

**BEFORE THE HEARING EXAMINER
FOR SEATTLE PUBLIC SCHOOLS**

In the Matter of the Consolidated)
Appeals filed by)
)
 DONALD BRUBECK,)
 CHRIS JACKINS, ET AL, AND)
 JACQUELINE SZIKSZOY, ET AL,)
)
 Appellants,)
)
 of a SEPA Mitigated Determination of)
 Nonsignificance (MDNS) for the)
 ALKI ELEMENTARY SCHOOL)
 Addition and Renovation Project,)
 issued on December 13, 2022, by the)
)
 SEATTLE PUBLIC SCHOOLS SEPA)
 RESPONSIBLE OFFICIAL,)
)
 Respondent)
 _____)

I. SUMMARY OF RECOMMENDATION.

Based on the entire record taken as a whole, the appeal should be denied. The appellants failed to offer sufficient evidence to establish that any probable, significant, adverse environmental impact will result from the project, even after requiring the project to meet existing laws, regulations, and measures noted in the environmental information included in the record. The Examiner is not left with a definite and firm conviction that a mistake has been committed. The challenged MDNS should be affirmed.

**RECOMMENDATION TO THE SUPERINTENDENT,
RE: CONSOLIDATED APPEALS OF SEPA MDNS
ISSUED FOR THE ALKI ELEMENTARY SCHOOL
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II. APPLICABLE LAW.

Jurisdiction.

The appellants challenge a SEPA Mitigated Determination of Non-Significance (MDNS) issued by the Seattle Public Schools SEPA Responsible Official for the Alki Elementary School Addition and Renovation Project, issued on December 13, 2022, by the Seattle Public Schools SEPA Responsible Official. Through the course of the appeal hearing process, the school district representatives did not question the timeliness or assert other potential procedural defects that might prevent this appeal from going forward with respect to the three appellants listed in the caption for this document. Two separate appeals were dismissed following a pre-hearing motion process, because they were untimely. Those written appeals were virtually identical to one submitted by Jacqueline Szikszoy, and one of the individuals was called as a witness during this appeal hearing. While District and State SEPA regulations limit jurisdiction for appeals of threshold determinations to timely written appeals, application of such standard in this process had no practical effect, because all issues that could have been raised or argued were addressed by other appellants who satisfied filing requirements.

The Hearing Examiner has jurisdiction to review and issue recommendations to the Superintendent regarding appeals of SEPA threshold determinations, like the challenged MDNS, under Board Policy No. 6890, at Sec. 8(c).

Standing; Appeals Heard in Consolidated Hearing Process.

There is no dispute that the three appellants have standing. Consistent with principals of judicial and administrative economy, the three appeals of the same SEPA threshold determination were consolidated into a single appeal hearing process. The party representatives were each given full discretion to introduce evidence, call their own witnesses, and cross-examine witnesses called by any other parties.

Burden of Proof on Appellants, Standard of Review.

To satisfy this burden challenging the MDNS, an appellant must present actual evidence of probable significant adverse impacts of the Project. *Boehm v. City of Vancouver*, 111 Wn.App. 711, 718-719, 47 P.3d 137 (2002).

A "clearly erroneous" standard applies when reviewing SEPA threshold determinations made by local and state governmental entities, such as the MDNS challenged in this matter. *King Cty. v. Washington State Boundary Review Bd. for King Cty.*, 122 Wn.2d 648, 661, 860 P.2d 1024 (1993). A challenged DNS (or MDNS) may be reversed if, although there is evidence to support it, the reviewing authority is left with the definite and

1 firm conviction that a mistake has been committed. *See Norway Hill Pres. & Prot. Ass 'n v.*
2 *King County Council*, 87 Wn.2d 267, 274, 552 P.2d 674 (1976). In reviewing a SEPA
3 threshold determination, the Hearing Examiner must first determine whether "environmental
4 factors were considered in a manner sufficient to amount to prima facie compliance with the
procedural requirements of SEPA." *Sisley v. San Juan County*, 89 Wn.2d 78, 84, 569 P.2d
712 (1977) (quoting *Juanita Bay Valley Com. v. Kirkland*, 9 Wn. App. 59, 73, 510 P.2d 1140
(1973)). Again, the appellants bear the burden of proof in their respective SEPA appeals.

5 ***Challenged MDNS is entitled to substantial weight.***

6 Procedural determinations by the school district's SEPA responsible official shall be
7 entitled to substantial weight in the administrative appeal and any subsequent proceedings.
8 *Board Policy No. 6890, at Sec. 8(f); H.Ex. Rule 2.24.* Such deference is further mandated by
9 Washington caselaw, including *Anderson v. Pierce County*, 86 Wn. App. 290 (1997) (holding
10 that substantial weight is accorded to agency threshold determinations), and is consistent with
11 *WAC 197-11-680(3)(a)(viii)* ("Agencies shall provide that procedural determinations made
12 by the responsible official shall be entitled to substantial weight."). However, substantial
13 weight, like judicial deference to agency decisions, is neither unlimited nor does it
14 approximate a rubber stamp. *See Swinomish Indian Tribal Cmty. v. W. Wash. Growth Mgmt.*
15 *Hearings Bd.*, 161 Wn.2d 415, 435 n.8, 166 P.3d 1198 (2007); and *Concerned Friends of*
16 *Ferry County v. Ferry County*, 191 Wn. App. 803, 365 P.3d 207 (Div. II, 2015). If an
17 environmental impact statement is required by the weight of evidence and if a government
18 agency's SEPA official does not require an environmental impact statement (as it did not
19 here), then the decision is clearly erroneous. *King County*, 122 Wn.2d at 667; *Norway Hill*,
20 87 Wn.2d at 274.

15 **III. RECORD.**

16 The Record for the matter includes all exhibits marked and numbered during the
17 course of the appeal hearing. Copies of all materials in the record and a digital recording of
18 the appeal hearing are maintained by the District. The challenged MDNS and SEPA
19 Checklist issued for the Alki Elementary Addition and Renovation Project, as issued on or
20 about December 13, 2022, and the three written appeals listed above that were filed in a
21 timely manner before 5:00 p.m. on January 5, 2023, are all part of the Record. Lists of
additional exhibits admitted into the record during the appeal hearing for both appellants and
the District are attached to this Recommendation, as stipulated by the party representatives.

22 During the appeal hearing, the appellants appeared pro se, with Mr. Brubeck
23 appearing on his own behalf; Mr. Jackins appearing on his own behalf and representing the
24 group of appellants named in his appeal statement; and Ms. Szikszoy appearing on her own
25 behalf and serving as the designated representative for the group of appellants named in her
26 appeal statement. The District was represented by counsel, Katie Kendall, from the

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1 McCullough Hill law firm. The appellants' hearing representatives and the District's attorney
2 were given wide latitude to call witnesses, submit exhibits, and cross-examine witnesses
3 called by the other side, all as they saw fit, to focus attention on topics or issues they deemed
4 relevant to their respective positions in this appeal. To the apparent frustration of some appeal
5 participants, SEPA appeals are not popularity contests, and legal standards established in
6 state and local regulations as well as Washington caselaw apply. Washington courts hold pro
7 se litigants, including appellants, to the same standard as attorneys. *State v. Irby*, 3 Wn.App.
8 2d 247 (Div. I, 2018), citing *State v. Bebb*, 108 Wn.2d 515, 524 (1987); *Audit & Adjustment*
9 *Co. v. Earl*, 165 Wn. App. 497 (Div. II, 2011), citing *Westberg v. All-Purpose Structures,*
10 *Inc.*, 86 Wn. App. 405, 411, 936 P.2d 1175 (1997). Understanding that SEPA appeal hearings
11 are not an everyday event for most people, the Examiner commends Mr. Brubeck, Mr.
12 Jackins, and Ms. Szikszoy, for their focused and thoughtful presentations. All party
13 representatives and witnesses were respectful and civil towards one another throughout the
14 lengthy two day hearing.

