

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

In the Matter of the Appeal filed by )  
)  
**CHRIS JACKINS, ET AL,** )  
Appellants, )  
)  
of a SEPA Mitigated Determination of )  
Nonsignificance (MDNS) for the )  
John Rogers Elementary School Replacement )  
Project issued on November 30, 2022, by the )  
)  
**SEATTLE PUBLIC SCHOOLS' SEPA** )  
**RESPONSIBLE OFFICIAL,** )  
)  
Respondent )  
)  
\_\_\_\_\_ )

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
RECOMMENDATION**

**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.

**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 John Rogers Elementary School Replacement Project. Through the course of the appeal hearing process, the school district representatives did not question the timeliness or assert other potential procedural defects, like standing issues, that might prevent this appeal from going forward.

**RECOMMENDATION TO THE SUPERINTENDENT,  
RE: APPEAL OF SEPA MDNS ISSUED FOR THE  
JOHN ROGERS ELEMENTARY SCHOOL  
REPLACEMENT PROJECT**

**GARY N. MCLEAN**  
HEARING EXAMINER FOR SEATTLE PUBLIC SCHOOLS

1  
2 The Hearing Examiner has jurisdiction to review and issue recommendations to the  
3 Superintendent regarding appeals of SEPA threshold determinations, like the challenged  
4 MDNS, under Board Policy No. 6890, at Sec. 8(c).

4 ***Burden of Proof on Appellants, Standard of Review.***

5 To satisfy their burden challenging the MDNS, an appellant must present actual  
6 evidence of probable significant adverse impacts of the Project. *Boehm v. City of Vancouver*,  
7 111 Wn.App. 711, 718-719, 47 P.3d 137 (2002).

8 A "clearly erroneous" standard applies when reviewing SEPA threshold  
9 determinations made by local and state governmental entities, such as the MDNS challenged  
10 in this matter. *King Cty. v. Washington State Boundary Review Bd. for King Cty.*, 122 Wn.  
11 2d 648, 661, 860 P.2d 1024 (1993). A challenged DNS may be reversed if, although there is  
12 evidence to support it, the reviewing authority is left with the definite and firm conviction  
13 that a mistake has been committed. *See Norway Hill Pres. & Prot. Ass'n v. King County*  
14 *Council*, 87 Wn.2d 267, 274, 552 P.2d 674 (1976). In reviewing a SEPA threshold  
15 determination, the Hearing Examiner must first determine whether "environmental factors  
16 were considered in a manner sufficient to amount to prima facie compliance with the  
17 procedural requirements of SEPA." *Sisley v. San Juan County*, 89 Wn.2d 78, 84, 569 P.2d  
18 712 (1977) (quoting *Juanita Bay Valley Com. v. Kirkland*, 9 Wn. App. 59, 73, 510 P.2d 1140  
19 (1973)). Again, the appellants bear the burden of proof in their respective SEPA appeals.

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

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

25 RECOMMENDATION TO THE SUPERINTENDENT,  
26 RE: APPEAL OF SEPA MDNS ISSUED FOR THE  
JOHN ROGERS ELEMENTARY SCHOOL  
REPLACEMENT PROJECT

GARY N. MCLEAN  
HEARING EXAMINER FOR SEATTLE PUBLIC SCHOOLS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

### III. RECORD.

The Record for the matter includes all exhibits marked and numbered during the course of the appeal hearing. Copies of all materials in the record and a digital recording of the appeal hearing are maintained by the District. The challenged MDNS and SEPA Checklist issued for the John Rogers Elementary School Replacement Project, as issued on or about November 30, 2022, and the single written appeal, filed in a timely manner in December of 2022 as amended in early January of 2023, are all part of the Record. Lists of exhibits admitted into the record during the appeal hearing for Appellants and the District are provided below:

#### APPELLANTS' EXHIBIT LIST:

1. Rogers Elementary School project MDNS and Final Checklist
2. Appeal filing by Chris Jackins, et al, of Rogers 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, June 2022, on requested departures from City code for Rogers project, posted on the website of the City of Seattle Department of Neighborhoods (DON)
5. Rogers Elementary Cultural Resources Assessment Short Report, June 2, 2022, redacted version, submitted by Perteet to Seattle Public Schools
6. School Board Action Report (SBAR), October 12, 2022, related to Montlake project, noting earth to be trucked from the Montlake project to the John Rogers project, saving the John Rogers project approximately \$2 million
7. School Board Action Report (SBAR), October 12, 2022, related to John Rogers project, noting earth to be trucked from the Montlake project to the John Rogers project, approximately 28,000 cubic yards
8. Comment letter, July 8, 2022, from Chris Jackins to Seattle School District, on Draft Checklist for Rogers Elementary School project
9. Written statement related to Duwamish history of the Rogers Elementary School area, by David Buerge
10. Description of background and expertise of David Buerge
11. Map #1 related to Duwamish history of the Rogers Elementary School area, produced by David Buerge
12. Map #2 related to Duwamish history of the Rogers Elementary School area, produced by David Buerge
13. Background historical document #1 from David Buerge
14. Background historical document #2 from David Buerge
15. Description of background and expertise of Scott Pinkham
16. Cedar Park Elementary data page, address and enrollment
17. Sand Point Elementary data page, address and enrollment
18. 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]
19. Montlake Checklist, information on geothermal wells

RECOMMENDATION TO THE SUPERINTENDENT,  
RE: APPEAL OF SEPA MDNS ISSUED FOR THE  
JOHN ROGERS ELEMENTARY SCHOOL  
REPLACEMENT PROJECT

GARY N. MCLEAN  
HEARING EXAMINER FOR SEATTLE PUBLIC SCHOOLS

20. Statement and photos supplied by Erik Stockdale, neighbor; Ellen Peterson, neighbor; Pam Bowe, President, Meadowbrook Community Council (MCC); Dan Keefe, Vice President MCC; Mike Reinhardt, Secretary MCC; Wilma Boyd, Treasurer MCC; related to traffic, parking, safety on NE 105<sup>th</sup> Street, 35<sup>th</sup> Avenue NE, Sand Point Way
21. Statement and photos supplied by Lori Wells including topics related to air pollution; cutting down trees; play field, topics.
22. Statement supplied by Michael Arndt about soils; play field; drainage patterns; surface water; wildlife; traffic and parking including on NE 105<sup>th</sup> and NE 109<sup>th</sup>, and at 35<sup>th</sup> and 105<sup>th</sup>; ability to get on 105<sup>th</sup> from 41<sup>st</sup> with school access moving to the church on 105<sup>th</sup>; natural migration of wildlife.
23. Copies of photos and Google aerial view of the school property and surrounding roads, trees, sidewalks, and other physical features noted during appeal witness testimony.
24. Detailed notes used by Chris Jackins throughout his hearing presentation, including opening statement, hearing testimony, and closing statement, 18 numbered pages.
25. Talking points, used by Sandy Shettler, during her hearing testimony, about 4 pages.
26. Written testimony, submitted by Ruth Williams, member of the Thornton Creek Alliance, but appeared as an individual and not representing the Alliance.
27. Written comments, submitted by Kathy Kelly, local resident.
28. Written comments, submitted by Jonathan Pasley, local resident.

