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No. 84831-9

(COA No. 38581-3-II)

SUPREME COURT OF
THE STATE OF WASHINGTON

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STATE OF WASHINGTON
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JZ KNIGHT,
Petitioner,

v.

CITY OF YELM and TTPH 3-8, LLC,
Respondents.

PETITIONER'S STATEMENT OF ADDITIONAL AUTHORITIES

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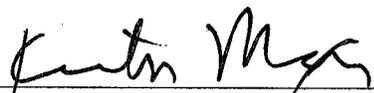
ORIGINAL

Petitioner JZ Knight submits the following authorities on the issue of whether she has standing to appeal local preliminary plat approvals under the Land Use Petition Act:

- A. *Loveless v. Yantis*, 82 Wn.2d 754, 759, 513 P.2d 1023 (1973).
- B. Professor Richard L. Settle, The Washington State Environmental Policy Act: A Legal and Policy Analysis, § 13.01[1], p. 13-16, (Matthew Bender), 2010.

Copies of these authorities, highlighted by Petitioner, are attached for the Court's convenience.

RESPECTFULLY SUBMITTED this ___ day of May, 2011.

By  _____
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A



Supreme Court of Washington, En Banc.
 Morris J. LOVELESS and Christine Loveless, hus-
 band and wife, Respondents,

v.

George F. YANTIS, Jr., et al., Appellants.

No. 42706.
 Sept. 6, 1973.

Appeal from order of county commissioners denying application for preliminary approval of plat for multifamily condominiums on peninsula at southern extremity of Puget Sound. The Superior Court, Thurston County, Warner Poyhonen, J., denied requests for permission to intervene, entered judgment granting preliminary approval of the plat and appeal was taken. The Supreme Court, Utter, J., held that association and individual who had direct interest as property owners were entitled as matter of right to intervene; that plat contemplating structures not permitted in suburban-agricultural use district on its face violated the county zoning ordinances; that record of county proceedings was inadequate to support the court's judgment; and that an environmental impact statement was a necessary prerequisite for preliminary approval of the plat.

Reversed.

West Headnotes

[1] Zoning and Planning 414 ↪1603

414 Zoning and Planning
 414X Judicial Review or Relief
 414X(B) Proceedings
 414k1600 Parties
 414k1603 k. Intervention and new parties. Most Cited Cases
 (Formerly 414k583)
 Association and individual who had direct interest as property owners and who would have had a right to appeal ruling of county commission had it

granted application for preliminary approval of plat for multifamily condominiums on Puget Sound peninsula were entitled to intervene as matter of right in developers' appeal from commissioners' order denying application for preliminary approval. CR 24(a).

[2] Associations 41 ↪20(1)

41 Associations
 41k20 Actions by or Against Associations
 41k20(1) k. In general. Most Cited Cases
 An organization whose members are injured may represent those members in proceedings for judicial review.

[3] Zoning and Planning 414 ↪1740

414 Zoning and Planning
 414X Judicial Review or Relief
 414X(E) Further Review
 414k1740 k. Right of review and parties.
 Most Cited Cases
 (Formerly 414k742)
 Association and individuals seeking to intervene in appeal from decision of county commissioners denying preliminary approval of plat filed by developers were not per se adequately represented by the fact that the county was appealing from superior court judgment which granted preliminary approval inasmuch as county was required to consider interest of all residents of the county, whereas intervenors represented a more sharply focused viewpoint.

[4] Parties 287 ↪38

287 Parties
 287IV New Parties and Change of Parties
 287k37 Intervention
 287k38 k. In general. Most Cited Cases
 Rule providing for intervention of right should be interpreted to allow intervention unless it would work a hardship on one of the original parties. CR 24(a).

[5] Zoning and Planning 414 ↪1603

414 Zoning and Planning

414X Judicial Review or Relief

414X(B) Proceedings

414k1600 Parties

414k1603 k. Intervention and new parties. Most Cited Cases (Formerly 414k583)

Failure of property owner seeking to intervene in appeal by developers from order of county commissioners denying preliminary approval of plat to follow rule requiring service of motions five days before time specified for hearing was not fatal to right to intervene. CR 24(a).

