

OFFICE OF THE HEARING EXAMINER

CITY OF YELM

REPORT AND DECISION

CASE NO.: SPR-05-0091-YL – WAL-MART SUPERCENTER

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

PROPERTY OWNER: Wal-Mart Stores, Inc.
2001 SE 10th Street
Bentonville, AR 72712-6489

**APPLICANT'S
ATTORNEY:** John C. McCullough
McCullough Hill Fisko Fretscmer Smith Dixon
2025 First Avenue, Ste. 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 Fifth Avenue, Ste. 3303
Seattle, WA 98154

SUMMARY OF REQUEST:

The applicant is requesting site plan review approval to allow construction of 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. The property is located north of State Route 507 east of Grove Road and is identified by assessor tax parcels 64303101100, 64303101000, and 64303101101.

SUMMARY OF APPEAL:

The Yelm Commerce Group filed an appeal of the MDNS issued on June 7, 2005. Said appeal was filed on June 30, 2005, citing probable significant adverse impacts on the environment.

SUMMARY OF DECISION:

Request granted, subject to conditions.

PUBLIC HEARING:

After reviewing Planning and Community Development Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearings were conducted on August 29, August 30, and September 1, 2005.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

Exhibit No.	Document Description
1	Site Plan Review Application
2	Site Plan
3	Design Guidelines Project Review Checklist
4	Title Reports
5	Perspective View
6	Phase I Environmental Site Assessment – Zipper, Zeman Associates, Inc.
7	Environmental Checklist
8	Revised Environmental Checklist
9	Site Reconnaissance Report – TALASAEA Consultants, Inc.
10	Preliminary Drainage and Erosion Control Report – PACLAND – Bill Dunning
11	Traffic Impact Analysis - TRANSP0
11a	Traffic Impact Analysis - Appendix A – Traffic Counts
11b	Traffic Impact Analysis – Appendix B – LOS Criteria and Definitions

11c	Traffic Impact Analysis – Appendix C – LOS Worksheets
11d	Traffic Impact Analysis – Appendix D – Trip Generation Worksheets
12	Water Supply Report – PACLAND – Bill Dunning
13	Geotechnical Engineering Evaluation – Zipper Zeman Associates, Inc.
14	Letter (Grant Beck to PACLAND) – Application Complete
15	Notice of Application
16	Letter (Grant Beck to PACLAND) – Requesting Additional Environmental Information
17	Letter (PACLAND to Grant Beck – Response to Request for Additional Environmental Information
18	Letter (PACLAND to Grant Beck) - Truck Loading Noise Reduction Measures
19	Letter (TRANSP0 to Grant Beck) – Impacts of Extending Y3 Roadway to 103 rd Avenue SE
	Agency Comments
20	Washington Department of Ecology – Erosion control measures during construction
21	InterCity Transit – Transit routes, connections, pedestrian access
22	Olympic Region Clean Air Agency – Demolition Permit/Asbestos
23	Olympic Region Clean Air Agency – Notice of Construction
24	Letter (Knoll Lowney to Grant Beck) – SEPA Issues
25	Letter (Grant Beck to Knoll Lowney) – Response to SEPA Issues
26	Attachment – Letter (Brent Dille to City Council) – City Council receiving testimony regarding big box development
27	Public Comment Letters – After application submitted
27a	Paulette Slaeng
27b	Frances Easley
27c	Jann Shia
27d	Dianne Bunnell
27e	John Bowman
27f	Rory B. Segner
27g	Char Hayes
27h	Char Hayes
27i	Helge Sandberg

27j	Lisa M. Beverly
27k	Catherine Alexander
27l	Serlay
27m	Valerie Blauski
27n	Ruth A. Jacobson
27o	Eleonora Biernacka
27p	Frances Oliver
27q	N. Oliverio
27r	Joanne Tarascio
27s	Kitty McKim
27t	J. Mason
27u	Donald Pidock
27v	Debra Mauer
27w	Herb Hepburn
27x	Robert E. Beowe
27y	Ellen Calleja
27z	Patricia Donnelly
27aa	Emily Stackhouse
27ab	Judy Allison
27ac	Valentin Fyrst
27ad	Kim Jones
27ae	Rosalie Saecker
27af	Linda Powell
27ag	M Lancaster
27ah	Raymond Bell
27ai	Alison Baker
27aj	Evom LeFarge
27al	Marian Lancaster

27am	Mary Thompson
27an	Marcia McHattie
27ao	James Edwards
27ap	Barbara Wade
27aq	Clare Wade
27ar	Carrie Bellinger
27as	Marjorie Leggett
27at	Dale Rutherford
27au	Brian & Carol Cavanaugh
27av	Carolyn GiaMarco
27aw	Carolyn GiaMarco
27ax	Carolyn GiaMarco
27ay	Gordon's Garden Center
27az	William Hashim
27ba	Edward Wiltsie
27bb	Edward Wiltsie
27bc	Edward Wiltsie
27bd	Yelm Commerce Group
27be	Yelm Commerce Group
27bf	Yelm Commerce Group
28	Public Comment Letters & Responses– Before application submitted
28a	Bettye Johnson
28b	Grant Beck reply to Bettye Johnson 10/14/04 letter
28c	Tom Foley
28d	Geneme' Adendorff
28e	Edward A. Wiltsie
28f	Grant Beck reply to Edward Wiltsie 11/10/04 letter
28g	Edward A. Wiltsie

28h	Sara Foster
28i	Grant Beck reply to Sara Foster 12/8/04 letter
28j	Cathy Elledge (cc also sent to Thurston County Planning)
28k	Grant Beck reply to Cathy Elledge 12/17/04 letter
28l	Jan Ferrari (to Nisqually Valley News, cc to City of Yelm)
28m	Amy Stark
28n	Nancy Breidenthal
28o	Edward A. Wiltsie (to Nisqually Valley News)
28p	Edward A. Wiltsie
28q	Edward A. Wiltsie
28r	Louise Oliverio
29	Mitigated Determination of NonSignificance (MDNS) Cover Memo
30	Mitigated Determination of NonSignificance (MDNS)
31	Appeal of MDNS by Yelm Commerce Group
32	Notice of Public Hearing
33	Letter (Claudia M. Newman to John C. McCullough & Grant Beck) MDNS Appeal expert witness list and specific issues to be raised
34	Staff Report To Hearing Examiner– Site Plan Review
35	Staff Report to the Hearing Examiner – SEPA Appeal
36	Letter (Nancy Bridenthal)
37	Postcard (Sara Foster)
38	Form Letter (Francesco Chiechi)
39	Form Letter (Illegible Name)
40	Letter (Ruth E. Lucas)
41	Letter (Robin L. Friend)
42	Letter (John and Cheryl McCracken)
43	Email (Adriene Brownfield)
44	Letter (Heidi Smith)
45	Postcard (Garry and Pam Nichols)

46	Letter (Trujillo-Martin Family)
47	Letter (Jack and Marybelle Rice)
48	Letter (Vickie Rolland)
49	Letter (Edith J. Olson)
50	Letter (B.J. Figgins)
51	Letter (Karen L. Dougherty)
52	Letter (Garry and Pam Nichols)
53	Letter (Ernie and Sharol Grant)
54	Letter (Marion and Thomas True)
55	Letter (Dewey and Shirley Clauson)
56	Letter (House Farm)
57	Postcard (Harry and Shila Dinelbriss)
58	Letter (Norma C. Chick)
59	Letter (Jack and Evelyn Fall)
60	Letter (Michael Rolland)
61	Postcard (Brenda Wells)
62	Letter (Fred and Cloe Poeschel)
63	Fact Sheet (U.S. v. Wal-Mart Stores, Inc.)
64	Court Case – Batavia NY
65	Letter (Dollar Up, LLC)
66	Powerpoint Printout – Bill Nichols
67	Email (Miriam Berto)
68	Packet of Information (V.L. Harper-Parsonson)
69	Traffic Data (Bill Nichols)
70	Written Testimony (Jean Handley) and letter from Representative Tom Campbell
71	Letter (Nancy Breidenthal)
72	Email (Jay Alexander to Valentin Fryst)
73	Email (“Clare” to “ jeweleress@ywave.com ”)

74	Letter (Eleanor Israel)
75	Email (Walter Cedar Korte to " jewelress@ywave.com ")
76	Letter (Reni Storm)
77	Letter (Susan Marie Bodle)
78	Letter (Susan Freitag)
79	Email (Pat Gaytan to " jewelress@ywave.com ")
80	Letter (Evonne Laforge)
81	Letter (Bev Granger)
82	Letter to the Editor in Nisqually Valley News
83	Letter (Ron and Cheryl Abraham)
84	Letter (Teri Simpson)
85	Letter (Brian and Carol Cavanaugh)
86	Email ("Clare" to " jeweleress@ywave.com ")
87	Letter, 3 photos of traffic, and Stryker Brigade News (Barbara Kates)
88	Letter (Connie Anderson)
89	Rosalie D. Saecker
90	Report - Wal-Mart and County-Wide Poverty
91	Report - Everyday Low Wages
92	Letter (Mary Ann Stuart)
93	Resume of Dr. Marlon Bournet
94	Excerpt from Yelm Community Assessment
95	Excerpt from Yelm Comprehensive Plan
96	Report - Impact of Big Box Grocers on Southern California
97	Report - Supercenters and the Transformation of the Bay Area Grocery Industry
98	Report - Research for Big Box Retail/Superstore Ordinance
99	Report - Impact of Wal-Mart Stores on Iowa Communities: 1983-93
100	Report - Retail Mix in Wisconsin's "Tiny Towns"
101	Report - The Economic Impact of Wal-Mart Supercenters on Existing Businesses in Mississippi