**DISTRICT'S EXHIBIT LIST.**

1. Final SEPA Checklist and MDNS with Appendices
2. Lisa Johnson Resume
3. Kas Kinkead Resume
4. Will Russack Resume
5. Jeff Ding Resume
6. Emily Peterson Resume
7. Tod McBryan Resume
8. Brett Larabee Resume
9. David Conlin Resume
10. John Rogers Elementary School SEPA Presentation - February 2023;  
\* *Provided during hearing, "New District Exhibit 10": the original order and complete presentation submitted as part of the Witness and Exhibit Lists on February 23, 2023, with updated or clarifying references regarding the streets and page numbers.*
11. June 2022 Departures Presentation
12. October 2022 Departures Response Letter
13. DON Recommendation on Departures
14. Redacted Cultural Resources Report
15. ECA Narrative for Landscaping Plan
16. Landscape Permit Drawings
17. Request for Relief from Prohibition on Steep Slope Request
18. SDCI Relief from Prohibition on Steep Slope Request Result dated August 2, 2022
- 19A and 19B. Existing and proposed drainage plan for field area
20. Redacted Cultural Resources report for John Rogers Playfield, Parvey and Hodges (January 27, 2006).
21. A selection of Landscape Sheets from Exhibit 16 and Sheets from Exhibit 15 referenced by Kas Kinkead during her hearing testimony.

**RECOMMENDATION TO THE SUPERINTENDENT,  
RE: APPEAL OF SEPA MDNS ISSUED FOR THE  
JOHN ROGERS ELEMENTARY SCHOOL  
REPLACEMENT PROJECT**

**GARY N. MCLEAN**  
HEARING EXAMINER FOR SEATTLE PUBLIC SCHOOLS

1 22. The reorganized District Exhibit 10 presented by Lisa Johnson, including the updated or  
clarifying references to the streets (new text in red on PDF pages 56-60).

2 During the appeal hearing, the appellants appeared pro se, on their own behalf, with  
3 Mr. Jackins' serving as the designated representative for the group of appellants named in his  
4 appeal statement, with some other named appellants conducting cross-examinations of  
5 specific District witnesses. The District was represented by counsel, Katie Kendall, from the  
6 McCullough Hill law firm. The appellants' hearing representative(s) and the District's  
7 attorney were given wide latitude to call witnesses, submit exhibits, and cross-examine  
8 witnesses called by the other side, all as they saw fit, to focus attention on topics or issues  
9 they deemed relevant to their respective positions in this appeal. Washington courts hold pro  
se litigants, including appellants, to the same standard as attorneys. *State v. Irby*, 3 Wn.App.  
2d 247 (Div. I, 2018), citing *State v. Bebb*, 108 Wn.2d 515, 524 (1987); *Audit & Adjustment*  
*Co. v. Earl*, 165 Wn. App. 497 (Div. II, 2011), citing *Westberg v. All-Purpose Structures,*  
*Inc.*, 86 Wn. App. 405, 411, 936 P.2d 1175 (1997). All representatives, counsel, and  
witnesses were respectful and civil towards one another throughout the lengthy hearing.

10 Below is a list of individuals called to present testimony under oath at the duly noticed  
11 appeal hearing for this matter, with the Examiner, all party representatives, and most  
12 witnesses appearing in-person in a District conference room, with some witnesses appearing  
13 by phone or using the Zoom online meeting platform coordinated by District staff on  
February 28, 2023:

- 14 1. Lisa Johnson, project architect, resume included in the record as District Ex. 2, called by the  
15 District after opening statements, to provide a summary of the Project and key design elements,  
16 mostly included in slides shown in Dist. Ex. 10. Ms. Johnson was recalled as part of the District's  
17 hearing presentation to provide direct responses to written comments and testimony by appellant-  
18 witnesses during the hearing, providing credible testimony rebutting implication that adverse  
19 impacts might result from glass and glare, because the building will use Low-E/solar controlled  
glass, with sun-screening ("eyebrows") to shade from hottest sun/prevent glare from the outside;  
and that view impacts will be minimal, given elevations of properties above the school site,  
directing attention to Ex. 10, view illustrations on page 59. Appellants failed to produce evidence  
of the professional expertise demonstrated by Ms. Johnson, who despite appellants' questions and  
concerns, confirmed that the new school has been designed to ensure there will be no probable,  
significant, adverse, environmental impacts.
- 20 2. Chris Jackins, the named appellant, served as the designated hearing representative for the appeal  
21 he filed on his own behalf and several other individuals and as a witness called by appellants to  
22 address several issues raised in their appeal. Mr. Jackins prepared detailed written notes, which  
23 he distributed throughout the hearing at various points during his presentation, including an  
24 opening statement, testimony about specific issues raised in his written appeal, and a closing  
25 statement, comprised of 18 numbered pages, included in the record as Appellant Ex. 24. Mr.  
Jackins testimony raised more than 20 points, including loss of play field/recreation/open space,  
the need to obtain "Departures" from standard City zoning codes and regulations, slope concerns,  
height, enlarging the building size too much impacting neighborhood, general traffic impacts,  
public comment process concerns, and general impacts on the character of the neighborhood. As  
with his other recent appeals, Mr. Jackins' focused much of his substantive remarks on respect for

26 **RECOMMENDATION TO THE SUPERINTENDENT,  
RE: APPEAL OF SEPA MDNS ISSUED FOR THE  
JOHN ROGERS ELEMENTARY SCHOOL  
REPLACEMENT PROJECT**

**GARY N. MCLEAN**  
HEARING EXAMINER FOR SEATTLE PUBLIC SCHOOLS

1 the Duwamish tribe, concerns about historic and cultural resource preservation. He acknowledged  
2 that while the Project may provide some benefits over existing conditions, such benefits should  
3 not outweigh what he perceives to be numerous impacts that “add up” and should serve as the  
4 basis to prepare a full EIS. He raised concerns about “earth transport” of materials from Montlake  
5 (soils) to the John Rogers school project site and the possible need to study impacts associated  
6 with such proposal together instead of separately for each project, a lack of public meetings with  
7 the community before the SEPA checklist was issued and other concerns with how notices were  
8 handled by the District in its outreach to surrounding residents. His concerns about loss of  
9 recreation space was mainly focused on outdoor space shown on the property today vs. after the  
10 Project, explaining that a larger “adult gym” is not necessarily for students, and can cause a loss  
11 of outdoor space for students generally. [NOTE: There is no dispute that this project site has a  
12 large “field area” that is not easily accessible to students from uphill where the existing school is  
13 located – meaning that concerns about “loss” of outdoor space may need to be focused on how  
14 “usable” the outdoor space might be to students, including students with mobility limitations].