[6] Motions 267 ↪22

267 Motions

267k18 Notice

267k22 k. Service and filing. Most Cited Cases

Rule requiring service of motions five days before time specified for the hearing is not jurisdictional; where the party had actual notice and time to prepare to meet the questions raised by the motions of the adversary, deviation from the time limit may be permissible. CR 24(a).

[7] Zoning and Planning 414 ↪1126

414 Zoning and Planning

414II Validity of Zoning Regulations

414II(C) Procedural Requirements

414k1126 k. Map. Most Cited Cases

(Formerly 414k132)

Purpose of a preliminary plat is to secure approval of the street layout and location "design" of a proposal.

[8] Zoning and Planning 414 ↪1126

414 Zoning and Planning

414II Validity of Zoning Regulations

414II(C) Procedural Requirements

414k1126 k. Map. Most Cited Cases

(Formerly 414k132)

Any approval or modification by the reviewers of a preliminary plat is binding where infirmities appear that would preclude any possible approval.

[9] Zoning and Planning 414 ↪1126

414 Zoning and Planning

414II Validity of Zoning Regulations

414II(C) Procedural Requirements

414k1126 k. Map. Most Cited Cases

(Formerly 414k132)

Where preliminary plat for multifamily condominiums on Puget Sound peninsula disclosed that the proposal contemplated structures which were not permitted in a suburban-agricultural use district and also contemplated a "planned area development" which was also not permitted, the plat on its face violated county zoning ordinances and could not be approved. RCWA 58.17.100.

[10] Zoning and Planning 414 ↪1594

414 Zoning and Planning

414X Judicial Review or Relief

414X(A) In General

414k1594 k. Record. Most Cited Cases

(Formerly 414k574)

Courts reviewing proceedings of planning commissions and county commissioners in zoning cases are normally restricted to a consideration of the record made before those groups. RCWA 58.17.100.

[11] Zoning and Planning 414 ↪1594

414 Zoning and Planning

414X Judicial Review or Relief

414X(A) In General

414k1594 k. Record. Most Cited Cases

(Formerly 414k574)

Record of proceedings before county planning commission which denied application for preliminary approval of plat for multifamily condominiums on Puget Sound peninsula was insufficient for judicial determination whether the commissioners' rejection of the plat was unlawful. RCWA 58.17.100.

[12] Environmental Law 149E ↪595(2)

149E Environmental Law

149EXII Assessments and Impact Statements

149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements

149Ek595 Particular Projects

149Ek595(2) k. Land use in general.
Most Cited Cases

(Formerly 199k25.10(3), 199k25.10 Health and Environment)

Inasmuch as proposed multifamily condominiums for Puget Sound peninsula would significantly affect the environment and approval of plat involved discretion, issuance of a preliminary approval to the plat would constitute a "major action" significantly affecting the environment so as to require an environmental impact statement. RCWA 43.21C.010 et seq.

[13] Environmental Law 149E ↪589

149E Environmental Law

149EXII Assessments and Impact Statements

149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements

149Ek589 k. Significance in general.
Most Cited Cases

(Formerly 199k25.5(1), 199k25.5 Health and Environment)

Not all discretionary actions trigger the provisions of the State Environmental Policy Act; not only must the action significantly affect the environment, but it must be nonduplicative. RCWA 43.21C.010 et seq.

[14] Environmental Law 149E ↪585

149E Environmental Law

149EXII Assessments and Impact Statements

149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements

149Ek585 k. In general. Most Cited Cases
(Formerly 199k25.10(2.1), 199k25.10(2), 199k25.10 Health and Environment)

Environmental Law 149E ↪597

149E Environmental Law

149EXII Assessments and Impact Statements

149Ek597 k. Updated or supplemental statements; recirculation. Most Cited Cases

(Formerly 199k25.10(2.1), 199k25.10(2), 199k25.10 Health and Environment)

If environmental issues have previously been considered or no new information or developments have intervened since the last "major action," a new or revised impact statement is not necessary.

