

**BEFORE THE HEARING EXAMINER *pro tem*  
FOR SEATTLE SCHOOL DISTRICT**

In the Matter of the Appeal of	)	
	)	
<b>Chris Jackins, et al, and</b>	)	<b>Wing Luke Elementary DNS</b>
<b>Seattle Committee to Save Schools</b>	)	<b>SEPA Appeal</b>
	)	
of the October 10, 2017	)	
Determination of Non-Significance	)	<b>Findings, Conclusions, and</b>
issued in review of	)	<b>Decision Recommended to the</b>
the proposed replacement of	)	<b>Superintendent of</b>
<u>Wing Luke Elementary School</u>	)	<b>Seattle Public Schools</b>

**SUMMARY OF RECOMMENDATION**

The Appellants did not satisfy their burden of proving that the determination of non-significance was clearly erroneous and the Responsible Official’s threshold determination should be **AFFIRMED**.

**SUMMARY OF RECORD**

**Request:**

Seattle Public Schools proposed to demolish and replace the existing Wing Luke Elementary School at 3701 S. Kenyon Street in Seattle, Washington. The proposal would construct a multistory school with a capacity of 660 students built in its place. Construction is expected to take 26 months and is intended to commence in July 2018.

Acting as lead agency for review of the proposal pursuant to the State Environmental Policy Act, Seattle Public Schools issued a determination of non-significance (DNS) on October 10, 2017.

Five individuals including Stephen Dale Bamford, Mimi Boothby, Jennifer Leshner, Atticus Waller, and Chris Jackins of Seattle Committee to Save Schools, acting as authorized representative (Appellants), timely appealed the DNS on October 24, 2017.

**Hearing Date:**

The open record appeal hearing in the above-captioned matter was conducted on December 15, 2017 at the Stanford Center, Seattle Public Schools headquarters, located at 2445 Third Avenue South, Seattle. At the conclusion of the hearing, the parties agreed upon a recommendation issuance date of January 9, 2018. The record was held open for submission of the project's cultural resources report and/or correspondence from the Washington State Department of Archeology and Historic Preservation (DAHP) regarding whether the Hearing Examiner and/or Appellants may view the report. The report and a letter from DAHP were timely submitted with a cover letter on December 21, 2017 and all are admitted.

**Testimony:**

At the open record public hearing, the following individuals presented testimony under oath:

*For the Appellants*

Chris Jackins, Coordinator, Seattle Committee to Save Schools  
Madelaine Mimi Boothby

*For Seattle Public Schools*

Mike Skutack, Seattle Public Schools, Project Manager  
Paula Johnson, ESA, Cultural resources consultant  
Katherine Taylor, Arborist, Tree Solutions  
Tod McBryan, Heffron Transportation Inc., Traffic consultant  
Kas Kinkead, Tree Solutions, Consulting Arborist

The School District was represented by G. Richard Hill, Attorney, McCullough Hill Leary PS.

**Exhibits:**

The following exhibits were admitted in the record of this matter:

1. Appeal, filed October 24, 2017
2. Seattle Public Schools Wing Luke Elementary SEPA determination of non-significance (DNS) issued 10/10/17 with cover sheet, Environmental checklist, and appendices:
  - A. Transportation Technical Report
  - B. Earthwork Quantities Update
  - C. Tree Inventory and Assessment
  - D. Comments and Responses
3. Mailed notice of hearing to Mr. Jackins and emailed notice to Ms. Boothby, both dated November 6, 2017
4. Chris Jackins' written hearing comments (19 pages), dated December 15, 2017
5. Seattle Public Schools (SPS) Queen Anne Elementary School Addition SEPA Checklist Public Meeting PowerPoint presentation, dated June 12, 2017 (offered by Appellants)
6. Chris Jackins/ Seattle Committee to Save Schools, SEPA comments on the Wing Luke Elementary Environmental Checklist, dated August 1, 2017
7. Queen Anne Elementary School Addition SEPA Checklist, Appendix, Public Comments and Responses, Excerpt (five pages) (offered by Appellants)
8. "Capital Projects and Planning" (offered by Appellants)
9. SPS web page screenshot, "BEX II - Building Excellence II Capital Levy" (offered by Appellants)
10. SPS School Board Action Report, dated October 9, 2017 (offered by Appellants)

11. Chris Jackins letter to SPS Public Records Officers, dated October 3, 2017 (offered by Appellants)
12. Letter from Natasha Walicki, SPS Public Records Officer, to Chris Jackins, dated October 13, 2017 (offered by Appellants)
13. Letter from Natasha Walicki, SPS Public Records Officer, to Chris Jackins, dated December 8, 2017 (offered by Appellants)
14. SPS Draft PowerPoint presentation for Departures Committee Consideration, prepared by NAC Architecture, undated (offered by Appellants)
15. Wing Luke Elementary Tree Protection Plan, dated December 15, 2017 (offered by SPS)
16. Wing Luke Elementary Tree Planting Plan, dated December 15, 2017 (offered by SPS)
17. Letter to Hearing Examiner from G. Richard Hill, dated December 21, 2017
18. Letter to Paula Johnson from Gretchen Kaehler, DAHP, dated December 20, 2017
19. Wing Luke Elementary School Cultural Resources Assessment, prepared by ESA, dated May 8, 2017

Based upon the record developed at the open record hearing, the Hearing Examiner *pro tem* enters the following findings and conclusions.

