



# STAFF REPORT

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## *City of Yelm Community Development Department*

Case Number: SPR-05-0091-YL

Applicant: PACLAND, Inc.  
606 Columbia Street NW, Suite 106  
Olympia, WA 98501

Property Owner: Wal-Mart Stores, Inc.  
2001 SE 10<sup>th</sup> Street  
Bentonville, AR 72712-6489

Applicant's Attorney: John C. McCullough  
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2025 First Avenue, Suite 1130  
Seattle, WA 98121-2100

Appellant: Yelm Commerce Group  
P.O. Box 1616  
Yelm, WA 98597

Appellant's Attorney: David A. Bricklin  
Bricklin Newman Dold  
1001 Fourth Avenue, Suite 3303  
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### Issue

*Was the issuance of a Mitigated Determination of Non-significance pursuant to the State Environmental Policy Act by the City of Yelm Responsible Official for the construction of a Wal-Mart Supercenter clearly erroneous?*

The key procedural requirement of the State Environmental Policy Act (SEPA) is for preparation of a "detailed statement" on proposals for "major actions significantly affecting the quality of the environment." [Section 43.21C.030(2)(c) RCW]. The decision on whether a detailed statement or EIS needs to be prepared requires an answer to the threshold question of "significance" of likely adverse environmental impacts.

The City of Yelm is the lead agency for purposes of SEPA. In this situation, the responsible official for threshold determinations is the Community Development Director [Section 14.04.030 YMC].

The Mitigated Determination of Non-significance (MDNS) appealed here is a negative threshold determination, a procedural decision under SEPA. Pursuant to Section 43.21C.075(3)(d) RCW procedural determinations of the responsible official shall carry substantial weight in any appeal proceeding.

The question is whether the Community Development Department's decision to issue a Mitigated DNS was clearly erroneous. In an appeal, it is the appellant's burden to show that the responsible official crossed this line. In reviewing the action taken, the question is not what the appellant think the facts show on the issue of "significance", but rather if the administrator's decision was clearly wrong, given the facts. If reasonable minds could differ, the judgment of the responsible official must be sustained.

### **Background**

PACLAND has applied on behalf of their client, Wal-Mart Stores, Inc. for a site plan review approval in order to construct a Wal-Mart supercenter store. The proposal includes a 187,400 square foot building housing mixed retail (including the sale of groceries, dry goods, electronics, a drive through pharmacy, food service, and an automotive repair facility). The proposal also includes a 14,000 square foot garden center and associated parking. [Exhibit 1]

The City's SEPA Responsible Official issued and published a Mitigated Determination of Non-Significance on June 7, 2005, based on Section 197-11-158 WAC. [Exhibit 30]

The threshold determination and environmental checklist was mailed to the Washington Department of Ecology, the Nisqually Tribal Council, agencies with jurisdiction, and affected agencies on June 7, 2005. The MDNS was mailed to Thurston County, CAPCOM, SE Thurston Fire/EMS, the Washington State Department of Transportation, Intercity Transit, Yelm Community Schools, the Olympic Region Clean Air Agency, and the Washington Department of Fish and Wildlife. [Exhibit 29]

The threshold determination was appealed on June 30, 2005, by the Yelm Commerce Group. [Exhibit 31]

The Mitigated Determination of Non-significance contained a number of conditions designed to mitigate potential significant adverse impacts and to promote the safe movement of traffic. Conditions relate to traffic improvements, emergency services, aquifer recharge and potential high groundwater flooding, noise, and light and glare. [Exhibit 30]

## **Analysis of Appeal Issues**

*The proposal, as conditioned through the Mitigated Determination of Non-significance, will not have probable, significant impacts to the environment.*

The Community Development Department was established by the City Council to coordinate the review of all development within the City, and staff of the Community Development Department is uniquely qualified for this coordinate review and the identification of potential impacts and mitigation measures of a project. In addition to the typical review performed by the Department, a subcommittee of the Planning Commission was formed to participate in the environmental review process and the City retained Perry Shea of Parametrix to help review potential traffic impacts. Mr. Shea has worked with the City of Yelm for over 18 years on transportation planning issues, including preparation of the Corridor Analysis and Environmental Assessment for the SR 510 Yelm Loop, which Parametrix is now designing for the Washington Department of Transportation.