[15] Environmental Law 149E ↪595(2)

149E Environmental Law

149EXII Assessments and Impact Statements

149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements

149Ek595 Particular Projects
149Ek595(2) k. Land use in general.

Most Cited Cases
(Formerly 199k25.10(2.1), 199k25.10(2), 199k25.10 Health and Environment)

Requirement for environmental impact statement prior to preliminary approval to plat for multifamily condominium project for Puget Sound peninsula could not be avoided on theory that environmental review would be premature. RCWA 43.21C.010 et seq., 58.17.110.

**1024 *755 John S. Robinson, Jr., Olympia, Gordon, Thomas, Honeywell, Malanca, Peterson, O'Hern & Johnson, James A. Furber, Tacoma, Smith Troy, Pros. Atty., Olympia, for appellants.

Ernest L. Meyer, Olympia, for respondents.

UTTER, Associate Justice.

This is an appeal from a superior court judgment which granted preliminary approval to a plat filed by Morris J. Loveless, affecting property on Cooper Point in Thurston County. The court declared the Thurston County commissioners' refusal to grant approval arbitrary and capricious.

The basic issues raised are: (1) whether the intervenor-*756 appellants [FN1] are entitled as a matter of right to intervene; (2) whether the offered plat on its face violates the county zoning ordinances; (3) whether the incomplete record of the county proceedings on this matter brought before the court was inadequate to support the court's judgment; and (4) whether an environmental impact statement pursuant to RCW **1025 43.21 is a necessary prerequisite for preliminary approval of the plat.

FN1. The intervenors are the Cooper Point Association, composed of Cooper Point area owners and residents who seek to insure the orderly development of the point so that the area's unique amenities will not suffer; the Cooper's Point Water Company, Inc., composed of landowners sharing in a common well and water system on the point; and Katherine Partlow Draham, who owns and operates a farm adjacent to a portion of the platted property here at issue.

Each issue is answered in the affirmative and we reverse the trial court.

The property in question is on a glacially-formed peninsula at the southern extremity of Puget Sound, known as Cooper Point. The point is approximately 4 miles wide at its base, narrows to less than a mile at its northern tip, and extends 7 1/2 miles into the salt water. There is extensive marine life and a wide assortment of vegetation and wildlife. The peninsula rises steeply from the coastal beaches and its interior is primarily a rolling terrace.

Recently a new state college has located toward the point's base. The respondent-Loveless' project, called 'By the Sea', is proposed for the narrow tip of the point and would consist of multi-family condominiums.

On or about March 3, 1972, respondent filed an

application with the Thurston County Planning Department, (pursuant to county ordinance No. 3829), for preliminary approval of his plat. A public hearing was held by the Thurston County Planning Commission on the application and a recommendation that the plat be denied was made on April 27, 1972. The recommendation failed to provide the required reasons for denial and when the county commissioners received the matter (pursuant to RCW 58.17.100), they consulted with the applicant and by mutual agreement*757 returned it to the planning commission for further consideration and with instruction to state specific reasons if the plat was again rejected.

A subcommittee of the planning commission recommended preliminary approval; however, the planning commission referred the matter back to committee for preparation of an environmental impact statement. At this point in the planning commission's review, respondent asked the county commissioners to reconsider the matter, arguing that no environmental impact statement was required. A public hearing was held by the commissioners on August 9, 1972, and an order denying the application for the preliminary approval of the plat was entered on August 14, 1972.

