of water quality issues faced by Spanaway Lake,

1 yet its only proposed mitigation is connection to the sewer system. Environmental Checklist ¶
2 B.3.a.1.

3 Despite reference to a “mitigation strategy” outlined “in a Conceptual Mitigation Plan
4 under separate cover” in a report prepared the Applicant, no such “Conceptual Mitigation Plan”
5 appears to have ever been created, nor does the MDNS require any mitigation whatsoever of
6 impacts to the wetlands, creeks, Spanaway Lake, groundwater, and water quality. An EIS must
7 evaluate the likely impacts to these water resources caused by the Project.

8 **E. Impacts Via Expansion of Urban Development into Rural Area**

9 The Applicant’s proposed Project will necessitate expansion of roadways, sewer lines,
10 and power lines into an undeveloped forest and wetland, as well as all the necessary
11 infrastructure to house, feed, and employ hundreds of residents. The fundamental change in the
12 nature of this entire area alone presents a significant adverse impact to the local environment,
13 but each of these component parts requires SEPA analysis via preparation of an EIS as well.

14 The MDNS’s primary substantive mitigation requirements all relate to the heavily
15 increased traffic that will be caused by this project on the already-overburdened Spanaway
16 Loop Road. These impacts indeed are likely to be significant and an additional basis for
17 preparation of an EIS, unless the County can show that its mitigation requirements fully address
18 any probably adverse impacts as a result of the increased traffic.

19 Shared Housing Villages are currently not permitted in the Residential Resource zone,
20 where this project is located, based on the County’s repeal of Ordinance 2023-5s. For many
21 years, Pierce County’s zoning code has provided the appropriate population density for each
22 respective residential zone through calculation of “dwelling units” allowed per acre. *See* PCC
23 18A.15.020. The Residential Resource zone provides a minimum of 1 and a maximum of 3
“du/ac” or dwelling units per acre. PCC 18A.15.020. However, notwithstanding this limitation,
the Project’s development of a Shared Housing Village under the Code intends to treat
individual “Sleeping Units” as “0.25 dwelling units for purposes of calculating density.” PCC
18A.15.020(A)(8).

Even assuming this redefinition of “dwelling unit” is permissible under Washington
law, it is clear that introduction of a dwelling population four times the size normally permitted

1 under the zoning code will, by very nature of living and working on the site, impact the
2 environmental quality of the area. This likelihood is not addressed by the MDNS and requires
3 an EIS to evaluate the likely risks of harm to the environment as a result of quadrupling the
4 typically permissible density. Notably, though the Applicant has reported plans to construct at
5 least 285 housing units, the MDNS reports that only 217 will be built on site. At minimum, the
6 County must consider the environmental impacts of the Applicant's planned 70 additional
homes unaccounted for in the MDNS.

7 Further, with specific regard to this project, the MDNS does not address the likely
8 environmental impacts of allowing and encouraging known drug-users to reside at the site.
9 Drugs are known to cause horrific environmental contamination, even in small quantities, yet
10 the only "mitigation" required by the MDNS is an "education" plan to avoid "illicit discharges
11 into the public sewer system." Even allowing for the implementation of an effective "education"
plan, introduction of drugs to this sensitive area is likely to cause adverse impacts and requires
further study before project approval.

12 **F. Impacts Via Introduction of Invasive Flora and Fauna**

13 In addition to the planned introduction of hundreds of new human residents at the
14 Project site, the Applicant has stated it intends for the Project to employ village residents on an
15 on-site farm, and to include a dog park. The MDNS does not address the impacts to the local
16 environment likely to be caused by agriculture on the site, or by bringing in new species of
17 plants and domestic pets. Without any substantive consideration of these issues by the County
or Applicant anywhere in the record, an EIS is necessary to address them.

18 **G. The County Must Consider Cumulative Environmental Impacts**

19 The above list of likely adverse environmental impacts caused by this project is meant
20 to be merely illustrative—a project of this magnitude in a wholly rural area is likely to have a
21 multitude of additional impacts. The purpose of an EIS is to assure informed decision-making
22 and identify those impacts before proceeding. Notably, as part of its threshold determination,
23 the County must consider whether "marginal impacts when considered together may result in a
significant adverse impact" after which, if the "proposal may have a significant adverse impact,
an EIS is required." WAC 197-11-330(3)(c), (4). Thus, the County must consider all the above

1 impacts, as well as their cumulative impact on the environment as a whole. These impacts taken
2 as a whole may have a significant adverse impact, requiring preparation of an EIS.

3 **H. Consolidation with Hearing on Project Permit Application**

4 SCC consents to consolidation of this SEPA appeal with a Hearing Examiner hearing
5 on the merits of the Applicant's project application, pursuant to PCC 1.22.090(D)(2).

6 **IV. CONCLUSION**

7 The record before the County is clear: the proposed shared housing village project, in
8 its proposed location, will inevitably cause adverse environmental impacts. Where such impacts
9 are merely "probable," and EIS is required under SEPA. SCC respectfully requests that the
10 Hearing Examiner remand to Pierce County for it to vacate its MDNS and issue a Determination
11 of Significance requiring that an EIS be performed.

12 DATED this 14th day of December, 2023.

13 SMITH ALLING, P.S.

14 

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16 Attorney for Appellant Spanaway Concerned
17 Citizens
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