- 15 3. Laurie Wells, listed as an appellant, long-time local resident, Project neighbor, called as an  
16 appellant witness, submitted written comments included in the record as Appellant Ex. 21, focused  
17 on general concerns about the increase in enrollment at the school, losing trees, concerns about  
18 impacts on the ecosystem in her neighborhood, concerns about lighted sign proposed by District,  
19 concerns about contaminants that might be spread around the site, especially given the large  
20 volume of fill-material/earth needed to make the proposed field improvements, and general noise  
21 concerns.
- 22 4. David Buerge, local historian, called as an appellant witness, submitted Appellant Exhibits 9-14,  
23 directed attention to his concerns that the presence of Thornton Creek on/near the school property  
24 [especially near the 35<sup>th</sup>/105<sup>th</sup> area, about 4 blocks west of the SW corner of the School property]  
25 means that his concerns for the possible presence of cultural resources are heightened, because  
26 floodplains and creeks move over time, meaning fish weers, stakes, baskets, nets and similar  
objects were likely used on or around the school property long ago. He did not change his opinion  
after hearing testimony from the District’s professional archaeology consultant, Ms. Peterson.
5. Sandy Shettler, called as an appellant witness, not a Project neighbor, but has a “lifetime interest  
in urban nature and public health and how they intersect”, submitted copy of her “Talking Points”  
included in the record as Appellant Ex. 25. Ms. Shettler focused her attention on general tree  
preservation concerns, and concerns that replanting and landscaping must be watered and properly  
cared for long-term, and not allowed to fail. She noted concerns about retaining wall that might  
impact neighboring large fir trees, and how removing trees could expose remaining trees to wind,  
heat and destabilization. She noted that a 1 to 1 replacement plan would not be enough. [\*NOTE:  
unrebutted testimony from the District’s Landscape Architect, Ms. Kinhead, established that the  
replanting plan is at a 4 to 1 ratio, not just 1 to 1].
6. Ruth Williams, called as an appellant witness, noted that she is a member of the Thornton Creek  
Alliance, but that she was appearing as an individual, and not on behalf of the Alliance. She  
testified that she believes the Project is not helpful, but she did not agree that the Project would  
result in adverse impacts. Her written comments are included in the record as Appellant Ex. 26.
7. Kathy Kelly, listed as an appellant, long time local resident, lives near the Rogers’ school  
playfield, called as an appellant witness; expressed general concerns about water, flows, impacts  
on water movement caused by so much dirt brought to site, new impervious surfaces, concerns  
about pooled water, noting how her home is 6-feet lower than the school property. Compared  
Project to “paving paradise to put up a parking lot,” generally questioning the need for the Loop-

1 turn around from parent drop-offs to be included on the school property, preferring that it not be  
2 paved or used for such purpose saying it could be done on 105<sup>th</sup> instead. Does not want to stop  
the Project, but prefers to wait for 10-year enrollment (?) projections and preparation of a full-EIS  
before going forward. Her written comments are included in the record as Appellant Ex. 27.

3 8. Ellen Peterson, project neighbor, listed as an appellant, called as an appellant witness, focused her  
4 testimony on concerns about pedestrian safety if school-traffic is directed to 105<sup>th</sup>, which is not an  
arterial like 110<sup>th</sup>, lack of sidewalks on 105<sup>th</sup>, concerns about impacts on Meadowbrook Pond,  
5 wants a better design for the “south access” aspect of the project along 105<sup>th</sup>. Her written  
comments are included in the record as Appellant Ex. 20.

6 9. Wendy Holman, project neighbor, listed as an appellant, lives east of the school site, called as an  
7 appellant witness, noted concerns about transportation and public notice problems associated with  
the project, explaining that she loves her neighborhood, wants the best outcome, and does not want  
8 to stop the Project, but she focused on concerns about using 105<sup>th</sup> for the new south access point,  
and how safety should be considered.

9 10. Jonathan Pasley, listed as an appellant, called as an appellant witness, longtime school neighbor,  
10 lives along NE 109<sup>th</sup>, near the school’s current entrance. Supports schools, but raised about 6 main  
concerns in his written comments, Parking; Light; Glare; Earth (fill materials needed to construct  
11 Project); general Aesthetics (mostly concerns about views, visibility of the larger, taller proposed  
school); and Groundwater concerns, high water, possible flooding in the area. His written  
12 comments are included in the record as Appellant Ex. 28. His hearing testimony focused on light  
and glare from the larger, taller building, concerns about birds hitting it, views and visibility  
13 impacts, claiming it will appear as a 6-story building from downhill to the west and south,  
including the Meadowbrook natural area, and general Thornton Creek flooding concerns.

14 11. Kas Kinkead, called by the District, as the primary Landscape Architect for the Project. Ms.  
Kinkead’s resume is included in the record as District Ex. 3. Ms. Kinkead offered qualified expert  
15 testimony on various issues, rebutting general concerns expressed by the appellants about  
stormwater issues, improper tree removal, replanting plans, steep slopes, and other landscape  
16 related issues, directing attention to exhibits or designs included in the record from other subject-  
matter experts addressing slope issues, arborist recommendations, and stormwater/infiltration  
issues.