Respondent appealed this order to superior court. The Cooper Point Association and Cooper's Point Water Company, Inc. appeared at an October 9, 1972 hearing requesting permission to intervene. They were denied intervention but permitted to submit briefs and argue the merits of the case as amicus curiae. Court then recessed, and before reconvening, Mrs. Katherine Partlow Draham filed a separate motion to intervene. On December 6, 1972, all motions to intervene were again denied, but all were permitted to argue as amicus curiae. The court then found the failure of the commissioners to provide any reason for refusing to grant preliminary approval to the plat constituted an arbitrary and capricious decision and granted the preliminary approval sought.

Appellant-commissioners began an appeal to

the Court of Appeals, while the intervenor-appellants petitioned the Supreme Court for a writ of certiorari authorizing them to intervene. By order of the Chief Justice the petition was granted, those seeking to intervene were permitted to appear on appeal, and the two appeal processes were consolidated into this review.

[1] The Cooper Point Association, the Cooper's Point Water Company, and Katherine Partlow Durham should have been allowed to intervene as a matter of right. This question*758 is controlled by Civil Rule for Superior Court 24(a).[FN2] The trial court found those seeking to intervene were not **1026 timely, had no claim as a matter of right, and were not necessary or proper parties to the cause. We find it necessary to rule only on the issue of intervention as a matter of right.

FN2. CR 24(a). 'Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.'

CR 24(a) requires an intervenor to show that he claims an interest relating to the property that is the subject of the action; that disposition of the action may impair his ability to protect that interest; that his interest is not being adequately represented by existing parties; and that his appeal is timely.

Each of the intervenors has the necessary interest in the property. The interest of the Cooper's Point Water Association and Katherine Partlow Durham is direct as property owners 'who feel themselves aggrieved' and who would have had a right to appeal the ruling of the commission had it

been adverse to them. They could, in addition, have shown special damages by way of diminution in value of their property resulting from the action of defendants. *Park v. Stolzheise*, 24 Wash.2d 781, 167 P.2d 412 (1946).

[2] The Cooper Point Association, likewise, has an interest in the property. An organization whose members are injured may represent those members in proceedings for judicial review. *NAACP v. Button*, 371 U.S. 415, 428, 9 L.Ed.2d 405, 83 S.Ct. 328 (1963). With the members of the association here all residents of the area affected, the association has a direct enough interest to challenge the administrative action. *Sierra Club v. Morton*, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972).

The intervenors are likewise in a position, where the *759 disposition of the action may impair their ability to protect their interests. Our ruling regarding the nature of a preliminary plat establishes that it is not merely an insignificant stage of the proceedings without real consequence. The failure to litigate environmental and zoning issues at this stage could result in decisions being reached by the county that have a binding impact on intervenors without their consent or participation.

[3] Intervenor-appellants are not per se adequately represented by the fact that the county is appealing. Actual proof in this case of that fact is shown by the county's failure to urge any of the grounds upon which we base our ruling. [FN3] In addition, the county must consider the interests of all the residents of the county, where the affected property owners represent a more sharply focused and sometimes antagonistic viewpoint to that of the county as a whole. *Herzog v. Pocatello*, 82 Ida. 505, 356 P.2d 54 (1960); *Bredberg v. Wheaton*, 24 Ill.2d 612, 182 N.E.2d 742 (1962).

FN3. The county solely contended that the commissioners' decision was not arbitrary and capricious and that if so, the trial court must remand the matter back to the com-

missioners rather than itself granting the preliminary approval. Moreover, on the issue of whether a zoning violation exists in this case, the county and intervenors are at odds on whether the plat even raises a zoning question.

[4] The motions to intervene were also timely. CR 24(a) should be interpreted to allow an intervention of right unless it would work a hardship on one of the original parties. *Wolpe v. Poretsky*, 79 U.S.App.D.C. 141, 144 F.2d 505 (1944), cert. denied, 323 U.S. 777, 65 S.Ct. 190, 89 L.Ed. 621 (1944); *Esso Standard Oil Co. v. Taylor*, 399 Pa. 324, 159 A.2d 692 (1960).