### **FINDINGS**

1. Seattle Public Schools (SPS, the District) proposed to demolish the existing Wing Luke Elementary School and build a new two-story school in its place. The proposed school would include 93,500 square feet of programmable spaces and would accommodate up to 660 students at full capacity to address projected growth in the Beacon Hill Neighborhood, up from current student enrollment of 356. The site is located at 3701 S. Kenyon Street in Seattle. The school property fronts Kenyon Street to the north, single-family parcels and 39th Avenue S to the east, S Rose Street to the south, and 37th Avenue S to the west. The Chief Sealth Trail, a public recreational facility and pedestrian path, is off-site to the east. *Exhibits 2 (see Exhibit 2, Figure 2), 14, and 15.*
2. The existing school is located on a 6.85-acre site that slopes gently down to the southeast, with an elevation change of approximately 50 feet. Slopes in excess of 40% in the southeast corner of the site, at the extreme southeast corner of the playfield, meet the Seattle Municipal Code definition of steep slopes; however no unstable soils or potential slides on-site. The project vicinity contains no surface water bodies, floodplain, or surfacing groundwater. The site is currently developed with four school buildings (including one temporary modular building) and two play areas, one fully paved and one grass playfield. *Exhibits 2 and 2.C.*

3. The current attendance area for Wing Luke Elementary is bordered by S Othello Street to the north, Martin Luther King Jr Way to the east, and Beacon Avenue S to the west. Zoning in the attendance area is a mix of single-family and denser residential development types, and the school is surrounded by residential uses. Many students from the New Holly Development walk to the school on the Chief Sealth Trail. *Exhibit 14.*
4. Acting as lead agency for review of the proposal pursuant to the State Environmental Policy Act, the District issued a determination of non-significance (DNS) on October 10, 2017. *Exhibit 2.* Represented by authorized spokesperson Chris Jackins of Seattle Committee to Save Schools, the Appellants timely appealed the DNS on October 24, 2017. *Exhibit 1.*
5. Issues raised on appeal related to alleged probable significant adverse impacts to the following: traffic, parking, trees, impacts to landmarks, noise, open space, recreation, bus loading, tree canopy, zoning departures, aesthetics, safety, trash, enrollment, future portables, demolition, interim site impacts, drainage issues, light and glare, playground size, loss of open space, a courtyard not accessible to the public, lack of sidewalks on Kenyon Street and 39th Avenue S, and construction traffic on 39th Avenue S. Appellants requested that the DNS be reversed and an environmental impact statement be required for the proposal, or alternatively that the matter be remanded for further review of open space/recreation impacts and further public comment on open space/recreation and historic/cultural impacts. *Exhibits 1 and 4; Testimony of Mimi Boothby and Chris Jackins.*
6. The proposal would demolish the existing school building and replace it with a new two-story building. Improvements would include 35 classrooms, a gymnasium, cafeteria, music and art rooms, and a library. A new childcare facility would be developed in the school building, intended for before and after school care. Play areas would include a new soft surface play area, a hardscape play area, and a field with improved drainage. The reconfiguration of all play areas in the southeast corner of the site and the proposed above ground library would facilitate supervision during outdoor recreation periods, improving safety and staffing. Drainage improvements in the playfield and improvements in the form of covered play areas would render more of the school's recreation facilities accessible for more days of the school year. The existing parking lot on the north end of the site would be enlarged and reconfigured, increasing the number of stalls from 39 to 50. Parent drop off and pick up would continue to be in the parking lot, but a new drop off loop with separate ingress and egress driveways would facilitate faster, safer student transfer. Bus loading would continue to occur on 37<sup>th</sup> Avenue S. A crosswalk is proposed across Kenyon Way South to provide connection to the Chief Sealth Trail. During pick up and drop off, students would be able to wait under eaves on the front of the building near the main entrance. An electronic reader board is proposed between the entrance to the parking lot and 37<sup>th</sup> Avenue S. Also proposed are extension of utility infrastructure to an area in the southern portion of the site adjacent to Rose Street that could someday contain portable classrooms; however, no portables are

proposed or are included in the proposed enrollment capacity of 660 students. *Exhibits 2, 2.A, and 15; Testimony of Mike Skutack.*

7. During construction, the Old Van Asselt building would be used as an interim location for Wing Luke Elementary School. The building has been in use as a school and for school programs. *Exhibit 2.* The existing Tiny Tots child care facility in the southwest corner of the site would continue to operate through construction. If maximum enrollment capacity is restricted to 500, the facility would remain in use in place for day care. *Mike Skutack Testimony.*
8. In order to accomplish the proposed design, the District intends to request four zoning code departures pursuant to the Development Standard Departure Process established in the Seattle Municipal Code. The first departure requests to exceed the maximum building height in the zone by 12 feet for two mechanical penthouses. The second departure seeks to reduce the number of on-site parking spaces from 130 to 50. The third departure seeks approval to retain the existing on-street bus loading on 37<sup>th</sup> Avenue S at the north end of the site due to an increase in enrollment of more than 25%. The fourth departure seeks approval of an electronic changing message board sign near the site entrance. *Exhibits 2 and 14; Mike Skutack Testimony.*
9. In its present condition, approximately 43% of the site is occupied by impervious surfaces. The proposal would result in a final site coverage by impervious surfaces of 50%. A comprehensive drainage plan would be required as part of the building permit process, which would include best management practices and temporary erosion and sediment control measures. *Exhibit 2.*

#### *Tree Removal*

10. The District commissioned a professionally prepared tree inventory and assessment report that evaluated the number and health of trees on-site and looked at trees off-site with canopy overhanging the site. The assessment found 74 significant trees on-site greater than six inches in diameter. Twenty-nine off-site trees have canopy that overhangs the site. The District's arborist found that the on-site trees were in good condition, except for trees 21, 22, and 26, for which removal was recommended based on condition. The tree assessment also recommended that two off-site trees (numbers 63 and 851) be pruned based on safety reasons; both are large black cottonwoods, known for limb drop potential. *Exhibits 2 and 2.C; Katherine Taylor Testimony.*
11. Based on construction plans, 37 of the site's significant trees would need to be removed. Thirteen of the trees to be retained are in close proximity to proposed construction and would require implementation of tree protection measures. The arborist recommended that the parking area could be redesigned to retain more existing trees, and also recommended retention of trees 31, 32, 33, 34, 35 (oaks) and 36 (sequoia) along the south alley. *Exhibits 2 and 2.C.*