15 Below is a list of individuals called to present testimony under oath at the duly noticed
16 appeal hearing for this matter, with the Examiner, all party representatives, and most
17 witnesses appearing in-person in a District conference room, with some witnesses appearing
18 by phone or using the Zoom online meeting platform coordinated by District staff on
19 February 9 and 10, 2023:

- 20 1. Donald T. Brubeck, Appellant, appeared on his own behalf providing arguments and testimony to
21 support his written appeal statement. Mr. Brubeck's key issues are summarized in his pre-hearing
22 witness and exhibit disclosure document and include assignments of error alleging that the District
23 failed to consider critical areas appropriately, listing 21 topics, some of which overlap with one
24 another, including steep slope issues, potential wetland issues, traffic, aesthetic/view concerns,
25 and many other items, all of which he addressed during his appeal presentation, and all of which
26 were addressed by District witnesses and reports discussed in the hearing. Mr. Brubeck owns one
of the homes located uphill, behind the existing Alki school building, which fronts Admiral Way.
There is no dispute that views from his home, decks, and other areas on his property, will change
as a result of this project. Mr. Brubeck testified that he was pretty sure that his view could not be
blocked when he was considering whether to purchase his current home along Admiral, because
he reviewed applicable codes, and believed that a 35-foot height was meant for gyms, not regular
school buildings. He explained that he paid a premium for his view. Before the draft SEPA
checklist and initial public comment period occurred, Mr. Brubeck engaged directly with some
District representatives, asking questions about aspects of the project, sometimes allowing District
agents to visit his property, to see first-hand conditions from his uphill property behind the existing
school. Given such direct engagement before the draft SEPA Checklist issued in July of 2022,
Brian Fabella, District Project Manager, was puzzled that the District never received any
comments from Mr. Brubeck before the original comment deadline. (*See Dist. Ex. 24*). In any
event, this appeal hearing provided Mr. Brubeck with a full and fair opportunity to question and
challenge aspects of the MDNS and SEPA review conducted by the District. In the end, Mr.
Brubeck's detailed written comments were considered and analyzed by District consultants, all of
whom confirmed that the MDNS should stand, despite challenges and issues raised in the appeal
hearing. Unrebutted evidence in the record shows that Mr. Brubeck's view will change, but does
not show that it will be blocked, leaving him with continued, though somewhat interrupted, views
out to the water, the beach, and the Olympic Mountains.

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2. Chris Jackins, one of the named appellants, served as the designated hearing representative for the appeal he filed on his own behalf and several other individuals and as a witness called by appellants to address several issues raised in their appeal. Mr. Jackins prepared detailed written notes, which he distributed throughout the hearing at various points during his presentation, including an opening statement, testimony about specific issues raised in his written appeal, and a closing statement, comprised on 16-numbered pages with extra unnumbered pages as attachments, included in the record as Jackins' Ex. 43. Mr. Jackins specifically asked that Mr. Brubeck's evidence and testimony be included as support for this appeal. He covered several of the same issues raised by other appellants and witnesses, with a list of 17 points addressed in his remarks. Most of the points on Mr. Jackins' list were only supported by personal opinions and preferences. Mr. Jackins questioned the merits of enlarging the school footprint on such a small site. Mr. Jackins' focused much of his substantive remarks on respect for the Duwamish tribe, concerns about historic and cultural resource preservation, the number of "departures" required from the City in order to achieve the proposed building design, steep slope concerns, a lack of public meetings with the community before the SEPA checklist was issued and other general concerns with how notices were handled by the District in its outreach to surrounding residents.
3. David Buerge, called by Mr. Jackins, local historian who has worked with some tribal officials over the years to research historic records for the Duwamish Tribe. Mr. Buerge focused on Duwamish tribe and cultural resource issues raised in the Jackins' appeal. After the District's cultural resources consultant/archaeologist, Ms. Peterson, provided her testimony, addressing the appellants' concerns about potential discovery of cultural resources on the site, and the need to conduct additional study before substantial construction work begins on the site – describing additional investigative work that will occur on the site, oversight during earthwork, and the like – Mr. Buerge testified that he was "thrilled" with the Ms. Peterson's plans to continue studying the site, and that his concerns were addressed. He stated that he had no rebuttal to Ms. Peterson's testimony, only praise.
4. David Resler, local resident along Lander, called by Mr. Jackins, expressed personal concerns and opinions about views, how construction and increased bus traffic might cause shaking in homes in the vicinity, noting his observations of soils and sand, earthquake concerns. He directed attention to buckling sidewalks, streets, damage to homes in the area, some that have experienced flooding, due to geologic hazards, high water table, earthquake faults in the vicinity.
5. Shauna Causey, local resident, called by Mr. Jackins, submitted Ex. 44, addressed general view concerns, worries about slope stability, impacts on adjacent creek and park, cultural resource concerns, and the like as raised in the Jackins appeal.
6. Carol Terao, local resident, called by Mr. Jackins as one of his co-appellants, sometimes served as party representative questioning District witnesses. Ms. Terao focused on transportation, traffic, parking concerns. She questioned the wisdom of possible geothermal heat for the new building, and concurred with concerns shared by others about seismic safety, wildlife, king tides and climate change.
7. Jackie Szikszoy, one of the named appellants, local resident with home a few lots uphill from Mr. Brubeck's house. Agreed with concerns raised by others, about geological/landslide concerns, parking problems, height of new building mechanical/penthouse, need for a flashing sign, and stressed her belief that the public outreach process for this project was inadequate, noting that it included notices with changing dates, bad links to information on the internet, and no public meeting.

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- 1 8. Steven Ramels, spouse and co-appellant of Ms. Szikszoy, agrees that the existing school needs to
2 be renovated or rebuilt, but says the size is too small and that the Schmitz Park school site should
3 be used to accommodate a new school to serve Alki students; argued that the lack of parking for
4 the new building is a mistake.
- 5 9. Steve Saxlund, local resident, called by Ms. Szikszoy, explained how he sees sinkholes and road
6 alignment problems in the vicinity, that he has had water in the bottom of his house, at the bottom
7 of steep hill by the school, notes how mud and debris have to be collected and scraped away at
8 bottom of hill.
- 9 10. Kathy Oss, local resident, called by Ms. Szikszoy, focused on need for ADA parking to serve the
10 school, general concerns about student drop-offs and pedestrian safety.
- 11 11. Kevin Lamb, P.E., L.E.G., Principal, NV5, called by the District to provide expert testimony
12 regarding geotech issues raised by appellants regarding steep slopes, soils, and liquefaction,
13 resume included in the record as District Ex. 7. Credibly testified and directed attention to facts
14 that rebut appellant allegations that steep slope is a natural feature, but is instead deemed a slope
15 created by many modifications over the years. Focused attention on improvements to safety that
16 the project design will provide – where existing factor of safety is just 1.4, and after the project,
17 the factor of safety will be 2.9 (*See Ex. 18, on page 102*). Considered item submitted by Mr.
18 Brubeck, and confirmed that a report from another homeowner, in Ex. L, had no impact on his
19 conclusions for this project. Mr. Lamb devoted a significant portion of his testimony to explaining
20 how design measures included in this project are intended to address site-specific concerns raised
21 by some local residents, including without limitation how borings will be made with an auger-drill
22 device instead of pile driving; how on-site soils are not liquifiable how new building will be
23 designed to satisfy stringent seismic standards; how the geothermal system would be a closed loop
24 system, drawing up water at a stable temperature, higher than air temperatures in the winter so less
25 energy would be needed to heat the building, and lower than hot temperatures in the summer,
26 making it easier to cool the building. Mr. Lamb's illustrations and testimony about the slope
stability improvements provided by this project was credible and unrebutted.
12. Tod McBryan, Transportation Engineer, with Heffron Transportation, called by the District to
provide expert testimony on traffic and parking analyses, with his resume included in the record
as District Exhibit 5. Mr. McBryan's report regarding transportation and parking issues in
included as Appendix G to the challenged MDNS. Mr. McBryan directed attention to portions of
his report, explaining how he used 'conservative' data and figures, relying on pre-pandemic, pre-
closure of the West Seattle Bridge, for his traffic analysis, noting that he even added traffic
numbers based on apartment in the construction pipeline. Mr. McBryan credibly explained the
validity of data and parking space survey counts used to assure that parking supplies on
surrounding streets is within standards acceptable to the City of Seattle Dept. of Transportation,
even with potential new parking demands generated by this project. He described the location of
the new ADA parking spot along 59th, NW of the school site. Mr. McBryan credibly described
how Google imagery of conditions in the school vicinity are consistent with Heffron firm
observations at various times of day. He described how parking demand associated with the
school occur on days and times when Alki beach and other neighborhood demand for parking is
somewhat lower than would be in the peak of summer season, or afternoons when people
congregate at the beach, parking on area streets. Early mornings, Fall/Winter days, see generally
lower parking demands. For times of day and events where projected school parking demands
might exceed City standards, Mr. McBryan recommended mitigation measures that are included
in the MDNS. In the end, he confirmed his professional opinion that the project will not generate
significant traffic, parking, or general traffic safety impacts.