[5][6] The failure of intervenors to follow Civil Rule for Superior Court 6(d), requiring service of motions 5 days before the time specified for the hearing, was not fatal in this case. The rule is not jurisdictional. Where the party had actual notice and time to prepare to meet the questions raised by the motions of the adversary, deviation from the time limit may be permissible. *760 *Herron v. Herron*, 255 F.2d 589 (5th Cir. 1958); 4 *Wright & Miller, Federal Practice & Procedure* s 1169, at 644 n. 30 (1969).

There was ample notice and time to prepare here. The appearance of intervenors as amicus curiae gave respondent adequate **1027 opportunity to know the issues raised and be prepared to meet them. The motion to intervene is granted in this appeal and as a matter of right should have been granted in the trial.

Respondent's submitted plat, on its face, violates the existing Thurston County zoning ordinance (No. 3744) in two respects. First, the proposal contemplates structures which are not permitted in a suburban-agriculture use district like northern Cooper Point, and it contemplates a 'Planned Area Development' which is also not permitted.

A preliminary plat is defined by Thurston County ordinance No. 3829, section 2, as

A neat and approximate drawing of the proposed layout of streets, blocks, lots and Other elements of a plat or subdivision which shall furnish the basis for the Planning Commission's approval or disapproval of the general layout of the plat or subdivision.

(Italics ours.) This is similar to RCW 58.17.020 (4). The documents filed by respondent show not only the proposed streets but the height and location of the structures to be served by these streets. The plat layout, therefore, related elements of the proposed subdivision, apparently in an effort to submit a 'Planned Area Development'.

Some of the proposed structures in the plat were 40, 50, and 110 feet high. Given this detail, the administrative body reviewing the plat was on notice that possible violations of the zoning prohibition that 'No building or structure shall exceed two (2) stories or thirty-five (35) feet in height, whichever is less' in a suburban-agriculture zone existed. Respondent contends any height violations are immaterial at the preliminary approval stage of a plat, since a preliminary plat is only an approximate drawing of streets, blocks, and lots with the question of zoning compliance deferred to a latter stage. We disagree.

*761 [7] It is true that a purpose of a preliminary plat is to secure approval of the street layout and location 'design' of a proposal. Essentially, the plat provides information not specified in ordinance regulations. 3 A. Rathkopf, *The Law of Planning and Zoning*, ch. 71, s 5 (1972). The importance of this preliminary approval procedure is indicated by Rathkopf at page 71-34:

Where this two-step procedure is in effect, consideration of the preliminary plat must result either in its approval as submitted, or a statement that it will be approved if it is modified in the manner specified by the planning board, or in Its disapproval where conditions or infirmities appear or exist that would preclude any possibility of approval.

The planning board cannot modify the preliminary plat and then disapprove a final plat conforming to the plat modified as prescribed by the board.

(Italics ours.)

[8] Therefore, since any approval or modification by the reviewers of a preliminary plat is binding where infirmities appear that would preclude any possible approval (such as clear zoning violations), it is incumbent upon the planning body to reject the plat. The planning commission is directed when considering preliminary plats of proposed subdivisions

to assure conformance of the proposed subdivision to the general purposes of the comprehensive plan and to planning standards and specifications as adopted by the . . . county.

RCW 58.17.100.

[9] Here, the plat's layout was more than just a drawing of streets and lot lines, and the indicated height of the proposed structures, violative of the height regulations, may not be approved.

It appears that respondent proceeded under section 11A of county platting ordinance No. 3829 which sets forth procedures for those seeking a 'Planned Area Development' (P.A.D.). The pertinent county zoning ordinance (No. *762 3744) provides no authority for a P.A.D. in a suburban-agriculture use district.

****1028** A 'Planned Unit Development' (P.U.D.), which is significantly different from the requested P.A.D., is permitted by the zoning ordinance. A P.U.D. has been defined as a self-contained community

built within a zoning district, with the rules of density controlling not only the relation of private dwellings to open space, but also the relation of homes to commercial establishments such as theaters, hotels, restaurants, and quasi-commercial uses such as schools and churches.