12. The District's tree protection plan considered more trees than those 74 on-site trees in the tree assessment. The tree protection plan identified a total of 102 trees, 76 on-site and 28 off-site, to be addressed during construction; this plan considered trees within rights-of-way fronting the property. Four of these trees are considered exceptional, due to meeting the City's definition of exceptional tree. All four exceptional trees are proposed to be retained. As mitigation for the removal of 42 trees, the District proposes to plant 89 trees. The existing 22,621 square feet of tree canopy would be reduced to 9,190 square feet for construction. Replanting would increase on-site canopy to 9,813 square feet, which at time of maturity of the new plantings would increase to 38,993 square feet of tree canopy on-site, a significant increase. *Exhibit 15; Kas Kinkead Testimony.*
13. In response to the arborist's recommendations for additional retention of trees, the District redesigned the driveway to the east to retain the existing trees along the east property boundary and redesigned stormwater treatment facilities to retain additional trees along the south property line. In order to save additional trees in the parking area, the building would need to be moved south, which would reduce open space and recreation areas; it would also result in additional grading. The District did not opt to move the building south. *Exhibit 2; Kas Kinkead Testimony.*
14. The Appellants contended that the proposed removal of 50% of significant trees on-site (37 of 74) would be a probable significant adverse impact, noting that the District's arborist report counted 74 trees on-site of six-inches or greater in diameter, and that the arborist recommended that the parking lot and the northern section of the site be redesigned to retain more existing trees. Some of the particular trees proposed for removal have special significance to neighboring residents, who helped plant the trees decades ago on the school site. Appellants argued that two-thirds of the existing tree canopy would be removed and that the proposed replacement plantings would not mature for years, resulting in a significant adverse impact. Finally, Appellants argued that the design team could have retained more trees but chose not to in favor of the proposed parking lot design. *Exhibit 4; Testimony of Mimi Boothby and Chris Jackins.*
15. Appellants did not submit their own arborist's report, nor challenge the health assessment of any specific tree or the tree counts in the District's.
16. The District's landscape architect responded to the alleged significant adverse impacts related to tree removal. In her testimony, she reviewed the four exceptional trees, various trees for removal and retention, and the overall planting plan. She noted that in addition to the on-site trees, two trees in the right-of-way are proposed for removal: tree 46 because it is in the location of a necessary access driveway and tree 851 because, based on species, size, condition, and location adjacent to the driveway it has been deemed a hazard. She noted that trees 17 and 18, two exceptional trees on-site in the middle of the 37<sup>th</sup> Avenue S frontage, are Hungarian oaks to be retained; these would require protection and the presence of an arborist during construction to limit disturbance to their roots. Two dawn redwoods that are unique and liked by the neighborhood, trees 868 and 869, would have to be removed due to location within building footprints. The District's

landscape architect noted that the planting plan would increase on-site canopy at maturity, in approximately 20 years, and that since we have better tree planting technology now, the new trees should do better and grow faster than those they replace. She also testified that young trees sequester more carbon than older trees. Tree removal permits from Seattle Department of Transportation (SDOT) would be required before removal of any trees in the rights-of-way; SDOT tree removal may be conditioned on more replacement trees. Replacement trees would be planted according to City requirements. Landscaping installed after construction would focus on native and drought resistant ornamental species, according to a plan designed to reduce water needs and maintenance. *Exhibit 2; Kas Kinkead Testimony.*

### *Parking Impacts*

17. Currently, the subject property has on-site parking for 39 vehicles access from a single driveway off of Kenyon Street. A second area without striped spaces is located on the southwest side of the school building is primarily used by service vehicles but accommodates some staff and visitor parking. A curb cut on 39th Avenue S, intended as access for service vehicles, is used for street parking outside of school hours. Passenger vehicle load/unload occur in the main parking lot off of Kenyon. School bus load/unload occurs at the 37th Avenue S site frontage, the northern portion of which is signed "School Bus Only" from 7:00 to 10:00 am and from 1:00 to 4:00 pm, serving two full sized and four smaller buses. Staff and visitors park in the parking lot and in on-street parking in the vicinity. *Exhibits 2 and 2.A.*
18. The project would reconfigure the on-site parking lot off of Kenyon Street to provide 45 spaces and seven additional spaces in the load/unload area to be available outside of school hours for a total of 52 on-site spaces for evening/weekend events. The location of the school bus load/unload zone on 37th Avenue is proposed to remain unchanged except for street frontage improvements required by the City. Other than frontage improvements, no other changes to the roadway network are proposed. *Exhibits 2 and 2.A.*
19. On-street parking supply and demand were studied by the District's transportation consultant. The study found 291 on-street parking spaces within 800 feet of the school site,<sup>1</sup> of which 265 are parallel parking spaces with no time restrictions. The 25 on-street parking spaces in the School Bus Load/Unload zone are restricted during peak drop off and pick up times, and one space on Kenyon Street is a three-minute passenger load/unload space from 7:00 am to 6:00 pm. Average parking demand for the streets within 800 feet of the school property was calculated by parking demand counts performed by the District's transportation consultant at different dates and times: on a spring break day at mid-morning, on two school days mid-morning, and on two weekday evenings. Existing average parking utilization during these counts ranged from 39 to 50%, meaning that 50 to 61% of the available street parking (including consideration of spaces with time restriction) was available. Utilization rates came out to be 48 to 50%

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<sup>1</sup> The calculation of these spaces is detailed on page 15 of Exhibit 2.A.

during the school day mid morning and 34 to 36% during weekday evenings. *Exhibit 2.A; Tod McBryan Testimony.*