102	Resume of William E. Reid
103	Memorandum (Gardner Johnson, LLC to PacLand)
104	Statement of Qualifications of Heidi Haslinger
105	Review and Commentary of TALASAEA Site Reconnaissance Report
106	Critical Areas Maps
107	Salmon Creek Drainage Basin
108	Revision of the National List of Plant Species that Occur in Wetlands
109	Data Form
110	Wetlands Research Program
111	Resume of William E. Shiels
112	Photos of Existing Vegetation and Site Topography
113	Resume of Kathryn A. Jerkovich
114	Architectural Summary of Design
115	Renderings of Proposed Building
116	Design Guidelines Project Review Checklist
117	Resume of Robert Bernstein, P.E.
118	Comments on Intersection Capacity Analysis
119	Intersection Analysis
120	Urban Street LOS
121	Excerpts from 2004 WSDOT Annual Traffic Report
122	Resume of Erich Armbruster
123	Transpo's Updated LOS Calculations with 103rd Street Connection
124	Transpo's Traffic Mitigation Measures Exhibit
125	December 1994 letters referencing big box stores and Yelm's Comprehensive Plan's EIS
126	Resume of Edward A. Wiltsie
127	Wiltsie Letter November 2004 regarding PACLAND's pre-application meeting
128	Chart - Salmon Creek Basin Groundwater Monitoring - LRS-08
129	Chart - Olympia Airport 2001/2005 Precipitation

130	Chart - Salmon Creek Basin Groundwater Monitoring - LRS-01
131	Report - Interim Site Development Standards For New Development in Salmon Creek Basin
132	Wiltsie Letter to Editor of Nisqually Valley News
133	Wiltsie Letter March 2005 regarding Mr. Beck's comments in Nisqually Valley News
134	Wiltsie Letter April 2005 regarding Walmart Site Development Application
135	Wiltsie Letter April 27, 2005 to Editor of Nisqually Valley News
136	Resume of William E. Dunning
137	Resume of Charles T. Ellingson
138	PACLAND's Stormwater and Groundwater Exhibit
139	Groundwater elevation map
140	PACLAND's Groundwater Model Layout and Hydrograph
141	Letter (Cindy Anderson)
142	Letter (April L. DeNio)
143	Letter (Connie M. Parker)
144	Letter (Barbara Oudeon)
145	Letter (Dawn & Sven Akerman)
146	Letter (Frank W. Reynolds)
147	Letter (Robert L. Hastings)
148	Letter (Marcia McHattie)
149	Letter (John Paul Jones)
150	Letter (Desmond and Debbie Iverson - Yelm Child Care Center)
151	Letter (Robert Ernst)
152	Card (Ron simmons)
153	Letter (Jess and Millie Peters)
154	Card (Unknown author)
155	Letter (Yvonne Starks)
156	Letter (Virginia Wood)
157	Letter (William Elledge)

158	Letter (Jerry Jenkins)
159	Letter (Thomas Dewell)
160	Letter (Chris Nubbe)
161	Letter (Kelan Moynagh)
162	Letter (Cass Lovejoy)
163	Letter (Thea Lovejoy)
164	Letter (Aimee Ross and Pascal Dedard)
165	Letter (Kim McCrea)
166	Letter (Mark Stanley)
167	Letter (Linda Pflugmacher)
168	Letter (Amy Stark)
169	Letter (Mayra Pena)
170	Letter (Guustaaf Damave)
171	Batch of Letters submitted all at once
172	Letter (Linda Thompson)
173	Letter (Susan Howe)
174	Letter (Carolyn GiaMarco)
175	Aerial Photo with Site Plan
176	Aerial Photo of Flooding
177	Large Aerial Photo of Flooding
178	Aerial Photo showing streets
179	Letter to John McCullough and Grant Beck from Claudia Newman dated July 27, 2005
180	Final Environmental Impact Statement dated January 3, 1995
181	Comments on FEIS
182	Wal-Mart's Post-Hearing Brief submitted by John McCullough and Courtney Flora dated September 16, 2005
183	Post-Hearing Opening Brief of Yelm Commerce Group submitted by David Bricklin dated September 16, 2005
184	Staff Report re: Wal-Mart Closing Statements prepared by Grant Beck dated September 16, 2005
185	Yelm Commerce Group's Post-Hearing Reply Brief prepared by David Bricklin dated September 23, 2005

186	Wal-Mart's Reply Brief submitted by John McCullough and Courtney Flora dated September 23, 2005
187	Staff Report re: Response to Yelm Commerce Groups post hearing brief submitted by Grant Beck dated September 23, 2005

NOTE: A complete record of this hearing is available in the City of Yelm Community Development Department

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, viewed the property, heard testimony, and taken this matter under advisement.
2. A Notice of Public Hearing was mailed to the applicant, appellant, and parties of record on July 22, 2005. This notice was also posted at City Hall and on the City of Yelm web site on the same date, and published in the *Nisqually Valley News* on July 29, August 12, and August 26, 2005.
3. Pac-Land Inc. and Wal-Mart Stores, Inc. (applicant), request site plan review approval to allow construction of a Wal-Mart Supercenter store within the City of Yelm. Following review under the State Environmental Policy Act (SEPA), the City of Yelm Responsible Official (RO) issued a Mitigated Determination of Nonsignificance (MDNS). The Yelm Commerce Group (appellant) timely filed an appeal of the RO's threshold determination. For the reasons set forth hereinafter the applicant has shown by a preponderance of the evidence that the project satisfies all criteria set forth in the Yelm Municipal Code (YMC) for site plan review approval. For the reasons set forth hereinafter the appellant has not met its burden of showing that the RO's threshold determination was clearly erroneous.
4. The applicant submitted to the City a completed application for site plan review approval to allow construction of a Wal-Mart Supercenter store on March 9, 2005. Along with the application the applicant submitted the following studies and environmental documents:
 - A. Environmental checklist (March, 2005).
 - B. Phase One Environmental Site Assessment prepared by Zipper Zeman Associates, dated December, 2004.
 - C. Site Reconnaissance Report prepared by Talasaea dated January, 2005.
 - D. Preliminary Drainage and Erosion Control Report prepared by Pac-Land dated March, 2005.
 - E. Transportation Impact Analysis (TIA) prepared by The Transpo Group dated March, 2005.
 - F. Water Supply Report prepared by Pac-Land dated November, 2004.

- G. Geotechnical Engineering Evaluation prepared by Zipper Zeman Associates dated January, 2005.

Following review of the above, the RO requested additional information which the applicant provided in May, 2005. The applicant also provided a revision to the environmental checklist in May, 2005, and a revised TIA in August, 2005. Following review of the above documents (except the revised TIA), the RO issued an MDNS on June 7, 2005. On June 30, 2005, the appellant timely filed an appeal of the RO's threshold determination and requested preparation of an Environmental Impact Statement (EIS).

SITE PLAN REVIEW

5. The applicant proposes to locate the supercenter on a 17 acre, rectangular parcel of property abutting the north side of State Route (SR) 507, east of its intersection with Grove Road at the eastern boundary of the City. The west property line of the parcel will abut a proposed SR-507/510 bypass loop around the north side of the City and the east property line abuts the Yelm City Limits. The parcel abuts SR-507 for 796 feet and measures 870 feet in depth. Improvements on the site include a mobile home, horse barn, and other horse/livestock buildings. The parcel has flat topography and vegetation consists of pasture grasses, low growing vegetation, and scattered fir trees. A swale crosses the northeast corner of the site in a northwest/southeast direction. Adjacent uses include single family homes on large parcels, vacant parcels, agricultural uses, and commercial uses. The site will have one vehicular access onto SR-507 from a driveway located 175 feet from the east property line, and one temporary and one permanent access from the future SR-507/510 bypass. The applicant will construct a portion of the bypass north from SR-507 to 103rd Avenue SE. Upon completion of the entire bypass the applicant will close the southern access which will limit access to the northernmost driveway located approximately 225 south of the north property line. Traffic signals will not control either access, but a traffic signal will control the intersection of SR-507 and the bypass.

6. The site plan shows a generally rectangular, 187,460 square foot building located in the northern portion of the parcel which will house general mixed retail sales of groceries, dry goods, and electronics. The building will also include a drive through pharmacy, food service, automotive repair facility, outdoor garden center, and seasonal sales area. Parking areas will provide 600 standard parking stalls, 202 compact stalls, and 20 handicap accessible stalls for a total of 822 stalls. A large majority of the parking stalls are located between the building and SR-507, although rows of parking spaces also extend along both the east and west sides of the building. Trucks will enter the site from the SR-507 access and travel north along the east side of the building to its rear. The rear or north side of the building will have two truck wells equipped with seals to eliminate noise from loading/unloading. Bale/pallet enclosures along with water storage tanks which provide fire flow are

located near the north property line. Truck maneuvering areas are located to the northwest and northeast of the building. The seasonal sales and outdoor garden areas are located at the southwest corner of the building. The architectural rendition (Exhibit "115") shows pedestrian scale elements such as entryways, awnings, wood columns with cultured stone bases, wainscoting, middle grill work, pilasters, and banding of the mid-level of the building which breaks up the building mass. The building facades use one or more methods of articulation to avoid blank walls. The south and west facades incorporate awnings, overhangs, metal grills, cultured stone, wainscoting, and color variations. The north and east facades include the service areas and also incorporate the same features. The building shows an articulated cornice around the entire parapet. The main pedestrian entryways into the general merchandise area, food center, and garden center have a barn motif which reflects the historic agricultural uses in the Yelm area. The building meets the required 15 foot front, rear, and side yard setbacks as required by the Yelm Municipal Code (YMC).

7. The site is located within the Large Lot Commercial (C3) zone classification as set forth in Chapter 17.28 of the Yelm Municipal Code (YMC). Section 17.28.010 YMC sets forth the intent of the C3 zone classification in part as:
 - A. Provide for the location of the facilities and services needed by the traveling public;
 - B. Permit commercial uses and activities which depend more heavily on convenient vehicular access than pedestrian access;
 - C. Limit location to sites having safe and efficient access to major transportation routes....