Cheney v. Village 2 at New Hope, Inc., 429 Pa. 626, 630, 241 A.2d 81, 83 (1968). A P.A.D., on the other hand, permits a group of structures to be built together in a more pleasing and practical manner than might be permitted under the restrictions of a subdivision and platting ordinance. Such an ordinance does not allow structures unauthorized by zoning regulations. The lack of enabling regulations for a P.U.D. is also fatal to the preliminary plat in this case.

We therefore conclude the plat cannot be granted preliminary approval since on its face it violates the controlling zoning ordinances.

The essence of the trial court's ruling was that the commissioners' decision was arbitrary and capricious. We find it impossible to intelligently review the commissioners' decision because of an incomplete and inadequate record.

[10] Courts reviewing the proceedings of planning commissions and county commissioners in zoning cases are normally restricted to a consideration of the record made before those groups. Bishop v. Houghton, 69 Wash.2d 786, 420 P.2d 368 (1966); RCW 58.17.100. Incomplete records make appellate review impossible and where a 'full and complete transcript of the records and proceedings had in said cause' is ordered by the superior court and cannot be furnished, the actions of those boards have been vacated. Beach v. Board of Adjustment, 73 Wash.2d 343, 438 P.2d 617 (1968). Such is the case here.

[11] The hearings before the planning commission could not *763 be accurately reproduced as the tapes made were unclear. The tapings of the county commissioners' hearings were also too unclear to permit a complete, accurate reproduction. We are thus presented with a conspicuously incomplete record to review. See Nesqually Mill Co. v. Taylor, 1 Wash.T. 1 (1854).

The problem is similar to that noted in Battaglia v. O'Brien, 59 N.J.Super. 154, 173, 157

A.2d 508, 519 (1960), where the court noted:

in view of the unavailability of the basic records, we are in no position to determine whether there has been 'strict conformity with the procedural and substantive terms of the statute,' nor are we able to determine whether the municipal action was arbitrary, capricious or a manifest abuse of discretionary authority.

In an identical quandary, the court in *Russo v. Stevens*, 10 Misc.2d 530, 173 N.Y.S.2d 344, 347 (1958), stated:

no adequate or intelligent judicial review is possible unless all the essential evidentiary material upon which the administrative agency predicates a quasi-judicial determination is in the record and before the court.

There is thus no legal basis by which the trial court below or we on appellate review can determine whether the commissioners' rejection of the respondent's plat was unlawful.

The trial court concluded an environmental impact statement was unnecessary for the preliminary approval of respondent's plat. Although our resolution of the preceding issues does not require us to necessarily reach this question, we do so for the guidance of the parties in light of the possible revision and resubmission of the plat.

[12] The facts of this case necessitate an environmental impact statement pursuant to the State Environmental Policy Act of 1971 (SEPA), RCW 43.21C, because **1029 the decision to grant preliminary approval of the plat for the contemplated project constitutes a major action significantly affecting the quality of the environment. *764 *Eastlake Community Council v. Roanoke Associates, Inc.*, 82 Wash.2d 475, 487-498, 513 P.2d 36 (1973); *Stempel v. Department of Water Resources*, 82 Wash.2d 109, 508 P.2d 166 (1973).

In *Eastlake* and *Stempel* we recognized the vigorous mandate the legislature directed at govern-

mental bodies to evaluate environmental and ecological factors in their major actions. The case now before us reveals the ideal factual setting for early, and thereby meaningful, environmental review.

No party to this appeal asserts that the project will not significantly affect the environment. Nor is there any question but that the preliminary approval of a plat involves discretion and in this case is non-duplicative. Therefore, the issuance of a preliminary approval to the respondent's plat constitutes a 'major action' significantly affecting the environment so as to require an environmental impact statement.