20. Considering parking demand rates with current enrollment and staffing levels as a base line, the transportation consultants estimated parking demand for future enrollment and staff levels (including staffing of the day care facility) at a total school day demand of 96 spaces, an increase in average school day demand of 33 spaces. This calculation considers that not all part-time teachers would be on-site every day and that some visitors and volunteers would generate demand. With 45 off-street spaces, the project would generate an average daily school day demand for 51 spaces. With mid-day parking utilization at 49%, approximately 134 on-street spaces would be available. The demand for 51 new parking spaces would increase the on-street utilization rate to about 70%, which the consultants indicated to be below the level considered by the City to be effectively full (which is 85%). The consultants concluded that this would not be a significant impact. *Exhibit 2.A; Tod McBryan Testimony.*
21. The school is anticipated to continue to conduct approximately 15 evening events throughout the school year that would be highly attended, such as school concerts, award assemblies, and the like. Additional smaller events, such as PTO meetings and boy scout/girl scout meetings, etc., would also continue to be hosted on-site after school hours. The District's traffic consultants determined that the larger evening events would generate a parking demand ranging from 80 to 215 vehicles, based on a rate of three to 3.5 passengers per vehicle and drop off activity that does not include parking. With the on-site evening parking of 52 spaces, the evening event parking demand would range from 30 to 165 spaces. At peak, this would result in 92% parking utilization, which is considered full. There are approximately three of these peak attendance large events (approximately 215 vehicles) during a school year. Other evening events (approximately 80 vehicles) happen only once or twice per month during the school year. The District's consultants submitted the position that this level of additional demand does not amount to a significant impact. *Exhibit 2.A; Tod McBryan Testimony.*
22. Appellants contended that the large increase in enrollment would result in full on-street parking during large events on approximately 10% of weekday evenings, resulting in area residents having to walk farther than 800 feet from their parked cars to their homes. They challenged the number of spaces the District reported currently exist on-site and the parking demand numbers submitted by the District's traffic consultant. Specifically addressing the 15 larger events per year, Appellants contended that a parking utilization rate of 92.7% would be a significant impact. At twice a month, large events would impact area residents 10% of the time, by Appellants' calculations, which they argue is a significant impact. The Appellants challenged the District's consultant's measurement of 800 feet, noting it appears to have been from the corners of the site, and therefore doesn't include the additional distance along the site frontage residents living across from the school may have to walk. Arguing that 800 feet may be reasonable for people headed to schools, Appellants challenged whether 800 feet (or more) is a reasonable distance to expect residents to travel when returning to their homes with groceries, luggage, or even

just day to day belongings in all weather conditions, especially those who are elderly or disabled or have children in strollers. They also noted that neighbors' driveways are frequently blocked by school event parking as it is. Appellants noted that the SEPA checklist failed to analyze the fact that there are overlapping parking radii for Wing Luke and Van Asselt Elementary Schools, meaning that demand in the overlap zone is underreported, which assures there will be parking demand exceedence if the schools have simultaneous events. *Exhibit 4; Testimony of Chris Jackins and Mimi Boothby.*

23. Appellants noted that Queen Anne Elementary Schools has 500 students and was required to provide 118 off street parking spaces. They question why the instant larger proposed school would be approved to provide substantially less. They noted that if the District does not obtain approval of its on-site parking departure request, additional parking would be required on-site, which would likely result in open space and recreation impacts and that the SEPA analysis does not address this potential outcome. Also, although the project would install infrastructure in preparation for future placement of portable classrooms on-site, no provisions for the excess parking demand generated by additional students is called out in the DNS. Arguing that such future parking would correctly be considered cumulative impact, the Appellants contended that an environmental impact statement is required for the proposal. *Exhibit 4; Chris Jackins Testimony.*
24. Although there was testimony from one Appellant witness stating that area roads are congested to the point of excessive delays, traffic impacts in terms of increased delays at area intersections were not alleged in the appeal.<sup>2</sup> *Exhibits 1 and 4; Mimi Boothby Testimony.*
25. Appellants did not submit their own parking demand study.
26. The District's transportation consultants recommended the following (paraphrased/abbreviated) measures (among others) to mitigate traffic and parking impacts resulting from the proposed expansion:
  - Establish a transportation management plan (TMP) to educate parents and students about preferred access and circulation, travel routes, and preferred load/unload locations. The TMP should encourage supervised walking, carpooling, and school bus ridership.
  - Confirm with SDOT the locations, extent, and signage of school bus and passenger vehicle load/unload zones.

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<sup>2</sup> The District's transportation consultants conducted a traffic impact analysis, in the record at Exhibit 2.A, which reflected only minor increases in delay at study intersections.

- Engage with Seattle School Safety Committee to review walk routes and determine if changes are needed for crosswalk locations, signage, pavement markings, speed limits, or crossing guard locations.
- Develop a neighborhood communication plan to inform nearby neighbors of events each year, updated annually, to include dates, times, and estimated number of attendees.
- Develop a construction management plan (CMP) that addresses traffic and pedestrian control during construction. The CMP should define truck routes, lane closures, walkway closures, and parking disruptions. The TMP should require trucks to access and depart the site by shortest possible routes, minimizing disruption on the residential streets, and identify parking locations for construction personnel, which should be on-site to the maximum extent possible.

*Exhibit 2.A.*

27. In response to Appellants arguments, the District's transportation consultant noted that the 70% parking utilization during the school day stated in the parking study represented a conservative, worst case scenario, and that at many times utilization is expected to be closer to 62%. He also reiterated that there are only three events in a typical school year that generate the peak parking demand that would result in 92% utilization. Addressing the appropriateness of identifying parking supply and demand within 800 feet of the school site, that area was selected and adopted by the City to guide transportation engineers in preparing parking studies for schools. In the District consultant's professional opinion, the parking projected does not reflect a probable significant adverse impact. *Tod McBryan Testimony.*

*On-Street Bus Loading*

28. Appellants contended that the requested on-street bus loading departure is not allowed pursuant to the Seattle Municipal Code (SMC), citing SMC 23.51B.002.I.3 and arguing the provision allows a departure from on-site bus loading only when the departure would contribute to reduced demolition of residential structures. Because no housing units are proposed to be removed for the project, the Appellants argue that it cannot be granted this departure. Instead, Appellants argued that on-site bus loading would be required and would result in loss of on-site parking, open space, playground space, and trees, increasing both the magnitude and the probability of significant adverse impacts on the environment. *Exhibit 4; Chris Jackins Testimony.*
29. The SEPA Checklist and District witnesses indicated that the District would abide by the decision of the Departures Committee. If the departures process does find favorably for the proposal, the SEPA Official would determine whether redesign is within the scope of SEPA review already conducted, or whether a SEPA addendum or entirely new SEPA process would be required. *Mike Skutack Testimony; Richard Hill Argument.*