13. Rebecca Hutchinson, Associate Principal, Mahlum Architects, Inc., called by the District to provide expert testimony regarding the design of the project building and school grounds, provided new Ex. 25, showing school, and location of properties where several hearing participants/appellants reside. Ms. Hutchinson credibly described the active consultation process she and the District have had with local tribes, including the Duwamish, and how the building design reflects input and considerations from such groups. She summarized how the existing school facility does not meet school district or city standards. She highlighted aspects of the project, and placement of features to consider surrounding homes, like the orientation of the mechanical/penthouse space on top of the new building. She summarized her thorough and credible View Impact Analysis, meant to address aesthetic and view concerns expressed in the pending appeals and some public comments; she described the detailed information and tools available for her design team to generate 3d models where camera-like views can be dropped into various places, showing what the building might look like from different viewpoints. Ex. 11, page 46 shows how trees block most views of the school from uphill, as the school currently exists, and as it might change in the future. Ms. Hutchinson explained the design teams' new Exhibit 26, showing slope stabilization, and stormwater system improvements that will be made to the school site, where water now simply runs over the top of the surface, possibly impacting adjacent streets and properties, to the new design with a drainage plan featuring a "large vault" where water will collect and be routed to city stormwater drainage system. She noted that the Departures requested for the project have received a recommendation of approval from the City's Department of Neighborhoods; that lighting will mostly be on times, so light will likely be off in classroom spaces on the southside to little or no light should be seen in off-hours; and that in her professional opinion, the project design will greatly improve slope stability and drainage conditions.

14. Emily Peterson, Ph.D., Anthropology, B.A., Archaeology, Cultural Resources Lead, with the Pertect consulting firm, called by the District to provide expert testimony regarding cultural resources analyses and related issues, resume included as District Ex. 4, prepared the cultural resources assessment for this project, based on literature review, maps, historic records, DAHP "WISAARD" database, geotech boring information collected on the site, and the like, confirmed that her report, included as District Ex. 8, served as her basis for concluding that the project would not result in significant adverse impacts on cultural resources, as explained in the SEPA determination. She explained her recommendation for additional site subsurface investigation work, including 8 foot trenched areas with box/walls placed around, where investigators can observe conditions and the possible presence of protected resources, explaining that such work would best be coordinated with spring break or sometime students and other are not on the site. In other words, she emphasized that this project site will require additional investigative work on the site, which is scheduled to occur, before any major ground disturbing work would commence. Again, the appellant's primary witness, Mr. Buerge, had only praise for Ms. Peterson's plans. In sum – Ms. Peterson's testimony credibly rebutted appeal questions and concerns related to cultural resource issues.

15. Will Russack, Wetland Biologist, Raedeke Associates, Inc., called by the District to provide expert testimony regarding issues raised by Appellants regarding possible wetlands, with his resume included as District Ex. 2. In short, Mr. Russack summarized his professional qualifications, and work done reviewing site conditions and adjacent properties that might have wetlands with buffers extending onto the property, concluding that there are no wetlands on the school site or vicinity that would impact development of the project. None of the appellants offered qualified consultant testimony to rebut Mr. Russack's expert conclusions that there are no portions of the project site that satisfy wetland assessment criteria used by the Army Corps and other government agencies.

16. Jeff Ding, Manager/Planner, EA Engineering, Science, and Technology, Inc. called by the District to provide expert testimony regarding the project and the SEPA process and analyses of several elements of the environment, including but not limited to the Appellants' claims regarding construction, energy, environmental health, critical areas, light, and noise, with resume in the record as District Ex. 3. Mr. Ding offered specific, credible, evidence, responding to several issues raised in appellants' testimony, directing attention to studies and reports generated to support the SEPA determination, establishing that while there will be impacts associated with the project, none will be significant, especially given mitigation measures, city codes like noise standards with which project will comply, construction related BMPs, energy conservation measures, lighting cut-offs, trees, and other design features for the new building and school grounds. He directed attention to the distance the school is from wildlife habitat areas referenced by appellants, with Schmitz Park over 800 feet away, with Admiral Way separating the site from some wildlife areas, noting that developed sites are less desirable for animals. He noted how Ex. 1, page 39, notes that SEPA-protected views include the "scenic route" along Admiral Way and Alki, but that this project will have no impact on either corridor, further explaining how private views are not protected under SEPA although they were thoroughly analyzed and considered by the District, resulting in a conclusion that there will be no significant adverse view-related impacts associated with this project. He addressed concerns about hazardous materials and possible underground storage tank issues, noting that the Dept. of Ecology issued a no further study letter (Ex. 23), and that any UST issues will be handled in compliance with applicable regulations, resulting in no adverse environmental impacts. He confirmed that he heard all evidence and arguments presented by the appellants, but none changed his opinion that there would be any adverse impacts caused by this project, subject to compliance with mitigation measures listed in the MDNS.

As noted during the hearing, the Examiner explained that he would be visiting the project site and areas discussed during hearing testimony. In the weeks following the hearing, the Examiner visited the school site and surrounding area on two occasions, at different times of day and days of the week. With such additional information and first-hand observations, the record for this Alki Elementary School SEPA appeal process is closed, and this Recommendation is now in order. Upon consideration of all the evidence, testimony, codes, policies, regulations, and other information contained in the record, and site visit observations, the undersigned Examiner issues the following Findings, Conclusions, and Recommendation.

IV. FINDINGS OF FACT.

1. Any statements of fact found in any other section of this Recommendation that are deemed to be findings of fact are hereby adopted as Findings of Fact by the undersigned Examiner and incorporated into this section by this reference. The use of captions is for convenience of the reader and should not be construed to limit or modify the application of a particular fact to some other topic or issue addressed elsewhere in this or any other portion of this Recommendation.

Background Information; Project Description.

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1 2. Alki Elementary School is located at 3010 59th Ave. SW, part of the Alki
2 neighborhood in the City of Seattle. The school campus is generally bounded by Alki
3 Playground and Whale Tail Park to the north, existing residences and Schmitz Park/Trail to
4 the east, existing residences to the south, and 59th Avenue SW to the west. The proposed
5 Alki Elementary School Addition and Renovation Project ("Project") is intended to expand
6 the capacity of the school and upgrade the quality of the student learning environment. *(All
7 background findings are derived from the MDNS and the Final SEPA Checklist, on .pdf pages
8 5 and 13-15 of District Ex. 1).*

9 3. The existing two-story Alki Elementary main school building is located on the
10 western portion of the site and contains just 46,330 sq. ft. of building space. An attached one-
11 story fieldhouse building is located on the east side of the main school building and is located
12 on both Seattle Public Schools (SPS) and Seattle Parks and Recreation property. The
13 fieldhouse building contains approximately 13,330 sq. ft. of building space and includes the
14 school gymnasium and support spaces in the south portion, while the north portion is operated
15 by Seattle Parks and Recreation and the Alki Community Center; the Community Center also
16 utilizes the gymnasium and some support spaces for it's after-school and summer programs.
17 A portable classroom building is also located to the north of the main school building within
18 City of Seattle property (Fee- Owned Property, No Parcel ID).

19 4. A hard surface play area is located further to the north of the main school building
20 and portable classroom building on City of Seattle property (Fee-Owned Property, No Parcel
21 ID). As part of the existing joint-use agreement between Seattle Public Schools and Seattle
22 Parks and Recreation, the school currently utilizes this area along with Alki Playfield as part
23 of its outdoor recreation space for recess and other activities.

24 5. A paved surface with room to park about 20 vehicles is located on the south side of
25 the school buildings and is accessed from a driveway at the south edge of the site on 59th
26 Avenue SW. Much of the parking lot striping has faded, but historical aerial images indicate
the area has been used for parking 20 or more vehicles. This area is also used for trash and
recycling container storage and pick up. The hard-surface area north of the building is signed
for "Community Center Parking Only," but is also used for school-event parking. Historical
aerials indicate the surface can accommodate about 27 parked vehicles. The City of Seattle
property (Fee-Owned Property, No Parcel ID) on the north side also has two parking stalls—
one 15-minute load space and one disabled permit space. To the east of these stalls are six
spaces signed for "Alki Community Center Permitted Staff Parking Only."