17 12. Emily Peterson, Emily Peterson, Ph.D., Anthropology, B.A., Archaeology, professional  
18 archaeologist and Cultural Resources Discipline Lead, Perteet, Inc., called by the District, resume  
included as District Ex. 6, prepared the cultural resources assessment for this project, based on  
19 literature review, maps, historic records, DAHP “WISAARD” database, and the like, confirmed  
that she her report, included as District Ex. 14, served as her basis for concluding that the project  
20 would not result in significant adverse impacts on cultural resources, as explained in the SEPA  
determination. Her professional/expert opinion that there is a low likelihood of impacts on cultural  
21 resources is based on the fact that various borings on the project site, backhoe trenches, and shovel  
probes, about a meter deep, did not find any pre-contact artifacts; she directed attention to a prior  
22 cultural resources report for the south end of the school property from 2006, that was consistent  
with her conclusions, now included as District Ex. 20. She acknowledged Mr. Buerge’s testimony  
23 and maps, noting that she accepts that native tribes lived in the area, so there might be traces of  
their activities, however, the school site does not show the type of soils that would likely preserve  
24 artifacts, or it has been moved around in prior years, so it is no longer there. Her survey of the  
property and the 2006 report reached the same conclusions. Nevertheless, there will be an IDP  
25 for the site. She confirmed her findings, and her report, noting that nothing from Mr. Buerge’s

1 materials or testimony caused her to change her opinions provided in her cultural resources report,  
2 District Ex. 14. Though challenged by Mr. Buerge’s testimony, and questioned by appellant  
3 representatives, she stood by her professional opinion that it is unlikely any cultural resources will  
4 be disturbed by the project. She noted that an Inadvertent Discovery Plan is included as part of  
her report, so any ground disturbing work would stop to address items that might be uncovered  
during ground disturbance work. She also pointed out that she recommends on-site monitoring  
for the only part of the school site where she feels such measure is warranted, in the south end of  
the school property where piping for the bio-swale will be installed.

5 13. Tod McBryan, P.E., with Heffron Engineering, resume included in the Record as *Dist. Ex. 7*, called  
6 by the District to summarize his work as the traffic engineer reviewing traffic, parking, and car  
7 accident issues raised by the appellants regarding the project. Mr. McBryan’s transportation and  
8 parking report, included as Appendix H to the Final MDNS, was not rebutted by appellants. He  
9 established that traffic on 105<sup>th</sup> is far lower than on other surrounding streets, so it has capacity to  
10 serve as the new main entrance point; and it is best to design access for school children from the  
11 road with the least traffic. He noted that parking is readily available on surrounding streets, and  
12 that even with a high-volume event at the school (like Curriculum Night), parking use in the area  
would still be below 70%. He explained that concerns about construction traffic, including trucks  
moving fill materials to/from the site, should be largely addressed by the fact that school children  
and regular operations will be relocated throughout the construction process to another site. He  
recommended three mitigation measures, that are included as part of the challenged MDNS. In  
the end, he confirmed his professional opinion that the project, subject to compliance with  
recommended mitigation measures, will not generate significant traffic, parking, or general traffic  
safety impacts.

13 14. Jeff Ding, Planner/Manager with EA, the District’s primary environmental consultant firm,  
14 managed and coordinated preparation of SEPA checklist, responses, and expert reports generated  
15 for purposes of reaching a SEPA threshold determination, with resume in the file as District Ex.  
16 5. Mr. Ding offered specific, credible, evidence, responding to several issues raised in appellants’  
17 testimony, directing attention to studies and reports generated to support the SEPA determination,  
18 establishing that while there will be impacts associated with the project, none will be significant,  
19 especially given mitigation measures, city codes like noise standards with which project will  
20 comply, BMPs for construction work, contact number(s) for complaints available to neighbors,  
21 and the like. Mr. Ding confirmed that view considerations were evaluated, that some might see  
22 the new building, but there will be no adverse view impacts. He confirmed that the District will  
ensure compliance with all applicable regulations regarding hazardous materials. He confirmed  
that all fill-material/dirt will be tested before it is transported onto the John Rogers school site, to  
verify it meets applicable health and safety standards – including any that might come from the  
Montlake school project site. He rebutted concerns expressed in some comments about the  
presence of turtles on or near the site, engaging services of consultants who identified a turtle in  
an photo submitted in public comments as a “Red Ear Slider Turtle”, i.e. a non-native turtle found  
in pet stores. He directed attention to Appendix F, the Wildlife Habitat Report, prepared by the  
Raedeke consulting firm, which found the presence of no protected habitat or animals, but it  
recommended certain BMPs that the District will follow. He noted that new plantings on the site  
are to be native plants, which is fully consistent with the subject-matter expert report prepared by  
the Raedeke firm.

23 As noted during the hearing, the Examiner explained that he would be visiting the  
24 project site and areas discussed during hearing testimony. In the weeks following the hearing,  
25 the Examiner visited the school site and surrounding area. Upon consideration of all the

26 **RECOMMENDATION TO THE SUPERINTENDENT,  
RE: APPEAL OF SEPA MDNS ISSUED FOR THE  
JOHN ROGERS ELEMENTARY SCHOOL  
REPLACEMENT PROJECT**

**GARY N. MCLEAN**  
HEARING EXAMINER FOR SEATTLE PUBLIC SCHOOLS



1 evidence, testimony, codes, policies, regulations, and other information contained in the  
2 record, and site visit observations, the undersigned Examiner issues the following Findings,  
3 Conclusions, and Recommendation.

#### 4 **IV. FINDINGS OF FACT.**

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

##### 11 ***Background Information.***

12 2. John Rogers Elementary School, and the proposed “*John Rogers Elementary School*  
13 *Replacement Project*” site, is located at 4030 NE 109th Street within Seattle’s Matthews  
14 Beach neighborhood. The school campus is generally bounded by NE 110th Street to the  
15 north, existing residences to the east, NE 105th Street to the south, and 40<sup>th</sup> Avenue NE and  
16 existing residences to the west.

17 3. The existing one-story school building is located in the north portion of the site and  
18 contains approximately 40,350 sq. ft. of building space with approximately 14 classrooms, a  
19 gymnasium, a library, a cafeteria/auditorium, administrative and support spaces, and a  
20 covered play court. Three portable classroom buildings are also located to the south of the  
21 school building at the south edge of the hard surface area. Existing hard surface play areas  
22 are located to the west and south of the existing building, with existing playground equipment  
23 also located along the western edge of the site.

24 4. The south portion of the site is comprised of a large grass playfield area which sits at a  
25 lower elevation than the northern portion of the site. This area, known as John Rogers  
26 Playfield Park, contains grass open space and a baseball/softball diamond at the south end of  
the site. A paved walking path surrounds the perimeter of the field area. This area is utilized  
for school activities, as well as by sports teams from Nathan Hale High School for practices  
and competitions. Public access to the field is also allowed during non-school hours.