### *Open Space and Playground*

30. Existing recreation facilities on-site include a hard surface play area in the southwest portion of the site, a play structure along the west of this hard surface area, another play structure east of the existing school building in the north part of the site, and a large playfield in the southeast corner. The SEPA Checklist notes that the playfield often cannot be used due to poor drainage. *Exhibit 2; Exhibit 2, Figure 2.*
  
31. With regard to open space, the SEPA checklist notes that in the existing condition, the site has approximately 43% impervious surface area, and that after construction, there would be approximately 50% site coverage by impervious surface areas. The checklist states that while the amount of open space would be reduced, the improvements to recreational facilities would result in an increase in useable, accessible recreation opportunities. Proposed recreation improvements include a gymnasium in the northeast corner of the site, a covered play area, a large improved playfield in the southeast corner, and a soft surface play area west of the playfield. The proposal would change the soil underlying the playfield to drain better and would grade the playfield to make it more easily accessible from the new school building. As noted elsewhere, the library would be built above a covered open space from which all on-site play areas could be monitored. Open spaces that may or may not be able to be used for recreation include (but are not limited to) an open courtyard on the interior of the buildings and a bioretention/stormwater facility in the southwest corner of the site. *Exhibit 2; Exhibit 2, Figure 3; Mike Shutack Testimony.*
  
32. The proposed recreation and open spaces on-site would be available to the public outside of school hours. Other recreational opportunities in the vicinity of the school include the Chief Sealth Trail located 60 feet east of the northeastern corner of the site and the East Duwamish Greenbelt, located approximately 1,200 feet west of the site. *Exhibit 2.*
  
33. Appellants objected to the SEPA checklist's omission of the calculation of change in the amount of open space and recreation space under the proposed project; there is no comparison provided between existing open space/recreation space area and proposed open space/recreation space areas. Arguing that open space is not the same as recreation/playground space, the Appellants took express exception to the apparent suggestion that improvements to recreation facilities should balance the loss of open space. Even in the absence of accurate accounting, however, they contended that a reduction of 7% in pervious surface area necessarily constitutes significant adverse impact to open space and recreation/playground space. Noting that neighborhoods frequently oppose reduction in open space and recreation space, Appellants contended that omission of these exact figures is an omission that renders the project incomplete for the purposes of SEPA review pursuant to WAC 197-11-055(2). They requested that the environmental threshold determination be remanded for further development on this issue. *Exhibit 4; Chris Jackins Testimony.*

*Historic and Cultural Preservation*

34. With respect to historic and cultural preservation, the Appellants noted that historic and cultural references to the person of Wing Luke, for whom the school is named, were inadvertently omitted from the Draft SEPA Checklist and that the cultural resources assessment was summarized in the Checklist rather than appended, precluding public review. In response to queries about this, the District notified members of the public seeking to review the assessment that it contained culturally sensitive information and was exempt from public distribution or disclosure pursuant to RCW 42.56.300. Appellants took exception to this, asking how anyone would know if other significant cultural or historic information were omitted without a chance to review the assessment. Appellants noted that there was public dissatisfaction with the District's decision to demolish the former Martin Luther King Jr. building and put that name on a new building, and contended that there could be similar upset about the instant proposal to do the same because "there is a reason that school is named for Wing Luke." *Chris Jackins Testimony; Exhibit 4.*
35. Appellants also argued that Wing Luke Elementary School appears to be eligible for further review by the Seattle Landmarks Preservation Board, as more than ten years has now passed since its previous nomination. They contended that the school is now older and that "its importance in historic perspective may have changed, including discovery of new information." *Exhibit 4, page 11.* They asked the Examiner to review the cultural resources assessment and take the following steps: 1) determine whether it contained information appropriate for public disclosure and if yes, allow further public review and comment for the purpose of the environmental threshold determination; and 2) whether it indicates the possibility for successful landmark nomination, and if yes, find that a determination of significance should have been issued. *Exhibit 4; Chris Jackins Testimony.*
36. At hearing, the District presented testimony of cultural resources consultant Paula Johnson, the registered archeologist who oversaw preparation of the instant cultural resources assessment and inadvertent discovery plan. Ms. Johnson testified that the report was based on review of the DAHP predicative model and ten or more other sources of data, which suggested that the area has a low likelihood for buried cultural deposits. This determination was based in part on the facts that the site is not near water, no recorded ethnographic information pertaining to the site was found, there are no documented archeological sites nearby, and that LiDAR showed that the site was graded when the school was built. She prepared the project's inadvertent discovery plan, which would halt construction in the event of unanticipated discovery of archeological or cultural artifacts. Ms. Johnson indicated that DAHP reviewed the instant report under SEPA, and that the state agency agreed with its recommendations. Addressing the District's choice not to disclose the report for public review, she cited RCW 42.56.300, which restricts distribution of cultural resource surveys to prevent looting. She testified under oath that the SEPA Checklist is consistent with cultural survey report she prepared and that nothing of cultural or historic significance had been omitted from the Checklist. *Paula Johnson Testimony.*