Section 17.28.050 YMC describes the site area for a C3 use in part:

Minimum size of any parcel to be subdivided or developed through the binding site plan shall result in at least 75% of the site remaining in one parcel or commercial pad....

Section 17.28.060 YMC requires setbacks of 15 from all property lines and Section 17.28.080 YMC authorizes a maximum height of structures of 55 feet. The Yelm City Council adopted C3 zoning for the site and area by Ordinance 555 in 1995. Thus, the site has remained within the C3 zone classification for approximately the past 10 years. The C3 zone authorizes large, retail, commercial uses to include a Wal-Mart Supercenter subject to obtaining site plan review approval.

8. Chapter 17.84 YMC sets forth the criteria for site plan review. Section 17.84.020(C) YMC provides that a proposed site plan must:

...Conform to the standards, provisions and policies of the city as

expressed in its various adopted plans and ordinances including the applicable sections of the shoreline master program for the Thurston Region

The project satisfies concurrency requirements for sewer and water as both City sewers and potable water are available to serve the site. The site plan shows one 25 foot diameter and one 20 foot diameter water storage tank adjacent to the north property line which will ensure concurrency for fire flow. As found hereinafter the project meets the requirements for transportation concurrency as the applicant will construct frontage improvements consistent with City standards, make appropriate off-site street improvements, and pay a traffic facilities charge. The applicant will also provide office space within the facility for police and fire department usage, will provide an emergency vehicle parking space, and will pay a fee to Thurston County Fire Protection District No. 2 to mitigate impacts to the fire service.

9. As found hereinafter the applicant has properly considered critical areas to include wetlands and aquifer recharge areas and will properly mitigate any impacts thereto.
10. Refuse areas around the building will be screened in accordance with the overall architectural theme and will not be located between a public street and the front of the building. A condition of approval requires the applicant to demonstrate that light from the project will not exceed more than one lumen at the property lines. The project satisfies the parking requirements of the YMC, and the applicant will install Type 2 landscaping around the perimeter of the site which will provide visual separation between the streets and parking areas. Because of the residential uses and zones abutting the north and east property lines, the applicant will install Type 1 landscaping along said property lines to provide a very dense sight barrier and physical buffer. The Type 1 landscaping requirements include a 15 foot strip wherein any combination of trees, shrubs, fences, walls, earthen berms, and other design features will provide a sight obscuring screen. The site must also provide Type 4 parking lot landscaping which requires 24 square feet of landscaping for each parking stall. The project satisfies all criteria set forth in the Yelm Design Guidelines as set forth on pages 12-22 of the Community Development Department Staff Report (Exhibit "34") and as shown in Exhibit "116".
11. Section 17.84.020 YMC provides that the Site Plan Review Committee consisting of the city planner, city administrator, director of public works, and building official reviews a site plan to determine its compliance with various adopted plans, ordinances, and design guidelines. However, Section 15.49.160(B) YMC provides that upon the filing of an appeal of a SEPA threshold determination, the review of the underlying action (in this case site plan review) is combined with the environmental appeal. Such means that the Examiner determines whether the proposed site plan meets the requirements set forth in Section 17.84.020(C) YMC as previously set forth. The applicant has satisfied its burden of showing that the project satisfies all site plan review criteria for the reasons set forth above.

SEPA APPEAL

12. The RO issued and published a MDNS following review of the application and above listed documents on June 7, 2005, pursuant to Section 197-11-158 of the Washington Administrative Code (WAC). The RO mailed the threshold determination and environmental checklist to the Washington Department of Ecology, the Nisqually Tribal Council, agencies with jurisdiction, and affected agencies on June 7, 2005. The RO also mailed the MDNS to various county, state, and regional agencies as set forth on Exhibit "29". On June 30, 2005, the appellant timely filed an appeal of the threshold determination.
13. Our courts have explained the purpose of SEPA review as follows:

SEPA is a procedural statute designed to ensure that local governments consider the environmental and ecological effects of major actions to the fullest extent. SEPA's purpose is to provide decision-makers with all relevant information about the potential environmental consequences of their actions and to provide a basis for a reasoned judgment that balances the benefits of a proposed project against its potential adverse effects. Des Moines v. Puget Sound Regional Council, 98 Wn. App 23 at 36 (1999).

In fulfilling its responsibilities under SEPA, the RO reviews the environmental checklist and supporting documents and issues a threshold determination as to whether any probable significant adverse environmental impacts will result from the proposed development. WAC 197-11-782 defines "probable" as "...likely or reasonably likely to occur, as in 'reasonable probability of more than a moderate effect on the quality of the environment'." Probable is used to distinguish likely impacts from those that merely have a possibility of occurring, and are remote or speculative. If the RO determines that no such probable impacts will occur, the RO issues a Determination of Nonsignificance (DNS) (WAC 197-11-340). If the RO determines that the proposal may have a probable significant adverse environmental impacts, the RO issues a Determination of Significance (DS) (WAC 197-11-360) which requires preparation of an EIS. However, if the RO can specify mitigation measures that would allow the issuance of a DNS, and the applicant agrees to implement said measures, the RO can issue a MDNS (WAC 197-11-350). Before requiring mitigating measures or issuing a DS, the RO must first consider whether the development regulations of local, state, or federal jurisdictions and enforcement thereof would mitigate an identified significant impact (WAC 197-11-330; 197-11-660). The RO followed these procedures in issuing the MDNS in the present case. The RO imposed mitigating measures pursuant to SEPA authority following evaluation of the environmental checklist, supporting documents, and applicable development regulations.

14. In making its threshold determination the RO considered Section 14.04.055 YMC, a portion of the City's SEPA rules, which sets forth guidelines by which to measure the significance of environmental impacts as follows:
 - A. The principal guide in measuring environmental impact will be consistency with the land use designations of the comprehensive plan and the development regulations designed to implement the plan.
 - B. The city adopted the plan recognizing the impacts of the planned increasing urbanization within the UGA [Urban Growth Area] and adopted the development regulations to provide the mitigation determined by the city council to be necessary and appropriate to that growth and the resulting impact.
 - C. The extent of departure from the comprehensive plan designated uses and the extent of any variance from adopted development regulations shall be considered in determining the extent of substantial environmental impact.

Said section provides that the City previously considered environmental impacts during the adoption of the comprehensive plan and development regulations (zoning). Said section further provides that the extent of any environmental impacts are measured by the extent of departure from those uses authorized by the comprehensive plan and any variances granted to requirements of the zoning code. In the present case, the proposed Wal-Mart Supercenter meets all three guidelines as set forth in Section 14.05.055 YMC, as it is consistent with the land use designation of the comprehensive plan, is consistent with the C3 zone of the development regulations, is located within the UGA, does not depart from the designated uses contemplated by the comprehensive plan, and does not require any variances from the adopted development regulations. The YMC clearly recognizes that previously adopted City plans and ordinances consider the cumulative impacts of urbanization and that consistency with such plans and development regulations are principal indicators of the lack of probable significant environmental impacts. As previously found, both the comprehensive plan and the C3 zone classification adopted in 1995 authorize large, retail, commercial uses such as the Wal-Mart Supercenter on this parcel and in this area of the City.

15. Despite the above, the RO identified areas where the supercenter would create significant impacts and imposed measures to mitigate said impacts. The MDNS requires the applicant to implement the following mitigating measures:
 - A. Pay the City Transportation Facility Charge (TFC) based upon the traffic engineer's estimate of 649 p.m. peak trips at the rate of \$750 per trip for a total of \$486,750, subject to credits if the project creates a significant economic benefit to the community. The MDNS sets forth a formula for

determining economic benefit and credits.

- B. Construct the following transportation improvements:
1. Frontage improvements along SR-507 to include a sidewalk, planter strips, curb and gutter, a drop lane on the north side of SR-507, a westbound travel lane, a two-way left turn lane, and a full eastbound travel lane.
 2. Frontage improvements along the future SR-507/510 Yelm bypass to include a sidewalk, planter strip, curb and gutter, a northbound drop lane from the intersection to the northernmost entrance to the site, a northbound lane, a two-way left turn lane, and a southbound lane.
 3. A traffic signal at the intersection of the SR-507 and the future SR-507/510 bypass and a minimum, 250 foot long, eastbound, left turn lane.
 4. Optimization of the traffic signal at the intersection of SR-507/Bald Hills Road/Creek Street.
 5. Connection of the future SR-507/510 bypass to 103rd Street by constructing a new road with two, 12 foot wide, drive lanes and four foot shoulders; widening 103rd Street from the bypass road to the bridge over Yelm Creek; and funding the purchase of right-of-way for said connection. The MDNS acknowledges that mitigating measures 3, 4, and 5 (above) provide for safe movement of traffic, but are not necessary to mitigate potential significant impacts of the project.
- C. Provide a secure, private space of at least 120 square feet within the building for use by the Yelm Police Department and the Southeast Thurston Fire/EMS, and provide one parking space dedicated for emergency vehicles.
- D. Install security cameras covering the entire parking lot subject to approval of the Yelm Police Chief and coordination with a potential city-wide video system.
- E. Pay a mitigation fee to Southeast Thurston Fire/EMS for replacement of equipment required to fight a fire in a large, commercial structure.
- F. Implement a stormwater plan that meets or exceeds the standards of the 1992 Department of Ecology Stormwater Manual as adopted by the City. The plan requires that the elevation of the bottom of the infiltration gallery extend a minimum of six feet above the elevation of the high groundwater, and wiring of the proposed pump system to an emergency generator of sufficient size to provide stormwater treatment during extended power outages. The stormwater system must also accommodate runoff from

required road frontage improvements unless a separate system is designed. The final plan will include a maintenance and operation plan.