5. Unrebutted evidence in the record, and a simple site visit, shows that the current play area  
is not easily accessible from the existing school building for elementary school age children  
(with a steep switchback to get down to the field and then climb back up towards the school).  
So, while the field area to the south of the school might look large and appealing on a flat  
map laying on a table, it is not very attractive to many school children, and teachers/staff may

RECOMMENDATION TO THE SUPERINTENDENT,  
RE: APPEAL OF SEPA MDNS ISSUED FOR THE  
JOHN ROGERS ELEMENTARY SCHOOL  
REPLACEMENT PROJECT

GARY N. MCLEAN  
HEARING EXAMINER FOR SEATTLE PUBLIC SCHOOLS

1 have problems supervising students as children venture down to play in the field below.

2 6. Parking is located in two separate parking lots north of the building. The northernmost lot  
3 contains approximately 20 parking stalls while the southernmost lot contains approximately  
4 15 parking stalls. Parking also occurs along the eastern side of the school building on asphalt  
5 areas that are not formally striped for parking. The site contains two primary access  
6 driveways, one opposite NE 109<sup>th</sup> Street and an exit-only northbound driveway onto NE 110<sup>th</sup>  
7 Street. The onsite parking lots are accessed from the exit-only one-way northbound driveway  
8 that extends north from the access opposite NE 109<sup>th</sup> Street. A gravel parking area is also  
9 located off-site within the north side of the NE 105<sup>th</sup> Street right-of-way, adjacent to the south  
10 end of the site and John Rogers Playfield Park. This area has no formal striping but has space  
11 for approximately 25 vehicles.

12 7. As of March 2022, the enrollment for the school was approximately 262 students. The  
13 school also has approximately 45 full-time and part-time employees. The school has a current  
14 capacity for approximately 342 students (including the existing portable buildings). *(Details  
15 included in the Background findings are derived from the SEPA Checklist on pages 3 and 4).*

16 8. Because the existing school building and site design do not satisfy current needs and  
17 standards for elementary school students and teachers, the District plans to demolish and  
18 replace the current building and reconfigure the field area to better serve students and school  
19 purposes. *(Testimony of Ms. Johnson and Ms. Kinkead).*

20 ***Project Description.***

21 9. The challenged SEPA threshold determination explains that the John Rogers Elementary  
22 School Replacement Project is intended to expand the capacity of the school and upgrade the  
23 quality of the student learning environment. The existing building and two portable buildings  
24 will be demolished and one portable building relocated to a new site. A new, three-story,  
25 approximately 88,000-square-foot school building will be constructed. The proposed  
26 building would include 24 classrooms, a gymnasium, a kitchen, dining commons, a library  
and media center, a music room, an art room, learning commons spaces, offices, and other  
support spaces. Overall, the project would provide capacity for approximately 500 students  
in grades kindergarten through 5th grade, as well as two classrooms that can be used for either  
two 30-student, licensable childcare classrooms for before- and after-school care for students  
enrolled at the school, or they can be used for two 20-student preschool classrooms. If the  
two classrooms are used for pre-school, the total student capacity would be approximately  
540 students in grades pre-K through 5th grade. *(Project Description details are found on  
page 2 of the MDNS).*

1 10. A hard surface play area is proposed south of the proposed building and would include  
2 new playground equipment and climbing structures. Outdoor classrooms and garden space  
would be provided adjacent to the proposed building.

3 11. The existing grass playfield will be replaced in its current location with a new grass field  
4 area that would provide space for soccer and kickball; a walking path also would be provided  
around the perimeter of the field.

5 12. In total, approximately 108,200 square-feet of recreation space would be provided on the  
6 site with the proposed project. [*\*The SEPA Checklist, on .pdf page 16, provides additional  
7 background information, about how the project was modified since the draft checklist was  
8 issued: “As project design has progressed since the issuance of the Draft SEPA Checklist,  
the option of a potential new synthetic turf field has been removed from the project...” (Ex.  
1, .pdf page 16) emphasis added*].

9 13. The proposal provides separate areas for school bus load/unload and passenger vehicle  
10 load/unload. In total, the project proposes 42 parking spaces for school-day use. For  
11 occasional evening or weekend events, the school-bus load/unload area (12 spaces) and the  
12 hard-surface play area (estimated to accommodate about 20 vehicles) could be used in  
13 addition to the school-day parking areas. The event-parking within the hard surface play area  
14 would be used infrequently for all-school after-hours events. In total, site would have 74  
15 parking spaces for event conditions. Existing off-site angle parking adjacent to the south  
16 portion of the site (along the north side of the NE 105th Street right-of-way) also would be  
retained and improved with site frontage improvements along NE 105th Street. (*See Dist. Ex.  
1, Appendix H, Transportation Technical Report; and Appendix I, summary of written  
17 comments and responses, on page 7, rebutting Mr. Jackins’ comment that available on-site  
18 parking, said to be 61 spaces, would shrink, but would instead increase for event conditions  
to 74 spaces*).

17 14. During the construction process, students and staff would be temporarily housed at the  
18 John Marshall site (520 NE Ravenna Blvd.).

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

20 15. At issue in this appeal is the SEPA Mitigated Determination of Non-Significance  
21 (MDNS) issued for the John Rogers Elementary School Replacement Project, issued in late  
22 November of 2022. A single written appeal of the MDNS was submitted in a timely manner,  
23 filed by Chris Jackins and about 23 other individuals. There is no dispute that Mr. Jackins  
24 appeal was timely, and the District did not contest it going forward to hearing. As explained  
25 in this recommendation, the appeal should be denied, because it was not supported by a  
preponderance of credible evidence of the same expertise and weight as that presented by the  
26 District’s qualified consultants’ exhibits and hearing testimony.

RECOMMENDATION TO THE SUPERINTENDENT,  
RE: APPEAL OF SEPA MDNS ISSUED FOR THE  
JOHN ROGERS ELEMENTARY SCHOOL  
REPLACEMENT PROJECT

GARY N. MCLEAN  
HEARING EXAMINER FOR SEATTLE PUBLIC SCHOOLS

1 16. The District prepared and issued a Draft SEPA Environmental Checklist for the John  
2 Rogers Elementary School Project on or about June 13, 2022, inviting public comments in  
3 the following weeks. *(See MDNS on appeal, Mr. Podesta’s November 23, 2022 cover memo  
explaining SEPA comment process).*

4 17. The District considered all written comment letters, emails, or post-cards received  
5 from numerous individuals during the SEPA comment period and included them with  
6 specific responses from the District as Appendix I to the final SEPA Checklist. *(See MDNS,  
7 SEPA Checklist, Appendix I, labeled “Summary of Public Comments and Responses”, a 27-  
8 page document, in small font, addressing about 88 separate comments, many of which  
9 overlap and repeat similar themes, from about 21 different people, including Mr. Jackins,  
10 who is shown to have provided about 41 of the 88 comments).*

11 18. Based on the Final SEPA Checklist, public comments, and the environmental reports  
12 and information provided in the professional consultant reports and analyses prepared for  
13 various aspects of the Project *(See MDNS, Final SEPA Checklist, Appendices A through I),*  
14 the District’s designated SEPA Environmental Official formally issued a Mitigated  
15 Determination of Non-Significance (MDNS) for the Project on or about November 30, 2022.