37. Per discussions on the record, the District obtained the authorization of DAHP personnel to allow the Examiner *in camera* review of the cultural resources assessment. The contents of the cultural resources assessment track the testimony of Ms. Johnson very closely, and at the risk of repetitiveness, for the benefit of the Appellants they are summarized in this and the following three findings. The assessment indicated that Wing Luke was a Chinese-American attorney and civic-leader who was active in the preservation of Pike Place Market and of Pioneer Square. The first person of Asian descent to hold public office in Washington State, Wing Luke served on the Seattle City Council from 1962 to 1965. He was involved in open housing and many other issues impacting Asian-American communities. *Exhibits 2, 17, 18, and 19.*
38. The cultural resources assessment indicated that Wing Luke Elementary School first opened in 1962 as the Van Asselt School Annex. It was renamed in 1967 as the South Van Asselt School and again in 1969 as the Wing Luke Elementary School. Classes were conducted in various portables until 1971, when the first permanent school structure was built on-site. An addition was added to the south side of the structure in 2005. The District nominated the school building for review by the Seattle Landmarks Commission in 2003, at which time the building was determined not to be eligible. *Exhibits 2 and 19.* There is no further discussion of the possible landmark eligibility of the existing school in the cultural resources assessment.
39. The cultural resources assessment reported that there are 29 properties adjacent to the school developed with structures old enough to meet the City's minimum 25-year age threshold for historic properties. Three adjacent residences have been determined Not Eligible for listing on the National Register of Historic Places (NRHP). The remaining properties have not been evaluated for listing potential. Properties south and east of the school are lower in elevation than the school, with views of the site obscured accordingly. Views of the proposed project from properties north of the site would be obscured by trees, fencing, yards, and the current school parking lot. Parcels to the west are separated from the site by mature vegetation, fencing, and yards. Because of these visual separations, the proposal is not anticipated to impact these properties in terms of historic setting. *Exhibits 2 and 19.*
40. In preparation of the assessment, the District's consultants reviewed the DAHP Statewide Predictive model, the Washington Information System for Architectural and Archeological Records Data, Seattle Landmarks Board records, historical maps, aerial photographs, published ethnographic studies, and histories published by the District. The consultants also reviewed geotechnical logs for investigations completed on the subject property; the borings were taken by a hollow stem auger to depths between 20.5 and 21.5 feet. Historical information shows that the site was farmed during the 1930s and converted to a school in the 1960s. School construction would have required grading of the site, likely disturbing any pre-contact or historic era archeological deposits that might have been present. However, the geotechnical boring results show that the former ground surface that would age to the earliest known human occupation of the area has been

removed. Thus, the probability of buried pre-contact resources is low. The consultants recommended no further archeological study. *Exhibit 19.*

41. The letter provided by the Department of Archaeology and Historic Preservation (DAHP) in response to the Examiner's request confirms that archaeological data, including reports, are exempt from public disclosure pursuant to RCW 42.56.300 for the purpose of preventing looting and depredation of cultural and historic resources. The letter goes on to state that members of the public who wish to view cultural resources reports should request them through DAHP's website at [www.dahp.wa.gov](http://www.dahp.wa.gov), and that DAHP personnel have the expertise to be able to redact protected archaeological information from such reports. *Exhibit 18.*
42. With regard to Appellants' concern that the existing school building could or should be nominated for landmark status, District witnesses reiterated that the previous landmark nomination in 2003 was denied. Pursuant to SEPA review for the instant proposal, the District's cultural and historic consultants reviewed whether any listed or eligible historic were located in the vicinity, and found no historic register-listed or -eligible properties near the site. The City's Landmarks Board indicated to the District there is no requirement to self-nominate. *Testimony of Paula Johnson and Mike Skutack.*

#### *Lighting, Electronic Reader Board*

43. The SEPA Checklist noted that site lighting would remain similar to that existing at the current school. Exterior lighting is necessary for safety. Both exterior and interior lighting is proposed to be on timers, to make the site mostly dark at night. Safety lighting would be designed to minimize glare onto adjacent parcels. The proposed electronic located 80 feet from the nearest residence, would not be illuminated from inside, but rather would utilize LED lighting that would be readable day or night. It would not result in measurable illumination on adjacent parcels. The reader board would be four feet high and seven feet, four inches wide. On the proposed base, it would be six feet tall. The proposal would have the sign on from 7:00 am to 10:00 pm daily. The sign would not use flashing lights but would contain written, static messages that would change at a specified frequency, such as every ten seconds. A departure would be needed for approval of this sign. *Exhibit 2.*
44. Appellants argued that such a reader board sign would be distracting and out of character with the neighborhood. They contended that a message that changes every ten seconds would not be "static" and might be considered by some to have the visual effect of flashing. Noting that an electronic reader board sign was initially proposed in the Magnolia Elementary School project and later withdrawn after the public submitted comments in opposition, the Appellants contended that such signs have been recognized as having significant impacts on residential neighborhoods, as this sign would. One Appellant recommended that such a reader board, if ultimately approved, should be limited to daylight hours. *Exhibit 4; Testimony of Chris Jackins and Mimi Boothby.*

45. Responding to concerns about impacts from the reader board, the District's project manager noted that its location at the northwest corner of the site avoids slopes and places the monument sign at a major intersection. He testified that it is needed because it is the ideal way of informing parents and the neighborhood of upcoming school events and schedule issues. It could also advertise community events and can be used to warn near neighbors in advance of high parking demand events. *Mike Skutack Testimony.*

*Other Alleged Significant Adverse Impacts*

46. Appellants contended that the DNS failed to consider impacts to energy and natural resources from demolition of the existing building, which is only 12 years old, noting that no landfill impacts were reviewed. Appellants noted that while the new building would be more energy efficient, taxpayers may not be interested in tearing down publicly funded buildings after only 12 years. *Exhibit 4; Chris Jackins Testimony.*
47. The SEPA Checklist noted that funding for the proposal would be from the BEX IV levy, construction under which is subject to guidance that promotes the use of designs that, among other aspirations, consider the life cycle costs of projects. Pursuant to Executive Order 06-11, public school construction projects receiving state funding must be built to Washington Sustainable Schools Protocol, or to LEED silver standards, which mandate a 10% reduction in energy use beyond what is required by the Washington State Energy Code. The District asserted that replacement of the existing older school with a new LEED silver building would greatly reduce energy savings. *Exhibit 2.*
48. The Appellants alleged that noise impacts from construction truck trips eight hours per day for five months would result in probable significant adverse impact to the nearest residences, some of whose occupants work nights. *Exhibit 4; Chris Jackins Testimony.*
49. The SEPA Checklist noted that vehicle and equipment operation during construction would result in noise impacts to surrounding properties. It stated that construction hours and construction noise would comply with City of Seattle standards. The project manager asserted that the number of proposed truck trips identified in the checklist represents the worst case scenario, in which all fill must be imported; however, since the site was previously cleared and filled, it is expected that there would be a high possibility of reuse of on-site soils. The construction technique proposed to reduce the building foundations, which is the use of geopiles, would further reduce truck trips for the export of excavated soils. He noted that the noise of geopile installation is similar to general construction noise and that the use of geopiles would be limited to the perimeter of the building. *Exhibits 2 and 2.B; Mike Skutack Testimony.*
50. Appellants alleged that there would be significant adverse impacts to views from surrounding residences if the building height departure is granted. Due to tree removal, the existing residences would no longer be screened by trees. Some residences have second floors and resulting territorial views that would be impacted by the (Appellant-calculated) 11 feet, seven inches of excess height proposed. The Appellants characterized the mechanical enclosures for which the height departure is sought as a