In *Eastlake*, 82 Wash.2d at pages 490-492, 513 P.2d 36, we set forth the elements necessary to establish a 'major action'. We therein indicated that if the governmental action 'involved a discretionary nonduplicative stage' of the government's approval, SEPA would apply where the considered project significantly affects the environment. The preliminary approval of the plat is a discretionary act not mandatory under the Thurston County ordinance, since this governmental action could have resulted in a denial of the plat.

Where choice exists there is discretion and the fact that previous to SEPA the choice could be solely based on narrow or limited evaluative points set forth in an ordinance or statute is immaterial. 'It is no answer to this finding of discretion in the renewal process that the department is bound and limited in its considerations to the permit renewal provisions of the Seattle code. Such a claim was raised and rejected in *Stempel* . . .' 82 Wash.2d at 492, 513 P.2d at 47.

[13][14] We emphasize, however, that not all discretionary actions trigger SEPA provisions. Not only must the action significantly affect the environment, but it must be nonduplicative. Therefore, if environmental issues have previously been considered or no new information or developments *765 have intervened since the last 'major action', a new or revised impact statement is not necessary.

SEPA does not mandate bureaucratic redundancy but only that the heretofore ignored environmental considerations become part of normal decision making on major actions.

[15] The only argument raised against requiring an environmental review here is that it would be premature, as this stage is very early in the project's life. This contention was rejected in Eastlake where we stated, 82 Wash.2d at page 492, 513 P.2d at page 47:

(I)t is no answer to the application of SEPA, to claim the renewal of a building permit is a modest exercise in a long process. Governmental action in approving a long-term project may occur at various intervals during the life of the project with various degrees of significance. It is unquestionable that numerous, modest and common governmental actions may be as damaging to the environment as a single, vigorous and critical action.

We further emphasized, at page 489: 'There may exist several phases or stages of decision making for any one project and each stage, if 'major', requires an environmental impact statement.'

Each stage of governmental action may focus on distinct environmental concerns, thus providing for a more narrow evaluation. In this case, it will be of benefit to the public and the developer that an environmental review can be made on the 'design' **1030 matters revealed in preliminary plats. Choices exist and crisis decision making and catastrophic environmental damage can be avoided by early deliberation here. Also, given this early stage, the application of SEPA would result in minimizing investment costs if the decision is abandonment or alteration.

The need for an early inquiry into environmental matters at the platting stage is emphasized by RCW 58.17.110 which sets forth the responsibility of the county legislative body on these matters. It requires that body to determine, among other things, if 'the public use and interest will be served

by the platting of such subdivision . . .' For either the planning commission or county commissioners to *766 determine this question, they must have before them, in major actions, an environmental review of the project. As previously indicated, it may well be that at the preliminary stage of plat submission, all environmental impacts and ramifications cannot be known or answered. Yet, the environmental concerns raised by the plat must be reviewed. If only the street layout is indicated, its impact should be studied. In this case, enough details of the broad project can be readily gleaned from the submitted plat to provide a broader environmental review on the overall project itself.

We recognized in Eastlake that SEPA is designed to avoid crisis decision making by requiring meaningful early evaluations of environmental matters. This state policy recognizes that the threat today to the environment is not its sudden destruction but its progressive degradation. Environmental deliberation, not default, is mandated by SEPA and such deliberation is required here.

The order of the superior court is reversed.

HALE, C.J., and FINLEY, ROSELLINI, HAMILTON, HUNTER, STAFFORD, WRIGHT and BRACHTENBACH, JJ., concur.