16 19. As noted above, there is no dispute that the pending appeal process was commenced  
17 upon the District’s receipt of Mr. Jackins’ timely written notice of appeal in December of  
18 2022. A copy of the Jackins appeal, with a amendment, is on file with the District.

19 20. Following proper notices issued to all parties of record, a prehearing motion process  
20 resulting in a Prehearing Scheduling Order by the Examiner addressing witness and exhibit  
21 disclosures to provide a fair and efficient process for all participants, the appeal hearing for  
22 this matter took place in person in a District conference room, taking most all of the workday  
23 on February 28, 2023.

24 21. As the appellants were advised, the specific “errors” and/or aspects of the challenged  
25 SEPA threshold determination that are at issue in any appeal are as set forth – and are limited  
26 to those raised – in the appellants’ written appeal statement.

27 22. As explained in HEX Rule 2.24: (a) The Hearing Examiner accords deference or  
28 other presumption to the decision being appealed as directed by applicable law; (b) Where  
29 the applicable law provides that the appellant has the burden of proof – as is the case for  
30 appeals of SEPA threshold determinations – the appellant must show by the applicable  
31 standard of proof that the Responsible Official's decision or action does not comply with the  
32 law authorizing the decision or action; and (c) Unless otherwise provided by applicable law,  
33 the standard of proof is a preponderance of the evidence.

34 **RECOMMENDATION TO THE SUPERINTENDENT,  
35 RE: APPEAL OF SEPA MDNS ISSUED FOR THE  
36 JOHN ROGERS ELEMENTARY SCHOOL  
REPLACEMENT PROJECT**

**GARY N. MCLEAN**  
HEARING EXAMINER FOR SEATTLE PUBLIC SCHOOLS

1 ***Summary of main issues raised in the appeal.***

2 23. Mr. Jackins' written appeal speaks for itself, and several items are repetitive or simply  
3 provide public policy arguments beyond the scope of either SEPA appeal, not actual bases  
4 upon which to grant either appeal. This is especially true with respect to arguments and  
5 questions about the project, generally asking that the District should not expand schools while  
6 enrollment is decreasing. The topics are addressed in the following findings.

7 24. For reasons explained in this Recommendation, this appeal should be denied, because  
8 the appellants failed to meet their burden of proof, and the District presented far more than a  
9 preponderance of credible, subject-matter-expert evidence to support the MDNS. The  
10 captions provided below are restatements of the primary appeal issues presented during the  
11 appeal presentation, including sworn testimony from Mr. Jackins, other named appellants,  
12 and that of other witnesses called to support various aspects of the appeal. Whether  
13 specifically discussed in this recommendation, the full language and substance of each issue  
14 mentioned in the written appeal statement has been fully considered and evaluated before  
15 issuing this Recommendation.

16 ***General concerns about aesthetics, views, especially for residents east of the site.***

17 25. Several appellants raised general concerns about changes in views looking into the  
18 site, from uphill to the east, and from downhill to the south and west. None of the appellants  
19 offered a preponderance of credible evidence to establish that the type of changes in views  
20 into the school property would result in probable significant adverse environmental impacts  
21 associated with aesthetics of views.

22 26. Views from various reference points are all somewhat limited, due to topography,  
23 existing vegetation, and mature trees, especially from the east. As noted in responses to  
24 written comments, to the extent that mature trees are retained on properties surrounding the  
25 school site, such trees would continue to provide a partial buffer/screen of the building. (*Ex.*  
26 *1, Appendix I, page 14*).

27 27. Based on site visits, and review of surrounding site photos, not all homes will have  
28 the same or any view impacts. In fact, some views will be improved. The site visit verified  
29 photos of the existing exterior site conditions, where views into the school may appear to  
30 some as unkempt, worn-out, dreary, or simply not up to the same quality of development  
31 demonstrated on other District properties, or in the surrounding neighborhood. While some  
32 homeowners will see something different than they do today, there is nothing in the record  
33 to support any appeal based on perceived impacts on views or project design aesthetics.

34 28. Seattle building codes do not protect views, per se. The District proposal and request  
35 for a 'Departure' to build a taller building than city codes might otherwise allow, will not

1 result in any probable, significant, adverse impact, on views or otherwise. There is  
2 insufficient evidence in this record to support such position. To the contrary, the testimony  
3 and slides provided by Ms. Johnson provided credible and substantial evidence to establish  
4 that, while some views will change as a result of this project, there will be no significant  
5 impacts on views or aesthetic considerations. (*Testimony of Ms. Johnson; Ex. 10*).

6 29. Personal opinions and a preferred aesthetic for the building to retain a lower profile  
7 do not serve as a basis to reject the challenged MDNS issued for this project.

8 30. The Seattle Department of Neighborhoods recommended approval of all requested  
9 “Departures” from otherwise applicable City of Seattle development standards that apply to  
10 this project – noting that Seattle does not have a specific zone for schools located in  
11 residential areas, necessitating requests for such Departures. (*Dist. Ex. 13*). The City’s  
12 ‘departures’ review process is separate and independent of the District’s SEPA appeal  
13 process. One of the departures addresses building height. The Department of  
14 Neighborhood’s favorable recommendation regarding all of the requested departures serves  
15 to support the challenged MDNS. The appellants failed to present evidence or legal authority  
16 sufficient to reject the challenged MDNS based on issues associated with any of the requested  
17 departures for this Project, including without limitation building height, which was  
18 mentioned in multiple comments about potential view impacts.

19 ***Surplus Soils from Montlake school site, possible use at John Rogers school site.***

20 31. Mr. Jackins’s written appeal and arguments presented during this appeal hearing and  
21 the Montlake School SEPA appeal hearing generally asserted that, because “surplus soils”  
22 from the Montlake school site might be transported to the John Rogers school site, the  
23 environmental review for the two projects must be considered together, cumulatively, not  
24 separately, citing WAC 197-11-060(3)(b) in the Montlake matter, which reads in relevant  
25 part: “*Proposals or parts of proposals that are related to each other closely enough to be,  
26 in effect, a single course of action shall be evaluated in the same environmental document.  
[...].*”

27 32. While the Examiner does not believe that evidence is sufficient to find the stand-alone  
28 soil transport issue legally requires that the Montlake and John Rogers projects should have  
29 been evaluated in the same environmental document, in this case, the appellants have the  
30 added level of reassurance in knowing the answer to their main question – that only safe soils  
31 will be brought onto the John Rogers school site, satisfying applicable health and safety  
32 codes. This information was verified during this John Rogers appeal hearing process, through  
33 the testimony of Mr. Ding.