third story that was not reviewed in the SEPA Checklist or addressed by the DNS. They also pointed to an excerpt from the architect's response and recommendation matrix that they claimed states the proposal was to be changed from three two-story pods to two three-story pods and question whether the new buildings would be three stories. *Exhibit 10*. They asked that the DNS be remanded for further review of the proposed height and its impacts. *Exhibit 4; Chris Jackins Testimony*.

51. The SEPA Checklist notes that the existing building is 38 feet, five inches above existing grade at its tallest point. The majority of the proposed new building would be 38 feet above existing grade; however, the District proposes to enclose rooftop mechanical equipment inside a "penthouse" equipment enclosure, for the purpose of extending the life and improving performance of the necessary mechanical equipment. The penthouses (one on each of the two "pods") would be 48 feet above grade at their tallest point. The mechanical penthouses would be setback 10 feet from the building perimeter facing residential property, meaning it would be setback 35 feet from the school property boundary. The District contended that the additional building height would not impact views from surrounding properties. As noted previously, properties south and east of the school are lower in elevation than the school, with views of the site obscured by topography and vegetation. Views of the proposed project from properties north of the site would be obscured by trees, fencing, yards, and the retained/replacement trees in the school parking lot. Parcels to the west are separated from the site by mature vegetation, fencing, and yards. The Checklist noted that the proposed service yard would be screened so as not to be visible to residential properties immediately adjacent to the east. *Exhibit 2; Mike Shutack Testimony*.
52. The Appellants pointed out that some who commented on the Draft SEPA Checklist noted that the current school lacks any outdoor garbage and recycling cans, and that the playground is often littered. In response to comments, the District responded that the new building would be provided with outdoor garbage and recycling cans. *Exhibit 2.D*. The Appellants forwarded as an issue on appeal their request that the District install such receptacles now as an act of good faith and sincerity. *Exhibit 4; Chris Jackins Testimony*.
53. The Appellants contended that the District failed to make all comments on the Draft Checklist available to all members of the public, upon request, arguing that in the past, the comment summaries prepared by the District in appendices to Checklists have inaccurately characterized the nature of some comment. In his testimony, Appellant Chris Jackins stated that his October 3, 2017 public records request was not fulfilled until December 7, 2017, one week prior to the hearing. He stated that counsel for the District provided him some additional comments that do not match the records disclosed. Appellants contended that this lack of access to the full and complete comment on the SEPA checklist fails to comport with the requirement of WAC 197-11-330(1)(a) for independent evaluation of responses by the Applicant. Appellants argued that this invalidates the SEPA process and serves as a basis for remand of the DNS to allow further review and comment by members of the public. *Exhibit 4; Chris Jackins Testimony*.

## CONCLUSIONS

### **Jurisdiction:**

Pursuant to Seattle Public Schools Policy 6890, adopted February 15, 2012, and specifically Section 8c, the District's Hearing Examiner *pro tem* has jurisdiction to hear evidence and prepare recommended findings and decisions for the Superintendent in any SEPA appeal.

### **Criteria and Standards for Review:**

The State Environmental Policy Act (Chapter 43.21C RCW or "SEPA") specifies the environmental review procedures the County must follow for proposals that may have an impact on the environment. *RCW 43.21C.030 (b)*. The SEPA threshold determination is a determination as to whether a proposal is "likely to have a probable significant adverse environmental impact." *WAC 197-11-330*. If the responsible official determines that a proposal will not have a probable, significant adverse environmental impact, a determination of non-significance (DNS) is issued.

The procedural determination of the Responsible Official shall be accorded substantial weight in appeals. *RCW 43.21C.075(3)(d); RCW 43.21C.090*.

Clear error is the standard of review applicable to substantive decisions under SEPA. *Cougar Mt. Assocs. v. King County*, 111 Wn.2d 742, 747 (1988). The determination by the governmental agency is clearly erroneous only if the reviewing tribunal is left with "the definite and firm conviction that a mistake has been committed." *Id.* at 747 (quoting *Polygon Corp. v. Seattle*, 90 Wn.2d 59, 69 (1978)). The burden of proof is on the Appellant to show that the proposal will have probable, significant adverse environmental impacts. *Boehm v. City of Vancouver*, 111 Wn. App. 711, 719 (2002).

### **Conclusions Based on Findings:**

1. In order to win an appeal of the District's environmental threshold determination, Appellants must show probable significant adverse impacts to the elements of the environment set out in the SEPA environmental checklist at WAC 197-11-330, which include earth, air, water, plants, animals, energy and natural resources, environmental health (which includes noise), land and shoreline use, housing, aesthetics, light/glare, recreation, historic/cultural preservation, transportation, public services, and utilities.
2. The record contains no evidence that demonstrates the proposed tree removal and replacement would fail to comply with the City's regulations for tree retention. The four exceptional trees on-site are proposed to be retained. The 42 removed trees from the site and abutting rights-of-way would be replaced with 89 new trees, selected and planted for optimum survival and vegetative screening. At maturity, the canopy would provide more 170% of its current coverage. While it does take a period of up to 20 years for a new canopy to mature, the site would not be denuded in the meantime as a significant number of mature trees around the site perimeter and in the abutting rights-of-way would be retained. The Appellants failed to demonstrate probable significant adverse environmental impact from tree removal. *Findings 11, 12, 13, 14, 15, and 16.*