- G. Submittal of a noise mitigation plan clearly showing that the use will meet the noise standards set forth in Chapter 173-60 WAC. The plan shall include at a minimum an eight foot tall, masonry wall along the northern and eastern property lines which abut residential zones. Noise exceptions for warning devices or intermittent safety equipment will not apply from 7:00 p.m. to 7:00 a.m.
 - H. A lighting plan that maintains a light level of .1 foot candle, five feet from the edge of the property.
16. The appellant submitted both expert and lay testimony challenging the MDNS in four areas:
- A. Failure to identify or adequately study the site itself and adjacent off-site areas for wetlands;
 - B. Storm drainage system inadequate to protect a critical aquifer and also inadequate to prevent flooding due to high groundwater. System is also inadequate as it requires pumping of stormwater, and other jurisdictions prohibit pumping due to pump failures during power outages;
 - C. Failure of responsible official to consider the probability of the closure of businesses resulting in urban blight in the downtown core following the opening of the supercenter; and
 - D. Failure to identify and mitigate significant adverse impacts of Wal-Mart traffic on City streets.

The appellants assert that due to the above unmitigated significant adverse environmental impacts, the RO should have issued a DS and required preparation of an EIS.

WETLANDS

17. Heidi A. Haslinger, Conservation Northwest, Inc., a wetland specialist, appeared on behalf of the appellant and testified that while she had not visited the site, she reviewed the National Wetlands Inventory Map. Said map shows that a wetland might occur in the northwest/southeast trending swale in the northeast corner of the parcel. She believes the swale represents a typical drainage pattern in a wetland, and that the area is a high groundwater flood zone as verified in 1996-1997 DOT aerial photographs. She reviewed the applicant's expert's report and noted that the expert found the on-site vegetation difficult to identify due to previous heavy grazing. She asserts that the RO should require reassessment of the swale due to uncertainties as to wetland indicators. See Exhibit "105".

18. The applicant submitted a Wetland Site Reconnaissance Report prepared by William E. Shiels, Principal, Talasea Consultants, Inc. Mr. Shiels testified that he performed an on-site analysis, walked the perimeter, and observed parcels off-site in all directions. He noted that the National Wetland Inventory Map shows a wetland touching the northeast corner of the site and extending to the northwest. He therefore took a soil sample at the lowest elevation of the swale but found no evidence of hydrology. He evaluated the three tests for a wetland and found that the swale clearly met none of said criteria. His study shows that while the swale could have been a drainage feature in geologic times, it is not now created by flowing water nor does it accommodate flowing water. The video submitted by a neighbor of flooding in the swale confirms his analysis as it shows standing water, not flowing water. Thus, flooding in the swale is caused by elevated groundwater. He found no soils with mottles and determined that all plants with the exception of a few were upland.
19. The Examiner accepts Mr. Shiels' testimony as he is an extremely qualified wetlands expert, having performed at least 1,000 evaluations. Mr. Shiels visited the site, performed a number of tests to include a soils analysis in the suspect swale, but found no evidence of wetland indicators. Ms. Haslinger had neither visited nor conducted any evaluations of the site. While she looked at a map and evaluated Mr. Shiels' report, she expressed only general concerns regarding the possibility of wetlands vegetation and hydrology. Furthermore, neither Ms. Haslinger nor the appellant contend that compliance with the City's critical areas ordinances will not adequately mitigate all adverse impacts to wetlands. The appellant's argument is directed more toward code compliance and enforcement as opposed to inadequate SEPA review.

STORMWATER

20. The Yelm City Council adopted the 1992 Department of Ecology's (DOE) Stormwater Management Manual and requires storm drainage systems throughout the City to meet its requirements. However, the applicant proposes an alternate technology for the treatment of stormwater known as StormFilter by Stormwater Management, Inc., which received a general use level designation as basic stormwater treatment by DOE on January 26, 2005. The applicant's system proposes to pump water from a water treatment gallery containing StormFilter cartridges upslope to an infiltration gallery. As required by the MDNS, the higher location of the infiltration gallery will provide six feet of vertical separation between the bottom of the gallery and the groundwater level during a high groundwater flood event. The City does not allow the use of alternate technology unless a proponent can show that such technology provides a higher degree of environmental protection, and it that has the financial ability to maintain the system properly.
21. The storm drainage exhibits ("138", "140") show that both the parking lot and roof stormwater cleansing detention areas and pumps are located beneath the parking

area in the northwest portion of the site. Pumps will move stormwater from the treatment devices in the detention areas to an infiltration gallery located adjacent to the intersection of the bypass and SR-507. The applicant's experts assert that the infiltration gallery will measure six feet or more above a 100 year storm event even if such occurs coincident with a large flood event.

22. Mr. Ed Wiltsie, professional engineer, testified on behalf of the appellant and submitted copies of numerous letters written to the City regarding the proposed stormwater system. He testified that the applicant has not shown that the infiltration gallery maintains a six foot separation from high groundwater. He also testified that pumps fail, and for that reason other jurisdictions have prohibited pumping and have required water to reach infiltration galleries by gravity flow. He testified that Thurston County has experienced a high failure rate with pumps and no longer allows their use. Mr. Wiltsie also expressed concerns with the type of filter used in the canister, as some types of filters add phosphorus to the soils.
23. William Dunning, professional engineer, and Charles Ellingson, hydrogeologist, testified on behalf of the applicant. Mr. Ellingson testified that in a worst case scenario, six feet of pervious soil would separate the groundwater from the bottom of the infiltration gallery. He stated that the City's requirements concerning this system are more rigorous than DOE's. He also testified that even if the pumps fail, the untreated discharge will not pollute the groundwater.
24. The Examiner accepts the applicant's expert testimony and studies as accurate based upon the presence of its experts on the site and their studies of groundwater levels to include area wells and photographs of flooding in the area. The proposed system exceeds the current requirements of DOE and apparently far exceeds the requirements of the City. While disputes exist between the experts regarding the provision of six feet of separation, a mitigating measure requires that the system provide said separation. Furthermore, a mitigating measure requires wiring of the pumps to a generator of sufficient size to continue pumping during extended power outages. The applicant has confirmed it will use a DOE approved filter in the StormFilter which will not introduce phosphorous into the groundwater. The RO was not clearly erroneous in assuming compliance with mitigating measures and then determining that the proposed storm drainage system will properly treat stormwater runoff generated from the site such that it will not pollute the aquifer; that stormwater runoff will not create flooding; and that the stormwater runoff will not create a probable significant adverse environmental impact. Furthermore, previous uses of the site include agriculture with livestock pasture and horse sales and trading. Stormwater likely infiltrated directly into the ground through significant amounts of manure. However, residents of the area indicated no past or present problem with the quality of their well water. The applicant's stormwater system should discharge significantly cleaner water into the ground as compared with the previous use.

URBAN BLIGHT

25. Appellant asserts that the RO erred by not considering the effect of Wal-Mart's economic competition on businesses in the City, specifically those in the downtown core. Residents opposing the application also assert that the RO should have considered socio-economic impacts such as Wal-Mart's business practices and wage structure. Section 197-11-448 of the Washington Administrative Code (WAC), a portion of the SEPA rules, provides in part as follows:

- (2) The term "socio-economic" is not used in the statute or in these rules because the term does not have a uniform meaning and has caused a great deal of uncertainty. Areas of environmental concern which must be considered are specified in RCW 43.21C.110(1)(F)[a section of the SEPA statute]...
- (3) Examples of information that are not required to be discussed in an EIS are: Methods of financing proposals, economic competition, profits and personal income and wages, and social policy analysis (such as physical and welfare policies in non-construction aspects of education and communications). EISs may consider whether housing is low, middle, or high income.

Thus, the SEPA rules do not require an EIS to discuss economic competition, socio-economic issues, or wage structures. RCW 43.21C.110(1)(F), cited by the above WAC, lists the elements of the environment necessary for consideration in an EIS as:

...public services and utilities (such as water, sewer, schools, fire and police protection, transportation, environmental health (such as explosive materials and toxic waste), and land and shoreline use.

Said section does not require any consideration of competition impacts or socio-economic issues.

26. Our courts have required an EIS to consider impacts on the physical environment of a downtown area to include the possible closure of businesses and the resulting blight of closed store fronts where large, retail malls locate in close proximity thereto. In Barrie v. Kitsap County, 93 Wn. 2d 843 (1980), our Washington Supreme Court ruled an EIS inadequate because it did not discuss the adverse effects of a new shopping area in close proximity to downtown Bremerton. However, the Barrie applicant also requested a zone reclassification from Kitsap County which it needed in order to construct a 400,000 square foot, regional, retail shopping center just north of the Bremerton city limits. The Court noted that the impacts of the shopping center were not remote or speculative as evidenced by an indication that Sears

would move from downtown to the center. The Court ruled that the EIS overlooked the real possibility of lost jobs and tax base in the Bremerton central business district, and that the EIS should have pointed out that possibility. By contrast, the present applicant proposes a 187,460 square foot business on a 17 acre parcel zoned for such use since 1995. Furthermore, Yelm's comprehensive plan and zoning code were adopted pursuant to GMA, and the City prepared an EIS to assess the environmental impacts thereof.

27. In West 514, Inc. v. Spokane County, 53 Wn. App 838 (1989), West 514 challenged the lack of an EIS assessing the economic impacts of a large, regional shopping mall in the Liberty Lake area on downtown Spokane. West 514 presented the testimony of Greg Easton, a consulting economist who had previously reviewed the impacts of large shopping malls on the downtown areas of Tacoma, Everett, Olympia, and Seattle. He concluded that regional shopping malls cause a decline in retail sales in the central business districts of cities. The Court of Appeals addressed the issue as follows:

There is no doubt that a large mall in the Liberty Lake area will compete economically with downtown Spokane as well as other retail centers, but economic competition, in and of itself is not an environmental impact and need not be discussed in an EIS. WAC 197-11-448(3). What is missing here is evidence that the proposed mall is likely to have a significant adverse impact on the physical environment of downtown Spokane. While loss of retail and resulting blight is a possibility, West 514 did not establish the probability or likelihood of this occurring in Spokane. 53 Wn. App 838 at 847.