6. Historic enrollment for Alki Elementary School reached its peak in 1958 with
approximately 620 students in grades K-6. The school has an existing capacity for
approximately 369 students (including the existing portable building). The enrollment for the
2021-22 school year is approximately 308 students, which is below the recent peak

enrollment of approximately 413 students in 2015.

7. Development of the Project would require the demolition of the existing main school building and portable building to accommodate construction of the new, three-story, approximately 75,000-square-foot building addition. The existing fieldhouse building would be retained and the school gymnasium portion of the building would be renovated.

8. During the construction process, students, and staff would be temporarily housed at the Schmitz Park School site.

9. The addition and renovated fieldhouse building will include building space with approximately 24 classrooms for grades K-5, two preschool classrooms, a child care classroom, a student commons/dining area, a library, an art room, a music room/stage area, learning commons areas, a renovated gymnasium, outdoor learning space, office/administrative uses, and other support spaces.

10. The Alki school capacity would increase from 369 students to approximately 502 students in grades K-5, as well as up to 40 students in early learning (preschool) programs. In total, the school would have a capacity for approximately 542 students in grades pre-K (preschool) through 5th grade.

11. The proposed project would remove the existing, approximately 3,600 square feet of fenced, paved recreation space to the south of the existing building and replace it with approximately 3,900 square feet of the outdoor learning area. Additionally, the project will replace the paved area to the south of the building with approximately 3,400 square feet of early learning play area space. Approximately 1,000 square feet of paved school entry area at the north side of the building would double as a flexible outdoor gathering area as well. A portion of the second level of the building would also contain outdoor learning and recreation space for use by the school (approximately 1,110 square feet). As under existing conditions and per their agreement with the City of Seattle Parks and Recreation Department, the school also would continue to utilize the adjacent Alki Playfield, as well as the City of Seattle property to the north of the building for recreation uses.

12. Of special concern to most all appellant witnesses, the existing on-site parking lot would be eliminated, and no onsite parking is proposed with the project. During the appeal hearing, District witnesses confirmed that a new disabled parking space will be developed to serve the school, located just west of 59th, in the uppermost northeast corner of 59th and SW Stevens Street.

13. The existing curb cut on 59th Avenue SW that provides access to the parking lot would be modified and reconstructed to provide access to the new onsite service/loading area. The on-street school bus load/unload zone would be retained along the east side of 59th Avenue

SW adjacent to the school building. The Project would also retain the existing curb-side passenger-vehicle load/unload area along the east side of 59th Avenue SW north of the school and adjacent to Alki Playground.

SEPA Threshold Determination issued for the project – an MDNS; Appeals.

14. At issue in this appeal is the SEPA Mitigated Determination of Non-Significance (MDNS) issued for the Alki Elementary School Addition and Renovation Project on or about December 13, 2022.

15. Although not required to do so under state SEPA regulations, the District prepared and issued a Draft SEPA Environmental Checklist for the Alki Elementary School Project on or about July 12, 2022 and invited public comments regarding the draft checklist in the following weeks. *(See MDNS on appeal, Mr. Podesta's December 6, 2022 cover email explaining SEPA comment process; Testimony of Mr. Ding).*

16. The District considered all written comment letters, emails, or post-cards received from more than 20 individuals during the SEPA comment period and included them with specific responses from the District as Appendix H to the final SEPA Checklist. *(See MDNS, SEPA Checklist, Appendix H, labeled "Draft SEPA Checklist Comment Responses").*

17. Based on the Final SEPA Checklist, public comments, and the environmental reports and information provided in the professional consultant reports and analyses prepared for various aspects of the Project *(See MDNS, Final SEPA Checklist, Appendices A through H)*, the District's designated SEPA Environmental Official formally issued a Mitigated Determination of Non-Significance (MDNS) for the Alki Elementary School project on or about December 13, 2022. The District's SEPA Official wrote: "After conducting an independent review, SPS [Seattle Public Schools] has determined that the project does not have significant adverse impacts on the environment as documented in the checklist and the enclosed Mitigated Determination of Nonsignificance (MDNS)". *(MDNS cover letter/email from Mr. Podesta).*

18. The MDNS includes four specific Mitigation Measures, noting that, with these measures, the Project would not be anticipated to result in a significant adverse impact:

MITIGATION MEASURES

1. Construction Transportation Management Plan (CTMP): The district will require the selected contractor to develop a CTMP that addresses traffic and pedestrian control during the construction of the new facility. It would define truck routes, lane closures, walkway closures, and parking or

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1 load/unload area disruptions, as necessary. To the extent possible, the CTMP
2 would direct trucks along the shortest route to arterials and away from
3 residential streets to avoid unnecessary conflicts with resident and pedestrian
4 activity. The CTMP also may include measures to keep adjacent streets clean
5 on a daily basis at the truck exit points (such as street sweeping or on-site truck
6 wheel cleaning) to reduce tracking dirt offsite.

7
8 **2. Develop Plan for Large Events:** For the one or two largest events each
9 year expected to attract 400 or more attendees (such as curriculum night), the
10 school will develop a large-event plan that modifies the event to reduce total
11 peak demand by separating it into two sessions or into two nights based on
12 grade levels.

13 **3. Develop a Neighborhood Communication Plan for School Events:** The
14 district and school administration will develop a neighborhood
15 communication plan to inform nearby neighbors of large events (those
16 expected to draw 400 people or more) each year. The plan will be updated
17 annually (or as events are scheduled) and will provide information about the
18 dates, times, and rough magnitude of attendance. The communication will be
19 intended to allow neighbors to plan for the occasional increase in on-street
20 parking demand that will occur with large events.

21 **4. Update right-of-way and curb-side signage:** The district will work
22 with the Seattle Department of Transportation to confirm the locations,
23 extents, and signage (such as time of restrictions) of the school bus and/or
24 school load zones along adjacent streets.

25 19. As noted above, the District received three timely written appeals from Mr. Brubeck,
26 Mr. Jackins, and Ms. Szikszoy, with the Jackins and Szikszoy appeals listing multiple others
as fellow appellants, identifying party representatives, and providing email addresses for
contacting appellants. Copies of the timely written appeals, all filed before the appeal
deadline, which was 5:00 p.m. on January 5, 2023, are on file with the District. Although
there was a technological complication that prevented the District from receiving Mr.
Brubeck's written comments before the MDNS issued, in the end, all of his detailed written
comments were addressed during this SEPA appeal hearing process, so he has had a full and
fair opportunity to have his input considered with regard to this matter. (*See Dist. Ex. 24*).

20. Following proper notices issued to all parties of record, a prehearing motion process
resulting in a Prehearing Scheduling Order by the Examiner addressing witness and exhibit
disclosures to provide a fair and efficient process for all participants, the appeal hearing for
this matter took place in person in a District conference room, spanning two days, on
February 9 and 10, 2023.

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1 21. Consistent with the District’s Hearing Examiner Rule of Practice and Procedure
2 (“HEx Rule”) 2.14, captioned “CONSOLIDATION”, which reads: “[a]ll cases under the
3 jurisdiction of the Hearing Examiner relating to the same matter should be consolidated for
4 hearing. The Hearing Examiner may order consolidation on the Hearing Examiner's own
5 initiative or at the request a party,” the Examiner consolidated the three pending appeals of
6 the SEPA MDNS issued for the Alki project into a single hearing process. (*Prehearing
7 Scheduling Order, issued on or about February 1, 2023*).

8 22. As the appellants were all advised, the specific “errors” and/or aspects of the
9 challenged SEPA threshold determination that are at issue for each appeal are as set forth –
10 and are limited to those raised – in each appellants’ written appeal statement.

11 23. As provided in HEx Rule 2.24: (a) The Hearing Examiner accords deference or other
12 presumption to the decision being appealed as directed by applicable law; (b) Where the
13 applicable law provides that the appellant has the burden of proof – as is the case for appeals
14 of SEPA threshold determinations – the appellant must show by the applicable standard of
15 proof that the Responsible Official's decision or action does not comply with the law
16 authorizing the decision or action; and (c) Unless otherwise provided by applicable law, the
17 standard of proof is a preponderance of the evidence.

18 24. During the appeal hearing, representatives for each appellant generally asked that
19 their appeals incorporate evidence presented by other appellants to support their own.