34 33. Mr. Ding confirmed that all soils that might be brought to the John Rogers school site  
35 for use as part of this Project will first have to be tested and evaluated to ensure that they

1 meet applicable environmental health standards that apply to soils that might be brought onto  
2 an elementary school site. (*Testimony of Mr. Ding, at the John Rogers appeal hearing*).

3 34. Further, the Examiner finds and concludes that the proper test for determining  
4 whether two projects should be evaluated in the same document rests largely on the question  
5 of whether each project can stand on its own without the other. Here, both the Montlake  
6 project and the John Rogers projects can move forward one without the other – Montlake  
7 contractors can move dirt offsite to a number of possible locations, and John Rogers  
8 contractors do not have to rely on Montlake surplus soils to complete their project. Again,  
9 any concern about the safety of surplus soils from Montlake, or elsewhere to accomplish the  
10 fill needed to modify the site topography, can and will be appropriately addressed through  
11 soil testing that is required before new soils can be imported onto an elementary school site,  
12 i.e. to the John Rogers school site.

### 13 ***Cultural Resource considerations.***

14 35. Assignments of error related to historic preservation and cultural resource concerns  
15 were not supported by evidence sufficient to reject the challenged MDNS.

16 36. During his appeal presentation, Mr. Jackins focused heavily on the testimony of Mr.  
17 Buerge, a local historian who has spent decades working with members of the Duwamish  
18 Tribe to catalogue and protect known historic sites. In this matter, Mr. Buerge’s information  
19 was not of the sort that would rebut the District’s professional archaeologist’s study and  
20 report, which concludes that the project will have not adverse impact on cultural resources.

21 37. In contrast to general questions and concerns expressed by appellants, while sincere  
22 and understandable given the sensitivity of cultural resource issues, the District’s subject-  
23 matter consultant, Emily Peterson, is a qualified expert in the field of archaeology. (*See*  
24 *District Ex. 6, resume of Ms. Peterson*).

25 38. Consistent with her education, training, and expertise on the subject, Ms. Peterson  
26 prepared the cultural resources assessment for this project, based on literature review, maps,  
historic records, the DAHP “WISAARD” database, and the like. She confirmed that her  
report, included as District Ex. 14, served as her basis for concluding that the project would  
not result in significant adverse impacts on cultural resources, as explained in the challenged  
SEPA determination. Ms. Peterson’s report and conclusions were further validated by a  
previous Cultural Resources Report prepared by another firm in 2006 as part of a review  
process for a playfield improvement project. A redacted copy of that 2006 Cultural  
Resources Report is included in the record as District Ex. 20. It includes a summary statement  
explaining its key conclusions regarding the playfield area, i.e. the site where the appellants’  
focused most of their attention regarding possible cultural resource issues. The 2006  
“Abstract” reads as follows:

RECOMMENDATION TO THE SUPERINTENDENT,  
RE: APPEAL OF SEPA MDNS ISSUED FOR THE  
JOHN ROGERS ELEMENTARY SCHOOL  
REPLACEMENT PROJECT

GARY N. MCLEAN  
HEARING EXAMINER FOR SEATTLE PUBLIC SCHOOLS

1 ABSTRACT

2 The Seattle Public School District (Seattle Schools) is proposing to improve the existing  
3 play/athletic field at John Rogers Elementary School in the city of Seattle. Since the  
4 current playfield was constructed using cut-and-fill, backhoe trenching was conducted to  
5 determine depth of fill and the presence of potentially significant archaeological materials  
6 in intact depositional sequences under the fill. The backhoe trenching showed that the  
7 current playfield is built on a fill platform that ranges from 30 cm at the north end of the  
8 field to over 250 cm thick in the south. The depositional sequences found below the fill  
9 suggest the bulk of the alluvium is of Vashon age, and some possibly may be pre-Vashon,  
10 and that if Holocene alluvium from Thornton Creek had been present, most of it was  
11 removed during construction of the playfield. NWAA recommends no further  
12 archaeological investigations. (*District Ex. 20, on .pdf page 7*).

13 39. Though challenged by Mr. Buerge’s testimony, and questioned by appellant  
14 representatives, Ms. Peterson stood by her professional opinion that it is unlikely any cultural  
15 resources will be disturbed by the project.

16 40. Finally, Ms. Peterson noted that an Inadvertent Discovery Plan is included as part of  
17 her report, so any ground disturbing work would stop to address items that might be  
18 uncovered during ground disturbance work; and she confirmed that the District will continue  
19 its consultation with local tribes, consistent with the Governor’s order on the subject, noting  
20 that tribal representatives may choose to be on-site to monitor ground disturbance work in  
21 the “fluvial” area, where piping will be installed for the bio-swale on the site. (*Testimony of*  
22 *Ms. Peterson*).

23 ***Traffic, parking, general pedestrian safety concerns.***

24 41. The appeal raised general concerns about possible traffic and parking impacts, and  
25 concerns about potential car/pedestrian incidents and pedestrian safety problems in the  
26 vicinity. A site visit confirmed what District consultants found, that traffic around the school  
site is not at the same high level as many other schools throughout the city, and that available  
on-street parking is far higher around the John Rogers site than in many neighborhoods.

42. The District generated a full traffic assessment for the proposed project, included in  
the record as an appendix to the challenged MDNS, prepared by a professional engineer, Mr.  
McBryan, which concluded that there would be no significant adverse traffic, parking, or  
related impacts as a result of the project. None of the appellants offered credible testimony  
or professional reports of comparable weight to the un rebutted traffic study (Appendix H)  
prepared by Mr. McBryan. The challenged MDNS includes specific conditions to address  
transportation issues, as recommended by Mr. McBryan. There are no outstanding traffic,  
parking, car accident levels, or pedestrian safety issues that would serve as a basis to reject  
the challenged MDNS.