As in West 514, the appellant presented an eminently qualified expert to address the impacts of a Wal-Mart Supercenter on existing businesses in Yelm. The applicant also presented an economic expert who assessed such impacts. For the reasons set forth hereinafter, the appellant has not established that a Wal-Mart Supercenter will create a significant adverse impact on the physical environment of either the downtown business core or other commercial areas of the City.

28. Dr. Marlon Boarnet appeared on behalf of the appellant and testified regarding his research into the impacts of Wal-Mart Supercenters on both large and small communities. He also reviewed the City's 1995 Comprehensive Plan which supports economic development, and the impacts of Wal-Mart on land use aesthetics and planning. He found the City's business core ill defined with some retail, but no sense of place. He noted that the Comprehensive Plan expresses a desire to build around the downtown. If the City has a goal of improving the downtown area, Dr. Boarnet believes that Wal-Mart will detrimentally impact said goal. He noted that the core of the Yelm Avenue/First Street intersection consists of older, smaller buildings, and that conventional strip malls such as the Nisqually Shopping Center are located in

the outer downtown area.

29. The appellant sent Dr. Boarnet a list of 175 businesses located in Yelm, and Dr. Boarnet pulled the data of said businesses from Dunn and Bradstreet. He then determined that 18 of the 175 businesses would compete directly with Wal-Mart, and that the stores most vulnerable are grocery, pharmacy, apparel, lawn and garden, and building materials. William Reed, the applicant's expert, identified 50 stores in the downtown core area, seven or eight of which he believes would directly compete with Wal-Mart. Thus, Dr. Boarnet finds that 10.3% of all businesses in Yelm will directly compete with Wal-Mart while Mr. Reed finds that 16% of the downtown core businesses will directly compete. Assuming that all businesses identified by both experts fail and that the building spaces are not released, such would not amount to "urban blight" as interpreted by the courts. Nine of ten businesses would remain open according to Dr. Boarnet, and more than eight of ten businesses would remain open according to Mr. Reed.

30. Dr. Boarnet testified that Wal-Mart would cause urban blight in downtown Yelm, and based his testimony in part on a study of the impact of Wal-Mart stores on Iowa communities between 1983 and 1993 (Exhibit "99"). However, said study addressed the impacts of a discount, general merchandise store opening in "a small-to-medium sized town with little population growth". While the City of Yelm is small, it is experiencing substantial population growth as are Thurston County, Pierce County, and Western Washington as a whole. Thus, the conclusions of said report are suspect as to its applicability to Yelm. Even so, the report concludes that the opening of a discount store creates both positive and negative impacts on a stagnant community. Dr. Boarnet also relied upon a study entitled "The Economic Impact of Wal-Mart Supercenters on Existing Businesses in Mississippi". Said study concluded that a Wal-Mart Supercenter captures a substantial percentage of the market in the categories of general merchandise, food sales, and building materials. However, furniture stores fared extremely well. The study also concluded that:

Rule-Of-Thumb 1: Local merchants that sell merchandise different from the supercenter or other big box stores tend to fare well and may gain sales as the additional traffic generated by the big stores spills over into their stores.

Rule-Of-Thumb 2 is not so pleasant: Local merchants that sell the same merchandise of the big stores will probably face a reduction in sales because of the difficulty in competing with major chains.

The study makes recommendations for local merchants facing direct competition from a supercenter such as developing a new merchandising strategy, providing services not offered by the supercenter, and by offering personalized service. The study then makes recommendations of how to successfully compete against a supercenter in the areas of marketing, service, customer relations, and continually

improving the efficiency of the business. Based upon the Mississippi study, when businesses in direct competition with Wal-Mart alter their methods, they can succeed. Such is apparently the opinion of some merchants in Yelm who will face head-to-head competition with Wal-Mart. No representatives from Safeway, QFC, Rite-Aid, or True Value Hardware appeared at the hearing or wrote letters expressing concerns. Furthermore, Gary Vallandingham testified that he works for the shopping center which houses Sunbirds, and that while Sunbirds' business will suffer, it will not be devastating. Finally, a local pharmacist testified that he had no problems with Wal-Mart if it were constructed subsequent to the opening of the 507/510 bypass. Such would address his main concern – traffic.

31. Dr. Boarnet co-authored a study entitled Supercenters and the Transformation of the Bay Area Grocery Industry: Issues, Trends, and Impacts. The study assessed the impacts of supercenters to include Wal-Mart moving into the San Francisco Bay area of California. A section entitled "Implications for the Grocery Industry" (Page 21 of 104) assesses the impacts of supercenters on the total US grocery market and specifically traditional supermarkets.

In the same period [between now and 2009], the share of traditional supermarkets in the grocery sector is expected to decline, from 86% today to 74% in 2009. The Merrill Lynch report anticipates that most of this decline will be born by smaller, independent grocers (Agnee 2002).

Testimony at a hearing expressed concerns regarding the ability of QFC and Safeway to compete with Wal-Mart. However, Dr. Boarnet's study indicates that smaller, independent grocers and not national chains such as QFC and Safeway will bear the brunt of Wal-Mart's competition. Furthermore, said report shows that while some chains are closing stores in response to Wal-Mart competition, others have built customer loyalty, provided private label merchandise (as does Safeway), and chosen to offer more high end goods and services (QFC). Thus, the appellant has not presented evidence that any of the anchor tenants of any of the strip shopping malls will close.

32. In the section entitled "Wal-Mart in Rural Communities" (Page 64 of 104), Dr. Boarnet reiterates the findings of the Mississippi study:

The evidence that has been assembled about Wal-Mart's impact in rural areas has been fairly consistent: Communities that had a Wal-Mart or other discount retailer saw a considerable rise in both their retail sales activity and their sales tax revenues, and on some occasions also saw an increase in overall employment. Shops and firms that directly competed with the discount retailer (for instance, lower-end apparel shops or merchants that sold general housewares) tended to lose a significant amount of business and

sometimes were forced to close. Merchants that offered non-competing goods and services, however-such as higher end restaurants and shops, specialty stores and furniture-saw their fortunes rise considerably as they benefited from the increased flow of customers that Wal-Mart attracted.

Said section points out that businesses which cannot successfully compete with Wal-Mart do close. However, the study does not support a conclusion that the Yelm commercial area will suffer blight from a wholesale closure of businesses or that buildings housing stores which do close will remain vacant.

33. The applicant's expert, Gardner Johnson, LLC, agrees with Dr. Boarnet that several businesses will directly compete with Wal-Mart. However, Gardner Johnson could not conclude that said businesses would fail. The Gardner Johnson study shows that Yelm businesses presently do well despite a high level of retail sales "leakage" to nearby shopping areas such as Lacey and Spanaway, both of which have Wal-Mart stores. Said study estimates that Yelm residents spend 40% of their dollars elsewhere. Furthermore, the study points out that Rite Aid, Safeway, and QFC, are all located in downtown Yelm and carry the same products as other downtown businesses. However, no evidence was presented that these national chains have adversely impacted downtown businesses. Businesses in the downtown area are also located near the intersection of Yelm Avenue and First Street, and therefore will maintain high visibility and will not lose retail location interest.
34. Gardner Johnson also reviewed Dr. Boarnet's studies which found negative impacts in isolated, rural, midwest and southern communities where Wal-Mart stores were constructed or expanded. However, Gardner Johnson refers to more recent studies which suggest that such concerns do not typically arise in communities experiencing increases in population and economic growth. Gardner Johnson finds that the City does not match the profile of a depressed or declining community susceptible to negative impacts from Wal-Mart. The Examiner agrees with the Gardner Johnson analysis for the reasons set forth above. The RO was not clearly erroneous in not considering the economic impacts of Wal-Mart on Yelm businesses in the downtown area.

TRANSPORTATION

35. The universal concern expressed by City residents and the appellant in both testimony and letters was the impact of Wal-Mart traffic on already congested City streets especially SR-507 and SR-510. Residents and the appellant assert that the new vehicle trips generated by the Wal-Mart Supercenter will increase travel time through the City, travel time from one point to another within the City, and waiting time to access both state highways from side streets. Concerns also include additional time on school buses for students attending Yelm public schools and increased response times by emergency vehicles. The Director of Transportation

for the Yelm School District submitted a letter expressing concerns regarding school buses, but emergency providers did not express concerns. In determining both transportation concurrency as required under GMA and the allegation of an unmitigated significant adverse environmental impact, the RO must consider previous legislative actions taken by the Yelm City Council pursuant to GMA to include adoption of comprehensive plans (transportation), development regulations (zoning), acceptable levels of service within the city limits, and the method of calculating said levels of service.

36. The City of Yelm adopted its comprehensive plan and development regulations pursuant to GMA and meets the definition of a “GMA city”. Therefore, in considering the environmental impacts of traffic generated by the Wal-Mart Supercenter, the RO first had to consider RCW 43.21C.240, a portion of the SEPA statute, which addresses site specific, project environmental review under GMA; WAC 197-11-158, a SEPA rule; and RCW 36.70B, entitled “Local Project Review”. RCW 43.21C.240 provides in part:

A comprehensive plan, sub-area plan, or development regulations shall be considered to adequately address an impact if the county, city, or town through the planning and environmental review process under Chapter 36.70A RCW [GMA] and this chapter, has identified the specific adverse environmental impacts and:

...

- (b) The legislative body of the county, city, or town has designated as acceptable certain levels of service, land use designations, development standards, or other land use planning required or allowed by Chapter 36.70A RCW.

The RO issued the MDNS pursuant to WAC 197-11-158 which authorizes consideration of the environmental analysis, protections, and mitigating measures set forth in the City’s zoning code, comprehensive plan, and other rules and regulations adopted pursuant to GMA. WAC 197-11-158 requires the RO to identify the specific environmental impacts of a site specific project and determine whether such impacts have been:

...