20 25. Even with combined and consolidated records, the three appeals should be denied,
21 because they were not supported by a preponderance of credible evidence of the same
22 expertise and weight as that presented by the District’s qualified consultants’ exhibits and
23 hearing testimony.

24 ***Summary of main issues raised in the appeals.***

25 26. Each of the three written appeals speak for themselves, and several items are repetitive
26 or simply provide public policy arguments beyond the scope of any SEPA appeal, not actual
bases upon which to grant an appeal. This is especially true with respect to arguments and
questions about the need for the Project, generally asking that the District should not expand
schools while enrollment is decreasing. Challenges to policy decisions made by the District
– like which schools to expand or improve – are not within the scope of issues assigned to
the Hearing Examiner. The main subjects addressed throughout the appeal hearing are
discussed in the following findings.

1 27. The appeal hearing presentations focused on several primary issues, with offshoots
2 on each topic raised by some appellants and their witnesses. None of the main issues, or sub-
3 issues, were supported by a preponderance of credible evidence that would serve as a basis
4 to reject the challenged MDNS.

5 28. Archaeological/Cultural resource concerns; potential aesthetic/view impact concerns;
6 traffic and parking concerns; and landslide/geotechnical concerns, took up most time during
7 the appeal hearing.

8 29. For reasons explained in this Recommendation, each of the pending appeals should
9 be denied, because the appellants failed to meet their burden of proof, and the District
10 presented far more than a preponderance of credible, subject-matter-expert evidence to
11 support the MDNS.

12 30. The captions provided below are restatements of the primary appeal issues presented
13 during the appeal presentations, including sworn testimony from Mr. Brubeck, Mr. Jackins,
14 and Ms. Szikszoy, and that of other witnesses called to support various aspects of their
15 appeals. Whether specifically discussed in this recommendation, the full language and
16 substance of each issue mentioned in each written appeal statement has been fully considered
17 and evaluated before issuing this Recommendation.

18 ***Archaeological/Cultural Resource Concerns;***

19 31. Evidence presented by the District in response to archaeological/cultural resource
20 concerns raised by the appellants and their witnesses was credible, and un rebutted. Ms.
21 Peterson is a qualified professional consultant with a demonstrated expertise in conducting
22 surveys on project sites for the presence of potential archaeological and other cultural
23 resources. Her recommended plan going forwarded, accepted by the District, earned “only
24 praise” from the appellant’s main cultural resource witness, who confirmed that his concerns
25 were addressed. In short, by following Ms. Peterson’s recommended plan for additional
26 subsurface investigative work, and the Inadvertent Discovery Plan recommended in her
27 report, the District’s witnesses established that this project will have no probable, adverse
28 impacts on archaeological or cultural resources. There are no outstanding cultural resource
29 issues that would serve as a basis to grant any of the pending SEPA appeals.

30 ***Aesthetic/View Impact Concerns, especially for residents located uphill, behind the
31 building.***

32 32. Mr. Brubeck provided the most qualified professional level testimony of all the
33 appellant witnesses, especially focused on his concerns about how the new school building
34 might impact his view looking north and west towards the beach and the Olympic Mountains
35 beyond. His background as a professional architect, with decades of experience in the field,

1 was demonstrated throughout his appeal hearing presentation and testimony. However, his
2 arguments against the project, based upon concerns about potential view impacts, were
largely rebutted by District witnesses and exhibits.

3 33. Mr. Brubeck owns one of the homes located uphill along Admiral way, behind the
4 existing Alki school building. There is no dispute that views from his home, decks, and other
areas on his property, will change as a result of this project.

5 34. Mr. Brubeck testified that he was pretty sure that his view could not be blocked when
6 he was considering whether to purchase his current home along Admiral, because he
7 reviewed applicable codes, and believed that a 35-foot height was meant for gyms, not regular
school buildings. He explained that he paid a premium for his view.

8 35. Unrebutted evidence in the record shows, and site visits confirm, that Mr. Brubeck's
9 view will change, but does not show that it will be "blocked", leaving him with continued,
10 though somewhat interrupted, views out to the water, the beach, and the Olympic Mountains.
11 The project architect and her team of design professionals generated view impact illustrations
12 included in the record, establishing that trees block or screen much of the views from Mr.
13 Brubeck's property looking down towards the current school building, and will continue to
14 block or screen much of his views looking down toward the proposed new school building.
(See slides of views from Mr. Brubeck's backyard, with lines drawn showing heights of
existing and proposed new building, included in District Ex. 11, at pages 45, 46). The same
illustrations, republished below, confirm that Mr. Brubeck's views, looking out towards Alki
Beach and the Olympic Mountains, will continue to be expansive and impressive, with
limited changes caused by the new building.

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Proposed Massing

View Impact Analysis

Photograph taken during a site visit to Mr. Donald Brubeck's residence on February 02, 2022.



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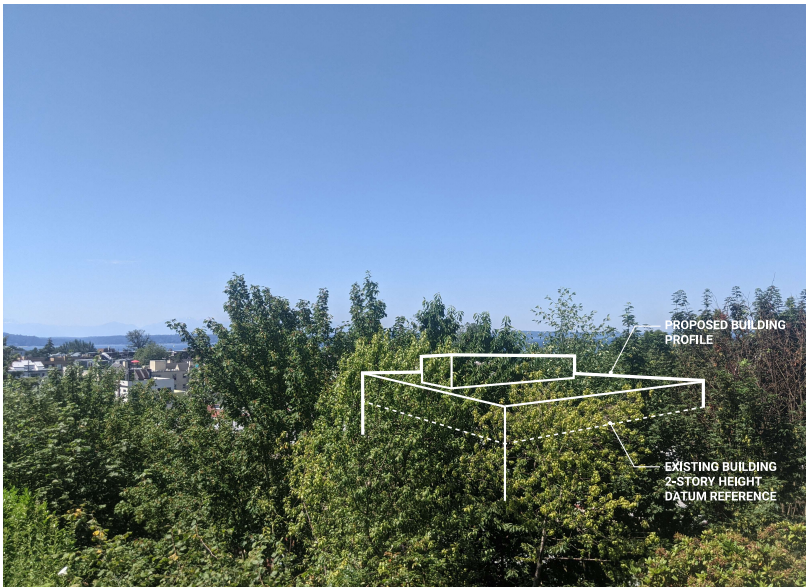
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Proposed Massing

View Impact Analysis

Photograph taken during a site visit to Mr. Donald Brubeck's residence on July 28, 2022.



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36. None of the appellants offered a preponderance of credible evidence to rebut Ms. Hutchinson's qualified professional opinion that the new building design will not result in probable significant adverse environmental impacts associated with aesthetics or views.

37. Not all homes will have the same or any view impacts. In fact, some views will be improved – at ground level, the haphazard existing building and portable classroom placement will be replaced with a design featuring a pleasant and appealing point of entry looking out to the park and beach beyond, influenced by local tribes' design traditions as the District's architect described in her testimony.

38. The Alki School Project is a high-quality design that will enhance vistas from many surrounding properties, sidewalk venues, and the park just north of the site. Yes, some homeowners will see something different than they do today, but there is nothing in the record to support any appeal based on perceived impacts on views or project design aesthetics.

39. Some comments raised concerns about the potential for view impacts, or changes to the neighborhood aesthetic presented by the proposed larger and taller new building. Several

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1 individuals believed that using a smaller enrollment figure should eliminate the need for a
2 larger, taller building addition. District witnesses provided credible evidence, including photo
3 illustrations, showing how the alleged view impacts, while a change from the status quo, will
4 not result in significant adverse impacts – from surrounding properties.

5 40. Seattle development codes do not protect private views. The District proposal and
6 request for a ‘Departure’ to build a taller building than city codes might otherwise allow, will
7 not result in any probable, significant, adverse impact, on views or otherwise. There is
8 insufficient evidence in this record to support such position. To the contrary, the testimony
9 and slides provided by Ms. Hutchinson provided credible and substantial evidence to
10 establish that, while some views will change as a result of this project, there will be no
11 significant impacts on views or aesthetic considerations. (*Testimony of Ms. Hutchinson*).

12 41. Personal opinions and a preferred aesthetic for the building to retain a lower profile
13 do not serve as a basis to reject the challenged MDNS issued for this project. Views across
14 a neighboring property are not protected by city codes or Washington caselaw.