3. On-street parking demand would increase with the proposal, but the Appellants have failed to show that the projected increase amounts to probable significant adverse environmental impact. Instead, the record shows that the school day parking demand increase can readily be accommodated by the parking supply within 800 feet of the school. The use of an 800-foot radius from the perimeter of the school site was selected by the City as the appropriate distance to consider. With regard to events, there would be two or three events per school year that would result in on-street parking utilization rates of 92%. The proposed mitigation measure requiring advance notification to surrounding residents of these events, combined with more contemporaneous notice afforded by the reader board (if approved) would allow neighbors of the school to plan around those two or three events per year. While these circumstances reflect a change over current conditions, the record presented fails to demonstrate probable significant adverse impacts. Finally, the fact that the on-site parking departure may be denied does not amount to evidence of impact. If the Departures Committee denies the on-site parking departure, the SEPA Responsible Official will determine whether further SEPA process would be required. *Findings 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27.*
4. With regard to the appeal issue that the on-street bus loading departure may not be approved, and if not, on-site bus loading requirements would have to impact on-site parking and/or recreation space, as concluded above, this does not amount to evidence of probable significant impact. Denial of any of the departures would result in the SEPA Responsible Official needing to determine whether further SEPA process would be required. *Findings 28 and 29.*
5. The Appellants correctly point out that the Checklist does not state the percentage in change from existing to proposed open space or recreation area. Open space is not an element of the environment evaluated in the checklist. The proposal would reconfigure and change recreation amenities from the existing condition by providing a new gymnasium, multiple outdoor covered play areas, a playfield with improved drainage, and new hard and soft surface plays areas, all of which would be more easily monitored because there would not be a building transecting the recreation area. The record contains no evidence suggesting that the proposed recreation amenities fail to conform to District standards, or that the changes would not provide improved safety, security, and usefulness. In the opinion of the undersigned, the lack of disclosed percentage change in area dedicated to recreational use between existing and proposed conditions does not cause the proposal to be incomplete for the purpose evaluating environmental impacts. No probable adverse environmental impact as to recreation has been shown. *Findings 30, 31, 32, and 33.*
6. The District's decision not to disclose the project cultural resources assessment was consistent with DAHP guidance and state law. Failure to disclose the document does not amount to an error in the SEPA process that justifies remand.<sup>3</sup> An *in camera* review of

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<sup>3</sup> Because the purpose of restricting access to cultural assessment surveys is to prevent looting and depredation of cultural and historic resources, in the opinion of the undersigned (who - full disclosure - is not a trained

the cultural resources assessment shows that the information summarized in the District's SEPA Checklist was a complete and accurate summary of all historic and cultural information discovered by the District's consultant related to first peoples, the cultural context of Wing Luke, and historic properties on or off-site; no pertinent information was withheld. Although of an appropriate age, the 1970s school building is not listed as a Seattle landmark or on any other historic register; nor are any properties in the vicinity of the site. The record presented shows no probable significant adverse impacts to historic or cultural resources. *Findings 34, 35, 36, 37, 38, 39, 40, 41, and 42.*

7. Although the appeal raises the issues of light from the electronic reader board as an impact, it fails to present evidence that the reader board, if approved, would result in off-site glare that would amount to probable, significant adverse environmental impact. *Findings 43, 44, and 45.*
8. The record presented does not show probable significant environmental impacts to energy and natural resources, environmental health (in the form of truck noise), or aesthetics (in the form of building height). While one part of the building was constructed in 2005, the remainder of the structure was built in the early 1970s. The alleged potential dissatisfaction of hypothetical taxpayers with a school addition only remaining in use for 12 years is not a significant impact. The proposal is consistent with District guidance promoting energy conservation. Without a showing of specific special circumstances, construction noise at levels permitted in City regulations cannot be considered to be a significant impact. No evidence was submitted to substantiate how a change in view of the site or across the site caused by a small area of height limit exceedence, if approved, would be a significant impact. *Findings 46, 47, 48, 49, 50, 51, 52, and 53.*
9. With regard to the appeal issue alleging that the District failed to timely and/or fully disclose to the Appellants all public comment on the Draft Checklist, Appellants claimed the instant SEPA review process violated WAC 197-11-33-(1), which states:

In making a threshold determination, the responsible official shall:

(a) Review the environmental checklist, if used:

(i) Independently evaluating the responses of any applicant and indicating the result of its evaluation in the DS, in the DNS, or on the checklist; and

It is unclear from the arguments and evidence presented how the District's process is alleged to have conflicted with this state regulation. Mr. Jackins participated frequently

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archeologist), an assessment that finds no cultural/historic resources on site and a low likelihood of cultural or historic properties being affected may not need to be restricted from disclosure. The undersigned suggests to the Superintendent that, in the interests of transparency, it may be in the District's best interests to explore with DAHP whether a given assessment may be disclosed (redacted or not) during the given SEPA process, redacted or not, and then disclose the study. Alternatively, the District may wish to revise its communications with interested parties to include the information about how they can request redacted assessments directly from DAHP.

and extensively from the beginning of the process. The record shows the District provided the public records he requested. None of the Appellants alleges that their own comments are inappropriately characterized or omitted from Appendix D to the Checklist. In the absence of evidence of omitted comments or gross mischaracterization of concerns submitted, it is unclear how lack of Appellant opportunity to review comments submitted by others prior to issuance of the environmental threshold determination could rise to the level of SEPA process error that triggers remand. *Findings 53.*

10. Based on the evidence provided by the parties, the Responsible Official's issuance of the DNS was based on information sufficient to evaluate the proposal's environmental impacts. The Appellants have not shown clear error in issuance of the environmental threshold determination. *Findings.*
11. Any arguments not addressed or evidence not cited are, respectfully, deemed unpersuasive.

#### **RECOMMENDATION**

Because the Appellants did not satisfy their burden of proving that issuance of the DNS was clearly erroneous, the Responsible Official's threshold determination should be **AFFIRMED**.

DECIDED January 9, 2018.



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Sharon A. Rice  
Hearing Examiner *pro tem*