- (ii) Adequately addressed in the comprehensive plan, sub-area plan, applicable development regulations, or other local, state, or federal rules or laws by:
- (A) Avoiding or otherwise mitigating the impacts; or

- (B) The legislative body of the GMA county/city designating as acceptable the impacts associated with certain levels of service, land use designations, development standards, or other land use planning required or allowed by Chapter 36.70A RCW.

Said section then requires the RO to condition approval of the project on compliance with the mitigation measures in the comprehensive plan, sub-area plan, zoning, and other rules and regulations. The RO required compliance with said documents but also identified additional adverse environmental impacts not adequately addressed and imposed mitigating measures in the MDNS issued for the project.

37. In Moss v. City of Bellingham, 109 Wn. App (2001), our Court of Appeals discussed the integration of GMA and SEPA as follows:

The seeds of SEPA regulatory reform were sown with passage of the Growth Management Act (GMA) in 1990. The GMA requires Urban Growth Areas (UGAs) to be designated only after preparation of an EIS. In 1995, this fundamental policy change came to fruition when the Legislature enacted the Integration of Growth Management Planning and Environmental Review Act. According to Professor Settle, the Integration Act “seeks to avoid duplicative environmental analysis and substantive mitigation of development projects by assigning SEPA a secondary role to (1) more comprehensive environmental analysis in plans and their programmatic environmental impact statements and (2) systematic mitigation of adverse environmental impacts through local development regulations and other local, state, and federal environmental laws.” 109 Wn. App 6 at 15.

The author of The Washington State Environmental Policy Act, Professor Richard Settle, discusses limitations on SEPA substantive mitigation authority for GMA local governments in Section 18.01(2)(e) as follows:

...A primary concern, strongly implicit in the legislation, was that SEPA’s ad hoc analysis of environmental impacts and imposition of substantive conditions upon project permits essentially may duplicate more comprehensive and systematic environmental impact analysis and substantive regulation under other local, state, and federal laws. In particular, the legislation assumes that comprehensive plans and development regulations adopted under the Growth Management Act (GMA) and the programmatic environmental impact statements prepared for proposed GMA plans and regulations often will provide sufficient analysis and

substantive regulation of environmental impacts for specific projects that comply with GMA plans and regulations.

The 1995 legislation adds a new section to SEPA authorizing, and in some cases arguably requiring, local governments planning under GMA to dispense with ad hoc environmental impact analysis and substantive mitigation under SEPA that would essentially replicate analysis and regulation of environmental impacts under local GMA plans and regulations or other local, state, and federal laws....

As part of the adoption process of the 1995 Comprehensive Plan and Development Regulations which authorized the C3 zoning for the Wal-Mart parcel, the City of Yelm prepared an EIS, which along with the Comprehensive Transportation Plan, considered increases in traffic congestion and mitigation measures therefor. In its SEPA evaluation the RO had to consider the mitigation measures and plans previously adopted by the City Council to include acceptable traffic congestion.

38. The City of Yelm Comprehensive Plan and Joint Plan with Thurston County adopted pursuant to GMA by the Yelm City Council on February 22, 1995, provides in Chapter VI(A), entitled "Transportation":

...The policies of the Yelm Comprehensive Transportation Plan are to be effective in the Urban Growth Area. The City and the County support the Regional Transportation Plan, and the Yelm Comprehensive Transportation Plan is consistent with the 1993 Regional Transportation Plan. The Regional and City transportation plans are incorporated herein by reference....

In Section VI(C) entitled "Levels of Service (LOS)", the comprehensive plan reads:

The City of Yelm is bisected by two state highways in the urban core which operate at or near failed levels of service, when measured on the A-F scale used by the Thurston Regional Planning Council for intersection and turning movements.

It is the policy of Yelm to disperse rather than to concentrate traffic through the urban core to promote a free flow of traffic throughout the community.

It is the policy of Yelm to adopt levels of service for concurrency and planning purposes which will promote development of transportation alternatives, both routes and methods of transport, rather than continue to enlarge the existing arterials.

For concurrency purposes, the following standards shall apply in the Urban Growth Area:

1. In all residential zones, LOS C.
2. In all commercial and light industrial zones, LOS D.
3. In the urban core LOS F is recognized as an acceptable level of service where mitigation to create traffic diversions, bypasses, and alternate routes and modes of transportation are authorized and being planned, funded, and implemented.

Development standards shall identify the method of LOS measurement and implementation....

Subsection VI(E) entitled "Implementation of Transportation Plans" provides in part:

Transportation planning and development in the Urban Growth Area is a joint exercise of responsibility between the City, the County and the State. Yelm will be responsible for planning and implementation of the policies of the City's Transportation Plan within the incorporated Urban Growth Area...

The Transportation plans adopted herein have been reviewed for consistency with land use plans and are in aid and support of the land use plans. Where changes in land use or transportation occur, this Plan shall be specifically reviewed to assure consistency, conformance, and concurrency and that the goals continue to be met.

As previously found, the proposed Wal-Mart Supercenter is consistent with the land use plans of the comprehensive plan and the development regulations. In making its threshold determination, the RO had to consider the Transportation Element of the Comprehensive Plan in accordance with the SEPA/GMA integrated rules to include adopted levels of service. Professor Settle addresses adopted levels of service in Section 18.01(2)(e) of The Washington State Environmental Policy Act as follows:

Subsection (4) of RCW 43.21C.240 apparently does not merely authorize, but compels agencies to abstain from imposing mitigation measures where a project's specific adverse environmental impacts have been (a) "avoided or otherwise mitigated" or (b) designated as acceptable in GMA plans or development regulations... Although the language of RCW 43.21C.240(4)(b) is unclear, it seems to say that "levels of service"

and other standards of acceptable environmental quality designated in GMA plans and regulations preempts SEPA substantive authority. Thus, if a GMA comprehensive plan and development regulation designates a “level of service” defining acceptable traffic congestion, the local government would be precluded from using SEPA substantive authority to mitigate traffic impacts if they would not exceed the designated “level of service”. This apparently would be so even if the local government did not adopt the GMA plan and regulation as SEPA policies and even if local SEPA policies would have called for mitigation of traffic impacts....

Perry Shea, Shea and Associates, the City’s traffic consultant, testified that the City previously adopted a means of measuring level of service (LOS) by computing the LOS of all movements of an intersection and then averaging said movements to obtain an overall intersection LOS. In addition, the City requires a proponent’s traffic engineer to identify the worst movement and the amount of delay for said intersection. The City has also adopted a policy to maintain the traffic flow on its two major roads, Yelm Avenue and First Street, and will accept long delays on side streets at unsignalized intersections to ensure continuation of said flow. Thus, in making the threshold determination and imposing traffic mitigation measures, the RO had to consider the City’s adopted plans, regulations, and policies along with the requirements of the integrated SEPA/GMA process. The RO properly imposed traffic mitigation measures and was not clearly erroneous in its threshold determination.

39. All testimony and exhibits addressing traffic within the City agree that the City presently has significant traffic congestion problems and has had such congestion problems since at least the 1980s. Said congestion is caused by the intersection of two State highways in the center of the downtown area. SR-510 provides access to Yelm from unincorporated Thurston County, and the cities of Lacey, Olympia, and Tumwater; traverses a portion of the City in an east/west direction; and is known as Yelm Avenue. SR-507 provides access to Yelm from unincorporated areas and the cities of Rainier, Tenino, Centralia, and Chehalis to the south. SR-507 also provides access from unincorporated Pierce County, McKenna, Roy, Fort Lewis, McChord Air Force Base, and the Spanaway area (south of Tacoma) to the north. SR-507 enters Yelm from the south, intersects with SR-510 at a right angle, turns east, and eventually enters Pierce County. SR-510 terminates at said intersection. South of the intersection with SR-510, SR-507 is known as First Street, but after the intersection and the turn to the east, SR-507 becomes Yelm Avenue. First Street continues to the north beyond the SR-510 intersection as a local City street. The Wal-Mart parcel abuts the north side of Yelm Avenue (SR-507) at the eastern edge of the City. Perry Shea testified that a significant amount of traffic on both State highways passes through Yelm to other destinations.
40. Prior to issuing the MDNS and imposing the mitigation measures set forth

hereinabove, the RO required the applicant to submit a Transportation Impact Analysis (TIA) (Exhibit "11") for the Wal-Mart Supercenter. The applicant engaged The Transpo Group, a qualified transportation engineering firm, to prepare the analysis. Prior to commencing work, The Transpo Group met with the City and the Washington State Department of Transportation (DOT) to determine the scope of the analysis to include the method of calculating the LOS, the background traffic increase, and the intersections to study. DOT and the City required the engineer to study 41 intersections within the City, which essentially included all intersections along SR-507 and SR-510.