15 42. As noted above, several local residents raised general view impact concerns. These
16 concerns do not serve as a basis to reject the proposal. In fact, evidence in the record firmly
17 demonstrates how alleged aesthetic and view impacts were considered and included as part
18 of the design for the project. While some neighbors will be able to see changes in their views,
19 none will be significant. Comments opposing the project or seeking major modifications
20 based on personal view considerations were not sufficiently supported and should be rejected.

21 43. In Washington, a person has no property right in the view across their neighbor's land.
22 A constitutionally protected property interest exists when a plaintiff demonstrates that he or
23 she possesses a “legitimate claim of entitlement” under the law. *Bd. of Regents of State Colls.*
24 *v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972). Here, the Seattle
25 Municipal Code does not grant adjoining property owners a claim of entitlement in the
26 protection of their views in the neighborhood; the code does not require the city to deny a
27 permit or other project application that might impair private views of lands beyond a
28 landowner’s property boundaries. Thus, any potential constitutional due process claims
29 alleging view loss should fail.

30 44. Washington case law is very clear that there is no view protection in common law;
31 nor are general views from a neighbor’s property onto an adjoining property protected in City
32 Codes at issue in this matter. See *Asche v. Bloomquist*, 132 Wn. App. 784, 133 P.3d 475,
33 2006 Wash. App. LEXIS 434 (Div. II, 2006). Simply put, project opponents do not have a
34 common law right in a view across their neighbor’s property. Any arguments based on
35 assertions to this effect must be rejected.

36 45. While not a perfect comparison, the Washington Supreme Court decision in *Durland*

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1 v. *San Juan County*, 182 Wn.2d 55, 340 P.3d 191 (2014), is persuasive authority on some
2 issues raised in this appeal process. Durland argued that county building codes about the
3 height and size of a proposed garage on a neighboring property created a property interest
4 because they were intended to protect neighbors' views of the water. The Supreme Court
5 rejected Durland's arguments, because the local codes did not contain mandatory language
6 requiring the jurisdiction to consider neighbors' views of the water before issuing building
7 permits for garage construction on nearby properties. Similarly, the neighbors in this matter
8 directed attention to no city code provisions that would essentially serve as a basis to consider
9 their preferred aesthetic for structures or developments that can be viewed from their house.

10 46. While sincere and understandable in their expressions of concern about potential view
11 impacts, issues raised by the appellants with respect to views or aesthetic considerations were
12 not sufficiently supported and should be rejected.

13 ***Traffic and parking concerns.***

14 47. Several appellant witnesses expressed doubt and a lack of confidence in the data and
15 studies the District relied upon to conclude that the project will not result in adverse traffic
16 or parking impacts. Some allegations generally alleged that data underestimated traffic and
17 parking impacts, because studies may have been performed during the Covid pandemic, or
18 while the West Seattle Bridge was closed.

19 48. The District's expert transportation engineering consultant, Mr. McBryan, offered
20 un rebutted testimony – confirming how his reports and conclusion were based upon
21 conservative figures that were based upon higher traffic and parking demands from years
22 prior to the pandemic, and while the West Seattle Bridge was fully operational. His report
23 includes the following explanation, rebutting appellant's challenges based on inadequate
24 data:

25 At the time of data collection for this analysis in November 2021, Seattle Schools had returned
26 to five- day, in-person learning after the disruption and school closures caused by the COVID-
19 pandemic in 2020-21, which affected traffic volumes and travel patterns throughout Seattle
and near the site. Some transportation patterns in the City overall, at the school, and within
the local site vicinity have not returned to pre-pandemic conditions. In addition, the West
Seattle High-Rise Bridge remained closed for repair after March 2020 inspections indicated
accelerated growth of new and existing cracks in the structure. The Seattle Department of
Transportation (SDOT) is currently completing repairs to the bridge with re-opening
anticipated by mid-2022. This temporary closure has also affected commuting patterns for
West Seattle residents. Therefore, the analyses were prepared using a combination of traffic
data collected for this project in February 2022 and other data collected in the area in 2017
and 2019. The volumes were adjusted to reflect representative normalized (non-pandemic)
conditions according to standards and practices recommended by the Institute of
Transportation Engineers (ITE) and other industry professionals. (*Ex. 1, Appendix G, Heffron
Transportation Report, .pdf page 329*).

1 49. Mr. McBryan’s transportation analysis is further supported by parts of his report that
2 are adjusted to reflect “historical traffic volumes”, ensuring that findings are not based upon
3 artificially low traffic associated with the pandemic or West Seattle Bridge closure, including
4 without limitation the following explanation:

5 **2.2.1. Historical Traffic Volumes**

6 Traffic volumes on the arterials around Alki Elementary, especially along Alki Avenue SW,
7 fluctuate seasonally due to its proximity the beach-front park. SDOT has performed traffic
8 counts on Alki Avenue SW west of Harbor Avenue SW (the nearest location for regular
9 counts) about five times per year since 2005. These counts were compiled to show how AM
10 peak hour, PM peak hour, and daily traffic volumes have fluctuated over the past 15 years.
11 Figure 3 shows the traffic volume trends from 2005 through April 2020 when volumes
12 declined steeply due to the COVID-19 pandemic. (*Id.*, @ .pdf page 336).

13 The 2021 peak hour volumes on SW Admiral Way at 59th Avenue SW were compared to
14 volumes compiled from turning movement counts performed at this intersection by SDOT in
15 March 2017 and June 2018. This review found that eastbound volumes have declined by about
16 32% in the morning peak hour and by about 17% in the afternoon peak hour compared to the
17 pre-pandemic/pre-bridge-closure 2018 and 2019 data; westbound declines were about 9% in
18 the morning and 28% in the afternoon. Therefore, to reflect normalized existing conditions
19 (non-pandemic with the West Seattle High-Rise Bridge re-opened), morning and afternoon
20 peak hour volumes on the arterials—SW Admiral Way and Alki Avenue SW— were
21 increased by 32% eastbound and 9% westbound in the morning; 17% eastbound and 28%
22 westbound in the afternoon. Background volumes at the non-arterial local access street
23 intersections were increased by 9% in the morning and 17% in the afternoon. These
24 normalization adjustments result in a conservatively- high baseline of peak hour traffic
25 volumes to represent existing conditions. Figure 5 shows the existing (2021) normalized
26 morning and afternoon peak hour traffic volumes.
(*Id.*, @ .pdf p. 338)

50. None of the pending SEPA appeals were supported by qualified expert testimony on
transportation or parking related issues.

51. As noted elsewhere, the Seattle Department of Neighborhoods recommended
approval of all requested “Departures” from otherwise applicable City of Seattle development
standards that apply to this project – noting that Seattle does not have a specific zone for
schools located in residential areas, necessitating requests for such Departures. These include
requests to adjust parking requirements for vehicles and bicycles. Based on Mr. McBryan’s
unrebutted expert opinions – and the independent recommendation of approval for parking
related Departures from the City’s Department of Neighborhoods – the Examiner finds that
substantial, unrebutted evidence supports all portions of the MDNS addressing transportation
and parking issues. The appellants failed to present evidence or legal authority sufficient to
reject the challenged MDNS based on such issues.

1 ***Landslide/geotechnical, slope stability concerns.***

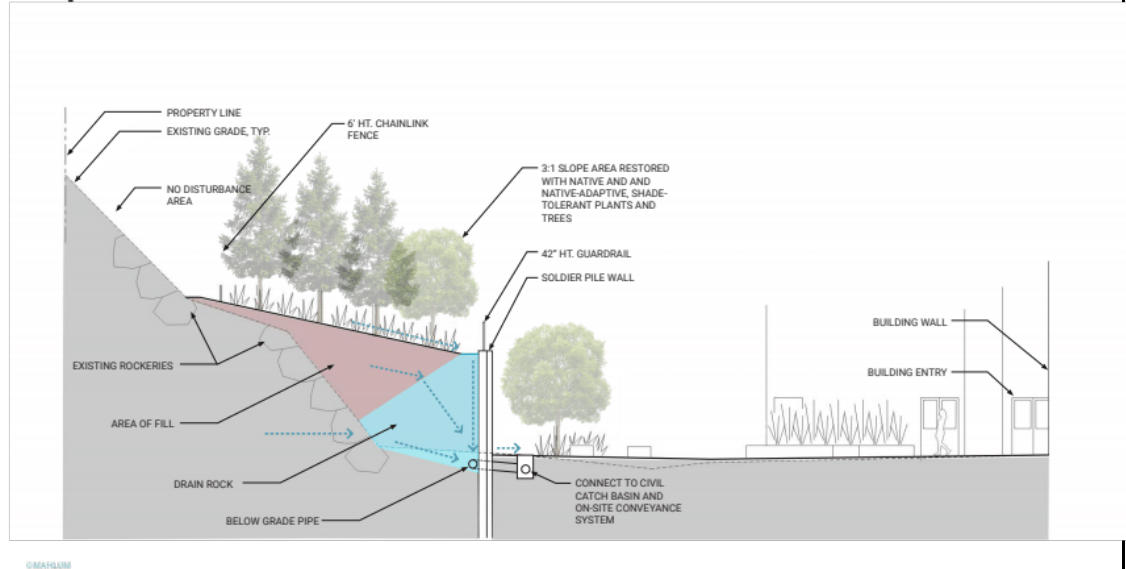
2 52. Kevin Lamb, P.E., L.E.G., Principal, NV5, called by the District to provide expert
3 testimony regarding geotech issues raised by appellants regarding steep slopes, soils, and
4 liquefaction, whose resume is included in the record as District Ex. 7, credibly testified and
5 directed attention to facts that rebut appellant allegations that the steep slope behind the
6 school should be considered a natural feature, but is instead deemed a slope created by many
7 modifications over the years.