Through this process, potential impacts to the environment were fully analyzed and the appropriate determination was made. As is clear from the findings adopted as part of the Mitigated Determination of Non-significance, all elements of the environment were considered in relation to the environmental documents and the policies and regulations of the City of Yelm. [Exhibit 30]

In fact, this group identified a number of areas in which the proposed Wal-Mart Supercenter would have a potential impact on the environment, including potential impacts to a critical aquifer recharge area, noise impacts, impacts to police and fire services, impacts from light and glare, and traffic impacts. In the case of each of these areas of the environment, it was found that conditions, some proposed by Wal-Mart and some determined to be appropriate by the review committee, would ensure that the identified impacts did not constitute a significant adverse impact.

Existing regulations were found to mitigate identified impacts to other elements of the environment, such as temporary construction impacts.

*The conditions attached to the MDNS mitigate any probable significant impacts.*

As noted above and below, the City of Yelm engaged in an inclusive, thoughtful process to evaluate potential impacts attributable to the proposed Wal-Mart and crafted effective mitigation measures as conditions of the Mitigated Determination of Non-significance.

*The list of specific impacts that the appellants raise in the appeal were appropriately addressed by the SEPA Responsible Official through the environmental review process.*

The appeal, with no supporting documentation, listed a number of specific areas of the environment in which there would be alleged significant adverse impacts to the

environment. Specifically, the appeal lists traffic, groundwater, land and shoreline use, floodplain, aesthetics and open space, stormwater, Yelm Creek, wetlands, air quality, conservation and renewable resources, public services and utilities, light, and glare.

There was, and is, little in the record before the Responsible Official to support these assertions, even though the appellants were encouraged to submit analysis of the information submitted by the applicant well prior to the issuance of the MDNS. Specifically, in a letter dated May 20, 2005, to Knoll Lowney, who then represented the Yelm Commerce Group, the Responsible Official indicated that:

*As you may be aware, the City is still reviewing the potential environmental impacts of the proposed development and has not yet issued a threshold determination. It would be appropriate, therefore, for you to submit on your client's behalf the information regarding traffic and 'urban decay' at this time to be evaluated prior to making the threshold determination. I have indicated to your clients through Dr. May that now is the time to submit this type of information to the City for consideration.*

Regardless, the City of Yelm was thorough in its environmental review process and virtually all the specific issues raised in the appeal were carefully considered by the City, as noted above. In addition, the City ensured that no decision was made at any point in the environmental review process without soliciting input from the public, agencies with environmental expertise, and affected agencies. The notice of application, which included a link to the environmental information submitted with the application, was sent to the Washington State Department of Transportation, the Washington Department of Ecology, the Washington Department of Fish and Wildlife, the Cities of Roy and Rainer, Intercity Transit, Thurston County, Pierce County, and the Nisqually Tribal Council. No significant comments were received from any of these agencies prior to issuance of the MDNS.

*The environmental information submitted along with the checklist was more than sufficient to identify probable significant adverse impacts and effective mitigation measures.*

Wal-Mart submitted the following environmental information as part of the site plan review application.

- Environmental Checklist
- Phase I Environmental Site Assessment
- Site Reconnaissance Report
- Preliminary Drainage and Erosion Control Report
- Transportation Impact Analysis
- Water Supply Report
- Geotechnical Engineering Evaluation

This information was reviewed by staff from the Community Development Department, including two professional planners, an engineer, and a certified building official. As noted above, the City retained Perry Shea of Parametrix to review the traffic study. The Department also coordinated its review with other City staff, including the Police Chief, Public Works staff, and SE Thurston Fire/EMS. The traffic study was provided to the Washington Department of Transportation and to the Thurston County Roads Division for review and comment prior to making a threshold determination. Throughout this process, questions about the environmental documents were raised and answered by Wal-Mart.

Through this process, it was clear that the environmental information submitted by Wal-Mart was sufficient to identify potential environmental impacts as well as appropriate mitigation measures.

### **Conclusion**

The Yelm SEPA Responsible Official's issuance of a Mitigated Determination was not clearly erroneous and should be upheld.