41. The Transpo Group submitted a TIA dated March, 2005, which estimated that the superstore along with the garden center would generate 7,998 new vehicle trips on a daily basis, 649 of which would occur during the p.m. peak period. The TIA also anticipated that the supercenter would attract 132 trips into the site from vehicles already using adjacent roadways. Thus, the TIA anticipates 781 vehicle trips (390 trips in and 391 trips out) during the p.m. peak period. The TIA anticipates that 39% of new trips will come from the east on SR-507, and that 61% of the traffic will come from the north, west, and south on Yelm Avenue and First Street. The TIA calculated the average LOS of all intersections as required, and determined that the operation of the Yelm Avenue/First Street intersection would reduce from LOS C to LOS D as would the Yelm Avenue/Bald Hill Road/Creek Street intersection. While no intersection would fall below an average of LOS D, the worst movement analysis shows that many movements at unsignalized intersections would either decrease to or remain at LOS F, and that some intersection movements would realize substantial increases in delay. At one such intersection, Yelm Avenue/Plaza Drive East, the worst traffic movement would increase in delay from 236 seconds to 940 seconds. At another intersection, SR-507/Grove Road, the delay would increase from 27.9 seconds to 736 seconds.
42. Because of the significant increase in side street delays, DOT and the City RO required as a mitigating measure in the MDNS that the applicant construct a portion of the proposed SR-507/SR-510 bypass from SR-507 north to 103rd Street. The RO also required preparation of a supplemental TIA to show the impacts of such connection. The revised TIA (Exhibit "123") shows that major Wal-Mart traffic impacts will occur at intersections along Yelm Avenue between the superstore and the intersection with First Street, and that the connection to 103rd Street would mitigate side street delays at said locations.
43. The supplemental TIA shows that approximately 20% of vehicle trips to and from Wal-Mart will use the 103rd Avenue connection to access destinations north of Yelm Avenue and will not impact Yelm Avenue traffic. The TIA still anticipates that 39% of Wal-Mart traffic will access the site from the east and 13% of the traffic will access from Bald Hills Road SE and Morris Road. Thus, with the 103rd connection, 72% of Wal-Mart traffic will not impact Yelm Avenue beyond its intersection with Bald Hills Road. An additional 3% of said traffic will turn from Yelm Avenue prior to its

intersection with First Street, and thus 25% of Wal-Mart traffic will travel through the Yelm Avenue/First Street intersection which Perry Shea testified is the main City traffic problem. From said intersection 10% will turn south on SR-507 and 15% will continue west on SR-510. The 103rd Avenue connection will not improve the LOS or the delays at said intersection. The operation of the Yelm Avenue/Bald Hill Road/Creek Street intersection will also remain at LOS D but the delays will reduce from 52 seconds to approximately 41 seconds. The improvement will also reduce delays at unsignalized cross streets to include the intersection of Yelm Avenue and Plaza Drive SE which will have a lesser delay than at present without the project.

44. Appellant asserts that the City does not have jurisdiction to establish a level of service F for the urban core. Appellant asserts that the Thurston Regional Planning Council has authority to establish levels of service for highways of statewide significance which include SR-507 and SR-510. Appellant further asserts that the Planning Council has established a LOS of D for both SR-507 and SR-510. However, the City Council adopted the City of Yelm 2001 Comprehensive Transportation Plan Update and reaffirmed LOS F for the urban core. The Examiner has no authority through SEPA or otherwise to overturn an action of the City Council. Furthermore, the LOS in the urban core to include the SR-507/510 intersection as determined by the City's methodology calculates to LOS D. Finally, the City calculates LOS by using traffic counts during the worst 15 minutes of the peak period, whereas DOT determines LOS by using the average of traffic counts during a two hour peak period. According to Mr. Shea, DOT's method of measuring LOS would result in a higher level of service for the intersection.
45. Appellant asserts that the LOS F concurrency standard as adopted by the City Council does not apply to the SR-507/510 intersection or at any intersections within the urban core as the City has no traffic diversions, bypasses, or alternate routes presently planned, funded, or implemented. Appellant presented a letter from Representative Tom Campbell advising of the lack of funding for the proposed SR-507/510 bypass. Appellant also asserts that voters will approve Initiative 912 which will eliminate gas taxes passed by the legislature, and that such will eliminate State funding for the bypass. However, Mr. Shea testified that the Federal Highway Administration (FHA) prepared an Environmental Assessment (EA) and issued a Finding of No Significant Impact (FONSI) for the northern bypass around the City known as the Y3 project. The Y3 project extends from SR-510 west of the City around the northern portion of the City to SR-507 near the east City limits at the Wal-Mart site. The EA and FONSI allowed the City and DOT to obtain funds for the project (\$33 million dollars). Mr. Shea testified that the bypass is currently in design and leading up to right-of-way acquisitions. In public hearings on preliminary plat applications, the Examiner has imposed conditions of approval at the City's request to either maintain in open space portions of plats identified as future bypass right-of-way or delay issuance of building permits for lots within said right-of-way until the balance of the subdivision lots have received permits. Mr. Shea testified that the project is not on hold and could be completed within five to seven years. Therefore,

at the present time, the Y3 project qualifies as a traffic bypass presently planned, funded, and implemented. Thus, even if the LOS of urban core intersections are reduced to "F", the project meets the concurrency standards adopted by the City Council.

46. Appellant presented testimony from Mr. Robert Bernstein, a qualified traffic engineer. Mr. Bernstein noted that the applicant's traffic engineer took traffic counts for the TIA during the months of January and February which statistically have the lowest volumes. In determining his calculation of the LOS of the SR-507/510 intersection, he increased the traffic counts by 20%. Such caused the LOS of said intersection to decrease to LOS E or F. However, according to Perry Shea, historic traffic counts taken throughout the year within the City of Yelm do not vary. In fact, the difference between traffic counts taken in July and January differed by only 12 vehicles during the peak period. The traffic counts taken in January and February are accurate for the entire year and confirm the LOS D average operation.
47. Mr. Bernstein asserts that the location of the Wal-Mart driveway on SR-507 near the east end of the parcel is unsafe as it is located at the bottom of a hill and has sight distance issues. However, the City and DOT performed an extensive review of the access to include sight distance, and DOT issued an access permit. Furthermore, DOT, the City, and FHA approved the traffic signal location. No safety concerns are present at either proposed driveway.
48. Mr. Bernstein asserts that the applicant did not perform an analysis of the traffic beyond 2006 and therefore did not consider future cumulative impacts. The applicant did, however, consider a background traffic growth rate of 4%, at least double the historic traffic increases for the City. The applicant also performed a study to ensure that the design of the project will fit the future bypass. Furthermore, planning for the future is the City's responsibility and the City has identified traffic improvement projects in its Six Year Transportation Plan (2006-2111) to include the SR-510/Yelm Loop (Y3), the SR-507 southern loop road, and the widening of Yelm Avenue West. The City is now planning under a Corridor 2030 Plan. The corridor plan assumes large store, commercial development in this area of the city based upon the C3 zone classification. The applicant satisfied its responsibilities by fitting the project with future City plans and considering background growth.
49. Mr. Bernstein noted that the applicant performed no analysis of the overall SR-507/510 corridor operation which would have considered such factors as average traffic speed, and also did not perform a queue analysis. Mr. Bernstein asserts that significant queuing at an intersection affects the LOS calculation because it limits the number of cars that can proceed through the intersection. He believes that the applicant should also have performed a traffic demand analysis of the intersection. Mr. Bernstein testified that he traveled from Yelm High School to the Bald Hills intersection and estimated the overall road corridor to operate at LOS E and F due to his speed of ten to 11 miles per hour. He recommended a rigorous analysis of the

corridor prior to the City moving forward on any project. The applicant did not perform a queuing analysis, a corridor analysis, or a demand analysis as neither DOT nor the City required such. However, computer models used in the TIA estimated queuing and the engineer performed some model analysis. Furthermore, performing the analyses recommended by Mr. Bernstein would only serve to confirm what the City has known since the 1980s – that severe congestion exists in the downtown core. The City Council has determined to accept such congestion until alternate routes around the downtown area are established. Furthermore, even if the analyses shows that the average LOS reduces to F, the City Council has accepted such LOS since the Y3 project is underway.

50. Mr. Bernstein also noted that since the TIA shows no pedestrian crossing analysis, it did not determine the impact on the traffic stream of pedestrians crossing the road. The TIA provides neither mid-block nor unsignalized crossing estimates nor pedestrian counts. The City and DOT once again did not require either specific pedestrian counts or crossing time evaluation. However, the model used by The Transpo Group includes a default pedestrian consideration which it used. The City asserts that the signal timing incorporates the pedestrian crossing analysis. Again, even if such analysis reduces the LOS to F, such is acceptable.
51. Mr. Shea testified that from at least the late 1980s the City has had concerns regarding traffic congestion and decided to mitigate said congestion by dispersing traffic as opposed to concentrating it through the urban core. The City believes that such will promote a free flow of traffic throughout the community.

It is the policy of Yelm to adopt levels of service for concurrency and planning purposes, which will promote development of transportation alternatives, both routes and methods of transport, rather than continue to enlarge the existing arterials (2001 Comprehensive Transportation Plan Update).

According to Mr. Shea, the City will mitigate congestion by constructing the bypass route and by creating other alternate routes through the City. Wal-Mart will construct the portion of the Y3 bypass between SR-507 and 103rd Street.

52. A number of speakers expressed concern regarding increased travel times for students on Yelm School District buses and increased response time by emergency service providers as a result of the increased traffic. Additional bus travel times may likely occur and on occasion emergency vehicles even using their sirens and lights may experience delays. However, in determining the level of service and congestion acceptable, the City Council is deemed to have considered such impacts as well as the impacts of additional time in vehicles for school teachers, business owners, and customers. Several speakers and the appellant's expert, Mr. Bernstein, testified that the City should very carefully consider any new project which would generate traffic on City streets. However, a map of the City will show that at present, traveling from

one portion of the City to another almost always requires accessing either Yelm Avenue or First Street. Thus, prohibiting development impacting said roads would essentially place a building moratorium in the City. Such is within the jurisdiction of the City Council. Furthermore, Mr. Shea testified that many vehicles on both SR-507 and SR-510 travel through Yelm to other designations. Thus, even if the City declared a moratorium, traffic on said state highways would continue to increase. Thus, while Yelm might impose a moratorium, other cities and counties would continue to grow with commercial and residential development which would use said state highways. Thus, the answer to traffic congestion on SR-507 and SR-510 is likely regional in nature. Such is akin to prohibiting development within the City of Gig Harbor due to traffic congestion on SR-16 which crosses the Narrows Bridge.

53. RCW 43.21C.075 entitled "Appeals" provides that where an agency authorizes an environmental appeal under SEPA, the agency:

- (d) Shall provide that procedural determinations made by the responsible official shall be entitled to substantial weight.