8 53. Mr. Lamb focused attention on improvements to safety that the project design will
9 provide – where the existing factor of safety is just 1.4, and after the project, the factor of
10 safety will be 2.9 (*See Ex. 18, on page 102*). Mr. Lamb explained that he considered
11 appellant's comments and questions, including a geotech report for another property owned
12 by a private party not included as an appellant, and confirmed that the report from another
13 homeowner, in Ex. L, had no impact on his conclusions for this project.

14 54. Mr. Lamb devoted a significant portion of his testimony to explaining how design
15 measures included in this project are intended to address site-specific concerns raised by
16 some local residents, including without limitation how borings will be made with an auger-
17 drill device instead of pile driving; how on-site soils are not liquifiable; how the new building
18 will be designed to satisfy stringent seismic standards; how the geothermal system would be
19 a closed loop system, drawing up water at a stable temperature, higher than air temperatures
20 in the winter so less energy would be needed to heat the building, and lower than hot
21 temperatures in the summer, making it easier to cool the building. Mr. Lamb's illustrations
22 and explanations about the slope stability improvements provided by this project were
23 credible and un rebutted.

24 55. For some readers, a picture speaks better than any words. Illustrations used by District
25 witnesses, including Mr. Lamb, show how the proposed slope stabilization measure will be
26 constructed/installed up against the deteriorating "rockeries" uphill from the school site, and
how stormwater and groundwater from uphill, behind the school site, will be directed to a
catch basin and on-site conveyance system, in contrast to existing conditions where water
simply runs or stands on ground surfaces in front of the existing rockery on the school
property. The following picture speaks for itself, and provides details addressed in Mr. Lamb
and Ms. Hutchinson's credible, un rebutted testimony, showing how the project will not
generate adverse geotechnical or stormwater impacts, but will instead, improve such
conditions on the school site as well as adjacent properties. (*See Slope Stabilization measure,
as shown in Ex. 11, page 52, with additional details added in District Ex. 26, below*):

Slope Stabilization



District Ex 26 - Slope Stabilization Chart.pdf

56. The Examiner finds that Mr. Lamb and Ms. Hutchinson provided substantial, un rebutted, expert evidence and testimony, verifying that the Alki school project will not generate adverse impacts associated with geotech, landslide risks, or drainage issues. All aspects of appeals regarding such issues must fail.

General discussion.

57. The appellants failed to provide a preponderance of evidence to support their appeals.

58. The pending appeals allege problems with the public comment process, errors in links to information, and a lack of public meetings regarding the proposal. In the appeal hearing, the appellants failed to offer any credible testimony or controlling legal authority to support their general allegation that the public noticing for this project, and lack of any public meetings, was somehow insufficient to inform the community about the proposal and generate meaningful public comments on the subject. Quite the opposite occurred with regard to this proposal. First, there is no law mandating public meetings as part of a SEPA threshold review process – the same for inviting written public comments on a draft SEPA checklist for a project. Nevertheless, the District took the extra step of issuing a draft checklist for public review and comment. Deadlines for comments were extended as appropriate, and all appeal hearing participants had a full and fair opportunity to address issues raised in their written appeal statements. Timely comments were all considered and

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received responses included as an attachment to the final SEPA Checklist. The public notice and comment procedures used leading up to issuance of the challenged MDNS exceeded any state or local requirements.

59. Appellants' personal opinions, about the benefits that could result from public meetings or broader more extensive public notices that are not required for a SEPA threshold review, do not serve as a basis to overturn the SEPA threshold determination challenged in this appeal.

60. District witnesses confirmed that they considered all comments offered during the public comment process and that a public meeting is not required by applicable law prior to issuing a SEPA threshold determination. The public comment process for this matter did not present an unreasonable barrier for the appellants, especially given the fact that they were able to submit written comments regarding the draft checklist and submit the appeals that initiated this hearing process. None of the appellants' allegations regarding a defective public process were supported by applicable law or credible evidence. Any failure to receive a written comment from one appellant did not prevent him from fully presenting his comments and evidence supporting his SEPA appeal.

61. While the findings above attempt to address most of the primary arguments and issues raised in the appeal documents and hearing testimony, none of the issues raised in any of the three appeals, whether specifically discussed in this Recommendation or not, were supported by credible and sufficient evidence required to sustain appellants' burden of proof, especially given the substantial weight that must be accorded the challenged decision. Comments raised about most issues appeared to be speculative, somewhat self-serving (particularly alleged view impact concerns) and were not supported by convincing studies or any preponderance of factual evidence on the subject.

62. The witness testimony presented during all three appeal presentations added little, if any, substantive evidence that would serve to rebut the expert consultant studies, and on-site observations of the surrounding area, summarized by District witnesses during the appeal hearing. All of the appellants failed to show the existence of any material errors in the Final SEPA Checklist or MDNS issued for this project, failed to show how the MDNS failed to assess potential impacts, and they failed to show that the proposal will cause any adverse impacts necessitating an EIS.

63. Personal preferences for a meeting, additional or more expansive notices, in the absence of any legal requirement to hold a meeting or provide broader notices, do not serve as a basis to overturn the challenged MDNS. More significantly, the appeal hearing itself provided the appellants an open record hearing opportunity to fully explain and present evidence supporting their assignments of alleged errors in the MDNS. They failed to meet their burden. Notices were mailed to adjacent property owners. Information was posted on

the District's website, including copies of the studies and reports attached to the SEPA Checklist. Simply put, appellants failed to demonstrate how an additional public meeting or additional noticing efforts would have established the existence of any potential, significant impact that is not already considered, addressed, and/or mitigated in the challenged MDNS.

64. The MDNS appendices include detailed findings and analysis that serve as support for the challenged threshold determination. The opinions and findings summarized in all of the MDNS appendices and District exhibits was boosted by credible testimony provided at the appeal hearing, from Ms. Hutchinson, Mr. Lamb, Mr. McBryan, Ms. Peterson, Mr. Ding, and Mr. Russack.

65. A party is entitled to present evidence and set forth facts based on personal knowledge but cannot merely state ultimate facts or make conclusory assertions and have them accepted at face value. *Jones v. State, Department of Health*, 170 Wash.2d 338, at 365 (2010). The appellants' evidence and testimony in this appeal was mostly a recitation of personal beliefs, opinions, and conclusory assertions. While sincere and genuinely concerned about the neighborhood and public schools, none of the appellant witnesses presented testimony or evidence of the same weight as the professional subject-matter expert reports and testimony included in the record.

66. Paraphrasing the action words contained in the definition given for the word "mitigation" in the state SEPA regulations, the term "mitigation" does not mean zero impacts, but means "avoiding", "minimizing", "rectifying", "reducing", "compensating", or "monitoring" an impact. WAC 197-11-768. The Examiner finds and concludes that the challenged MDNS should be upheld, because substantial evidence in the record establishes how it includes measures intended to appropriately avoid and/or mitigate potential impacts.

V. CONCLUSIONS OF LAW.

1. "SEPA does not demand a particular substantive result in government decision making; rather it ensures that environmental values are given appropriate consideration." *Glasser v. City of Seattle*, 139 Wn. App. 728, 742 (2007).