WASH 1973.
Loveless v. Yantis
82 Wash.2d 754, 513 P.2d 1023

END OF DOCUMENT

B

THE WASHINGTON STATE ENVIRONMENTAL POLICY ACT

A LEGAL AND POLICY ANALYSIS

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2010

Filed Through:
RELEASE NO. 22, DECEMBER 2010



CHAPTER 13

THRESHOLD DETERMINATION

SYNOPSIS

- § 13.01 Threshold Determination**
- [1] The Threshold Standard: “Significantly Affecting the Quality of the Environment”**
 - [2] The Standard of Judicial Review of Threshold Determinations**
 - [3] Threshold Determination of the Timeliness of EIS Preparation**
 - [4] The Threshold Determination Process, In General**
 - [a] Timing of the Threshold Determination**
 - [b] Limitations on Actions During the Threshold Determination Process**
 - [c] The Environmental Checklist and Additional Information**
 - [d] Alternatives in Threshold Environmental Review**
 - [e] Determination of Nonsignificance (DNS) Issuance, Notice and Comment**
 - [f] Mitigated Determination of Nonsignificance**
 - [g] Determination of Significance (DS)**
 - [h] Threshold Determination Addendum**
 - [i] Statutory Determination of Significance**
 - [5] The Effect of SEPA’s Regulatory Reform Provisions on the Threshold Determination Process**
 - [6] The Effect of Interim Guidance on SEPA and Climate Change on the Threshold Determination Process**

§ 13.01 Threshold Determination

The threshold determination, which has inspired more litigation and closer judicial supervision than any other SEPA requirement, is not explicitly

mentation stage is not present where government action will affect the environment without subsequent implementing or regulatory action. Subdivision approvals, building permits, Shoreline Management Act permits, air quality variances, and the like, authorize specific site development with ascertainable environmental consequences and usually without subsequent opportunities for environmental scrutiny. In evaluating the environmental significance of such actions the courts seem to focus on the intensity and irrevocability of the proposed development and the sensitivity and vulnerability of the site and its surroundings.

Preliminary plat approval, the crucial state of subdivision regulation,⁶⁹ often has been held environmentally significant because of the virtually inevitable intensification of use and development which land subdivision portends. The immediate clearing, grading, and installation of roads, sewers and other public facilities combined with subsequent development of the new lots amount to major absolute increases in levels of environmental impacts in developed areas and striking relative impacts in pristine or sparsely developed locales. Proposed subdivisions conceded or held to be significant include: a 14-acre, 22-lot recreational-residential subdivision on the shore of Lake Lawrence, a small lake in Thurston County which, as a result of environmental analysis, was discovered to be a bald eagle haunt;⁷⁰ a large recreational-residential subdivision in an environmentally sensitive and valuable area of Whidbey Island;⁷¹ a 52-acre, 198-lot residential subdivision in a heavily wooded, developing residential area of King County near the City of Bothell;⁷² a multi-family condominium subdivision on the tip of Cooper Point near Olympia;⁷³ a 40-acre, 103-lot mobile home subdivision on land doubtfully suitable for septic tank disposal systems;⁷⁴ an undescribed subdivision in Clallam County near the Town of Sequim;⁷⁵ and a proposed subdivision in the City of Spokane Valley subject to frequent

⁶⁹ *Loveless v. Yantis*, above note 32.

⁷⁰ *State v. Lake Lawrence Public Lands Protection Ass'n*, 92 Wn. 2d 656, 601 P.2d 494 (1979).

⁷¹ *Swift v. Island County*, 87 Wn. 2d 348, 552 P.2d 175 (1976).

⁷² *Norway Hill Preservation & Protection Ass'n v. King County Council*, 87 Wn. 2d 267, 552 P.2d 674 (1976).

⁷³ *Loveless v. Yantis*, 82 Wn. 2d 754, 513 P.2d 1023 (1973).

⁷⁴ *Newaukum Hill Protective Ass'n v. Lewis County*, 19 Wn. App. 162, 574 P.2d 1195 (1978).

⁷⁵ *D.E.B.T., Ltd. v. Board of Clallam County Commissioners*, 24 Wn. App. 136, 600 P.2d 628 (1979).

CERTIFICATE OF SERVICE

On this 24th day of May, 2011, I caused to be delivered in the manner indicated below a true and correct copy of (1) Petitioner's Statement of Authorities; and (2) Certificate of Service to the following:

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I certify under penalty of perjury under the laws of the State of
Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington on May 24th, 2011.


Amanda Kleiss-Acres, Declarant