Our Washington Supreme Court interpreted the "substantial weight" requirement in Wenatchee Sportsmen v. Chelan County, 141 Wn. 2d 169 (2000), as follows:

A decision to issue an MDNS may be reviewed under the clearly erroneous standard...A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the record is left with the definite and firm conviction that a mistake has been committed...For the MDNS to survive judicial scrutiny, the record must demonstrate that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA and that the decision to issue an MDNS was based on information sufficient to evaluate the proposal's environmental impact....141 Wn. 2d 169 at 176.

Had the Examiner served as the responsible official he may have required the TIA to include analyses of the overall corridor, queuing, and pedestrian crossings. However, the Examiner is not left "with the definite and firm conviction that a mistake has been committed", especially considering adoption of a level of service standard and other traffic standards by the City Council pursuant to GMA. Applying the "substantial weight" criteria, the City's environmental analysis provides sufficient information to identify the proposal's probable significant environmental impacts, and the MDNS adequately mitigates said impacts to less than substantial.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.

2. The applicant has established that the request for site plan review approval satisfies the criteria set forth in Chapter 17.84 YMC.
3. The appellant has not shown that the Responsible Official was clearly erroneous in its issuance of the MDNS. The MDNS provides sufficient information to evaluate the Wal-Mart Supercenter's environmental impacts.
4. The environmental appeal of the Yelm Commerce Group should be denied.
5. The PACLAND, Inc. request for site plan review approval should be granted subject to the following conditions:
 1. The conditions of the Mitigated Determination of Non-significance are hereby referenced and are considered conditions of this approval.
 2. The applicant shall connect to the City water system. The cost to connect shall include a fee of \$1,500.00 per Equivalent Residential Unit (900 cubic feet per month), subject to change. The number of ERU's will be calculated on water usage based on the design capacity of the new facility and the proposed portables. The applicant shall provide proposed water usage calculations in the civil plan submission. Water connection fees are paid at building permit issuance. The water line near the intersection of Grove Road and SR 507 shall be extended at the applicant's expense to serve the property. The applicant may apply for a latecomer's agreement to recover the cost of extending the water line.
 3. The civil plan submission shall include fire flow calculations and demonstrate that the fire flow requirements of the International Fire Code have been met at the site. If water storage tanks are utilized to provide required fire flow, they shall meet the standards of the Yelm Design Guidelines, shall include backflow prevention pursuant to State Health Regulations, and shall include a maintenance and operations plan approved by the Community Development Department. All fire hydrants installed as part of the development shall include hydrant locks approved by the Development Review Engineer and the Public Works Director.
 4. The applicant shall connect to the City S.T.E.P. sewer system. The cost to connect shall include a fee of \$5,417.00 per ERU with a \$145.00 inspection fee per connection, subject to change. The number of ERUs required will be determined by approved water consumption calculations submitted as part of the civil plans. Sewer connection fees are paid at building permit issuance. The sewer line near the intersection of Middle Road and 100th Way shall be extended at the applicants expense to provide service to the property. The applicant may apply for a latecomers

agreement to recover the cost of extending the sewer line. Approved grease interceptors or oil interceptors shall be provided on all side sewers serving areas which include the potential for introduction of fats, oils, and greases into the sewer system. All S.T.E.P. tanks shall be designed to the specifications of the City of Yelm Development Guidelines, including a maximum depth to the tank invert of 6 feet below finish grade.

5. Upon completion of the onsite installation pursuant to the City's Development Guidelines, the S.T.E.P. sewer equipment, appurtenances and lines shall be conveyed to the City, and an easement provided for maintenance.
6. The applicant shall design and construct all stormwater facilities in accordance with the conditions of the Mitigated Determination of Non-significance. A final stormwater report shall be included in the civil plan submission.
7. Parking shall be provided in accordance with the City of Yelm Development Guideline standards based on one space for every 250 square feet of gross floor area. The project shall provide:
 - ✓ A minimum of 806 total parking spaces (9 feet by 20 feet minimum standard)
 - ✓ A maximum 202 of the total spaces shall be compact stalls (8 feet by 16 feet).
 - ✓ Shopping cart return areas shall not be located in required parking spaces.
 - ✓ 16 accessible spaces pursuant to the Washington State Amendments to the Building Codes.
 - ✓ A minimum of 4 loading areas.
8. The civil plans shall include a complete detailed landscape plan in accordance with Chapter 17.80 YMC, including provisions for irrigation and for maintenance of landscaping.
 - ✓ A Type I landscape buffer is required along the north and east property lines.
 - ✓ Type II landscaping is required along the west and south property lines and adjacent to buildings.
 - ✓ Type III landscaping is required with all frontage improvements.
 - ✓ Type IV landscaping is required in all parking areas.
9. The 'Welcome to Yelm' sign located in the southwest corner of the property shall be moved at the applicant's expense to a location approved by the Community Development Department. The landscaping plan shall

include the proposed new location of the sign.

10. The building elevations included as part of the site plan review application are consistent with the Yelm Design Guidelines for the gateway district and are approved as submitted. Any changes to the approved building elevations shall be submitted to the site plan review committee for review and approval.
11. The landscape buffer along the frontages of SR 507 and SR 510 Yelm Loop shall provide parking lot screening according to the design guidelines applicable to the gateway district. The screening shall incorporate a combination of the following design elements:
 - ✓ Screen walls of river rock no less than 3 feet in height and segments not less than 20 feet in length.
 - ✓ Landscaping typical of type II
 - ✓ Decorative fence or trellis
 - ✓ Appropriate transit facilities for Intercity Transit along the SR 510 Yelm Loop frontage.

The landscaping plan shall include the plan for parking lot screening information.

12. The intersection of SR 507 and the SR 510 Yelm Loop shall include corner enhancements consistent with the Design Guidelines for the gateway district that include the following elements:
 - ✓ Landscaping enhancements
 - ✓ A structural element designed to enhance the intersection and create an attractive entry into the City of Yelm such as the relocated 'Welcome to Yelm' sign or a clock tower.

The landscaping plan shall include the plan for corner enhancement.

13. Refuse collection and trash compaction areas shall be designed to contain all refuse generated on site and deposited between collections. Deposited refuse shall not be visible from outside the refuse enclosure. Screening shall be of a material and design compatible with the overall architectural theme of the associated structure, shall be at least as high as the refuse container, and shall in no case be less than six-feet in height with a gate enclosure. The fence shall be a solid material such as wood or masonry, and shall be designed per the City of Yelm Development guidelines. Building plans shall include architectural details of the enclosure. If floor drains are utilized in the refuse collection area, they shall be tied to the S.T.E.P. sewer system, and a roof shall be provided over the entire collection area.

14. The civil plan submission shall include a fire access plan showing all required fire lanes and a striping plan for fire lanes.
15. The civil plan submission shall include a plan, including provisions for a financial guarantee, for maintenance of the property should the use discontinue. The plan shall include the maintenance of the stormwater system, perimeter and parking lot landscaping and the building. The plan shall also provide provisions for enforcement of the maintenance plan which does not financially burden the City of Yelm.
16. There shall be no outdoor storage or display of merchandise which is not screened from public rights-of-way or adjacent residentially zoned properties. The landscaping plan shall include details for screening all outdoor display areas, including the garden center. There shall be no outdoor storage in cargo containers, trailers, or storage containers which have not been included in the landscaping plan and approved by the site plan review committee.
17. There shall be no overnight recreational vehicle parking on the site.
18. The site plan is effective for eighteen (18) months from the date of this approval. If application for a building permit is not made within the eighteen month period, the approval shall automatically terminate. The applicant may request a six-month extension of the approval, if the request is made in writing prior to the expiration date of this approval.

DECISION:

The appeal of the Yelm Commerce Group of the Yelm Responsible Official's decision to issue a Mitigated Determination of Nonsignificance is hereby denied.

The application of PACLAND, Inc., for site plan review approval to allow construction of a Wal-Mart Superstore is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this 1st day of November, 2005.

STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this 1st day of November, 2005, to the following:

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

PROPERTY OWNER: Wal-Mart Stores, Inc.
2001 SE 10th Street
Bentonville, AR 72712-6489

**APPLICANT'S
ATTORNEY:** John C. McCullough/Courtney Flora
McCullough Hill Fisko Fretscmer Smith Dixon
2025 First Avenue, Ste. 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 Fifth Avenue, Ste. 3303
Seattle, WA 98154

City of Yelm
Grant Beck/Tami Merriman
105 Yelm Avenue West
P.O. Box 479
Yelm, Washington 98597

OTHERS:

See Attached Mailing List

CASE NO.: SPR-05-0091-YL – WAL-MART SUPERCENTER

NOTICE

1. **RECONSIDERATION:** Any interested party or agency of record, oral or written, that disagrees with the decision of the hearing examiner may make a written request for reconsideration by the hearing examiner. Said request shall set forth specific errors relating to:

A. Erroneous procedures;

B. Errors of law objected to at the public hearing by the person requesting reconsideration;

C. Incomplete record;

D. An error in interpreting the comprehensive plan or other relevant material; or

E. Newly discovered material evidence which was not available at the time of the

hearing. The term “new evidence” shall mean only evidence discovered after the hearing held by the hearing examiner and shall not include evidence which was available or which could reasonably have been available and simply not presented at the hearing for whatever reason.

The request must be filed no later than 4:30 p.m. on November 14, 2005 (10 days from mailing) with the Community Development Department 105 Yelm Avenue West, Yelm, WA 98597. This request shall set forth the bases for reconsideration as limited by the above. The hearing examiner shall review said request in light of the record and take such

further action as he deems proper. The hearing examiner may request further information which shall be provided within 10 days of the request.

2. **APPEAL OF EXAMINER'S DECISION**: The final decision by the Examiner may be appealed to the city council, by any aggrieved person or agency of record, oral or written that disagrees with the decision of the hearing examiner, except threshold determinations (YMC 15.49.160) in accordance with Section 2.26.150 of the Yelm Municipal Code (YMC).

NOTE: In an effort to avoid confusion at the time of filing a request for reconsideration, please attach this page to the request for reconsideration.