2. In this appeal, the Examiner is delegated authority to prepare a recommendation to the Superintendent as to whether the pending appeal should be granted.

3. Based on findings provided above, and other evidence in the record for this matter, the Examiner concludes that Appellants have not shown by a preponderance of the evidence that the challenged MDNS was not properly issued. They failed to establish that there will be any significant impact that cannot be addressed through applicable of existing codes, policies, development regulations, or measures identified in the MDNS materials.

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ADDITION AND RENOVATION PROJECT

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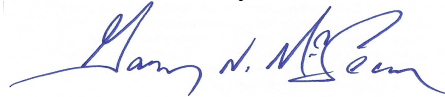
1 4. For reasons set forth in the Findings of Fact, all of the appellants specific issues on
2 appeal must fail, because the District successfully presented credible testimony and
3 documentary evidence, including un rebutted expert reports, to prove that the MDNS is
supported by a preponderance of evidence in the Record. This is especially true in this appeal,
where the challenged threshold determination is accorded substantial weight.

4 5. Any finding or other statement contained in this Recommendation that is deemed to
5 be a Conclusion of Law is hereby adopted as such and incorporated by reference.

6 **VI. RECOMMENDATION.**

7 The above-captioned appeals should be denied. The Mitigated Determination of Non-
8 Significance (MDNS) for the Alki Elementary School Addition and Renovation Project
should be affirmed.

9 ISSUED this 13th Day of March, 2023

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Gary N. McLean, Hearing Examiner

BRUBECK EXHIBITS:

- A. Comments on Draft SEPA Checklist
- A1. Email transmittal of Draft SEPA Checklist and follow up email
- B. Appeal of MDNS Decision and Final SEPA Checklist
- C. School enrollment and attendance area
- D. Building floor area
- E. Environmental Checklist Table of Contents
- F. Plants and Animals. Impervious surface.
- G. Wetlands
- H. Site visit notes February 2, 2023
- J. Steep slopes
- K. Environmentally Critical Areas and Tree Canopy
- L. Neighbor's geotechnical report
- N. Noise
- O. Seattle Land Use Code excerpts for Departures and Rezone Criteria
- P. Photos and Sketchup model views.
- Q. Aerial photo
- T. Transportation and Bike parking
- U. SPS 2021 Facility Master Plan Update
- V. SPS Final Programmatic EIS for BEX V
- Z. Illustration (2-pages) prepared by Mr. Brubeck, marked showing portions of view corridors from his property allegedly blocked by parts of new building; fails to rebut District Exhibits showing 3D images of views, not fully blocked, where trees screen or block most views of school from uphill.

JACKINS EXHIBITS:

- 1. Alki Elementary School project MDNS and Final Checklist
- 2. Appeal filing by Chris Jackins, et al, of Alki Elementary School project MDNS
- 3. October 2016 School Board Action Report (SBAR) and School Board Resolution supporting Treaty rights and benefits for the Duwamish Tribe
- 4. School District Report, August 2022, on requested departures from City code for Alki project, posted on the website of the City of Seattle Department of Neighborhoods (DON)
- 5. Alki Elementary Cultural Resources Assessment Short Report, June 16, 2022, redacted version, submitted by Perteet to Seattle Public Schools
- 6. Excerpt from Alki Elementary School project Draft Checklist, page 25
- 7. Comment letter, August 2, 2022, from Chris Jackins to Seattle School District, on Draft Checklist for Alki Elementary School project
- 8. Written statement related to Duwamish history of the Alki Elementary School area, by David Buerge
- 9. Description of background and expertise of David Buerge
- 10. Map #1 related to Duwamish history of the Alki Elementary School area, produced by David Buerge

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11. Map #2 related to Duwamish history of the Alki Elementary School area, produced by David Buerge
12. Description of background and expertise of Scott Pinkham
13. Page listing sample school playground sizes, from an exhibit that the District provided for the recent Montlake appeal hearing [Montlake District Exhibit #18, last page / page 5]
14. Dave Resler -Tree trunk bird nest
15. Dave Resler -Schmitz Creek Waterfall
16. Dave Resler -Schmitz Creek Waterfall
17. Dave Resler-Reconnect West Seattle Follow-Up Survey Report 11.
18. 2218.Dave Resler -Seattle Fault Study Details 7.7.22
19. Dave Resler -Sidewalk buckling 5717 SW Lander
20. Dave Resler -Triquet Beach
21. Dave Resler -Triquet first nation village Pg 1 Pg 2
22. Dave Resler -Triquet First Nation village Pg 3
23. Dave Resler -Tsunamis Today
24. Dave Resler -Schmitz Creek Waterfall
25. Dave Resler -5717 SW Lander
26. Dave Resler -Schmitz Creek Overflow
27. Dave Resler -old fireplace post
28. Dave Resler -home post
29. Dave Resler -homes on 58th pillar & post
30. Dave Resler -Alki High Tide
31. Dave Resler -Acous House post
32. Dave Resler -5717 SW Lander flooding of Schmitz Creek
33. Dave Resler -5717 SW Lander Street flooding of Schmitz Creek
34. Dave Resler -Midden Detail
35. Dave Resler -Disju Longhouse
36. Dave Resler -Culturally Altered Tree
37. Dave Resler -58th SW flying blue heron
38. Dave Resler -Alki high tide
39. Dave Resler -58th SW Blue Heron
40. Dave Resler -Seattle GeoData liquification
41. Dave Resler -Seattle GeoData Potential Slide Zones
42. Dave Resler -Seattle GeoData for Steep Slope Forty one.
43. Mr. Jackins' detailed written hearing notes, which he distributed throughout the hearing at various points during his presentation, including an opening statement, testimony about specific issues raised in his written appeal, and a closing statement, comprised on 16-numbered pages with extra unnumbered pages as attachments.
44. Email message regarding hearing schedule, possible testimony from Ms. Hanson.
45. Email message including Mr. Buerge, discussing inadvertent discovery plan, protocols for on-site archaeologist to enforce protection measures during ground disturbing work.
46. Photos and hearing presentation comments provided by Shauna Causey.
47. Photos of various materials, used as tools, illustrating certain cultural resources.

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1 **SZIKSZOY EXHIBITS:**

2 A. Documents used by Ms. Szikszoy and her spouse, Co-Appellant Steven R. Ramels, during
3 their testimony:

- 4 1. map of slide areas, liquefaction zone, and steep slope
5 2. map of known slides
6 3. Seattle school enrollment projections
7 4. Alki Area Parking Overlay

8 B. Documents used by Steve Saxlund:

- 9 • Three (3) photos of sinkholes and alignment in the area

10 C. Documents used by Kathy Oss:

- 11 1. Liquefaction zones in King County
12 2. Liquefaction zone in Seattle
13 3. Liquefaction zone in Alki
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26 **RECOMMENDATION TO THE SUPERINTENDENT,
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SEATTLE SCHOOL DISTRICT’S EXHIBIT LIST.

1. Final SEPA Checklist and MDNS with Appendices
2. Rebecca Hutchinson Resume
3. Kevin Lamb Resume
4. Will Russack Resume
5. Jeff Ding Resume
6. Emily Peterson Resume
7. Tod McBryan Resume
8. Redacted Cultural Resources Report
9. Mahlum Departures Presentation – August 2022
10. Mahlum Departures Response Letter dated December 2, 2022 (revised December 13, 2022)
11. Mahlum Alki Elementary School SEPA Presentation - February 2023
12. Raedeke initial wetland conclusion dated February 3, 2022
13. Raedeke Wetland Assessment Memorandum dated February 6, 2023
14. Correspondence with DAHP and Tribal Governments
15. SDCI Permit Number 6911596-EX Submission
16. NV5 Response to August 10, 2022 SDCI Markup Summary dated September 14, 2022
17. SDCI Relief from Prohibition on Steep Slope Request Result dated December 8, 2022.
18. NV5 Updated Report of Geotechnical Engineering Services dated February 3, 2023
19. EHSI Underground Storage Tank (“UST”) Investigation Report
20. EHSI Email to District regarding UST Investigation Results
21. EHSI UST Exploration Location Map
22. SDCI GIS ECA Maps
23. Department of Ecology Letter regarding lack of TSP contamination dated November 22, 2022
24. Declaration of Mary Cauffman
25. Neighbor Location Maps, used during the hearing
26. Slope Stabilization illustration, used during hearing
27. Drainage Plan illustration, used during hearing

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