RECOMMENDATION TO THE SUPERINTENDENT,  
RE: APPEAL OF SEPA MDNS ISSUED FOR THE  
JOHN ROGERS ELEMENTARY SCHOOL  
REPLACEMENT PROJECT

GARY N. MCLEAN  
HEARING EXAMINER FOR SEATTLE PUBLIC SCHOOLS



1 43. Mr. McBryan credibly explained how the new drop-off ‘loop’ on the southeast part  
2 of the school site off of 105<sup>th</sup> should improve pedestrian and general traffic safety, and fits  
3 with SDOT and sound traffic engineering judgment that student-safety is better when drop-  
4 offs/pick-ups occur on the school site and/or from a street that is less-busy than others. 105<sup>th</sup>  
has far less traffic than other roads surrounding the school property. Simply put, it is the  
safer option. Questions or comments opposing the drop-off loop, or the 105<sup>th</sup> access point,  
are without merit.

5 44. On-street parking within the John Rogers school vicinity averages 17% occupied on  
6 school days, with about 320 unused spaces. Mr. McBryan’s report concludes that increased  
7 demand from the expanded school may increase the parking use figure to something still less  
8 than 30%, which is far below ‘capacity’ figures used by City transportation officials.  
9 (*Testimony of Mr. McBryan; Ex. 1, Appendix I, on pages 4-5, response to parking comments*).

10 ***Playground, recreation space concerns.***

11 45. The appeal alleges that open space/recreation space loss was not adequately  
12 considered before the MDNS issued for this project. Most of this is based on raw square  
13 footage of existing ‘open space’/play field area, vs. that proposed after the Project is  
14 completed. The appellants did not offer any studies or reports by professional consultants or  
15 experts to rebut information considered by the District before issuing the MDNS for this  
project. The project architect, Ms. Johnson, and landscape architect, Ms. Kinkead, both  
offered credible testimony and evidence that establishes how the school replacement project  
will greatly improve the quality of accessible/usable play areas and recreation venues  
available for students. (*Testimony of Ms. Johnson and Ms. Kinkead; Ex. 10, page 6, showing  
how field now has poor access for school children*).

16 46. Ms. Kinkead offered un rebutted testimony confirming that the Project will result in a  
17 10-fold increase in parts of the school property that will be ‘usable’ to school children after  
18 the Project is completed and the site is “activated” with new recreational venues and outdoor  
spaces easier for children to access, and easier for teachers and staff to monitor.

19 47. In the end, the appellants failed to provide a preponderance of evidence to support  
20 their appeal based on recreational or outdoor play space.

21 ***“Mega-School” concerns.***

22 48. The appeal made general assignments of error challenging the MDNS because some  
23 appellants believe that proposed new school building will be a “Mega-School” or something  
24 to this effect. Their challenges allege that decreases in District enrollment figures do not  
warrant any school expansion, and that the taller building will simply present a larger  
presence in the neighborhood, contrary to the smaller, low-profile aesthetic (like the existing

1 building) that they seem to prefer. These challenges were not supported by professional  
2 studies or expert testimony of comparable weight to those relied upon by District officials  
3 before issuing the challenged MDNS. Debates over school capacity rest with the school  
4 board. And, while the appellants generally request an analysis of alternatives, including  
5 consideration of a smaller building, they failed to establish that this project is likely to result  
6 in any probable, significant, adverse environmental impact that could support issuance of a  
7 Determination of Significance, mandating the preparation of an Environmental Impact  
8 Statement. Assignments of error about the school size and capacity are without merit and  
9 should be rejected.

6 ***Concerns about notice and community outreach.***

7  
8 49. The appeal alleges problems with the public comment process and a lack of public  
9 meetings regarding the proposal. In the appeal hearing, the appellants failed to offer any  
10 credible testimony or controlling legal authority to support their general allegation that the  
11 public noticing for this project, and lack of any public meetings, was somehow insufficient  
12 to inform the community about the proposal and generate meaningful public comments on  
13 the subject. Quite the opposite occurred with regard to this proposal. First, there is no law  
14 mandating public meetings as part of a SEPA threshold review process – the same for inviting  
15 written public comments on a draft SEPA checklist for a project. Nevertheless, the District  
16 took the extra step of issuing a draft checklist for public review and comment. As noted  
17 elsewhere, these comments were all considered and received responses included as an  
18 attachment to the final SEPA Checklist. The public notice and comment procedures used  
19 leading up to issuance of the challenged MDNS exceeded any state or local requirements.

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

24 51. District witnesses confirmed that they considered all comments offered during the  
25 public comment process and that a public meeting is not required by applicable law prior to  
26 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.

22 ***Concerns about potential impacts on habitat, trees, animals.***

23  
24 52. Some written comments and hearing testimony expressed concerns that potential  
25 impacts on animals and habitats in the area were not adequately considered. The District’s

1 environmental consultant, Mr. Ding, responded to such concerns, directing attention to the  
2 Wildlife Habitat Report commissioned by the District, which concludes that the Project will  
not have adverse impacts on wildlife or other habitat features.

3 53. Mr. Ding’s testimony included a direct rebuttal addressing concerns expressed in  
4 some comments about the presence of turtles on or near the site. He noted that a turtle in a  
5 photo submitted in public comments, and referenced by local observers, was identified as a  
6 “Red Ear Slider Turtle”, i.e. a non-native turtle found in pet stores. He summarized parts of  
7 Appendix F, the Wildlife Habitat Report, prepared by the Raedeke consulting firm, which  
found the presence of no protected habitat or animals, but it recommended certain BMPs that  
the District will follow. He noted that new plantings on the site are to be native plants, which  
is fully consistent with the subject-matter expert report prepared by the Raedeke firm.

8 54. Ms. Kinkead’s testimony provided a credible summary of substantial evidence in the  
9 record that establishes how the project will not result in adverse impacts on trees, and that  
10 tree removals or limbing will be consistent with recommendations provided by professional  
11 arborist, in District Exhibit 15, and Appendix E, Tree Inventory/Arborist Report and  
Addendum.

### 12 ***Stormwater/Drainage concerns.***

13 55. Part of the appeal raised concerns about increased impervious surface area figures in  
14 the post-project vs existing condition for the site. Unrebutted expert testimony established  
15 that there is minimal stormwater treatment or drainage features used on the site today, with  
16 water from the site mostly running on pavement. (*Testimony of Ms. Kinkead*). The project  
17 includes a ‘swale’ to be added, for purposes of catching water running from steep slopes, and  
18 multiple new ‘bioretention areas’ where stormwater will be collected, infiltrated, and/or  
19 directed to appropriate city stormwater drains/lines around the school site. (*Compare Dist.*  
*Ex. 19A, showing existing drain plans, with 19B, and Ex. 10, on .pdf page 46, showing*  
*multiple bioretention areas*). The project will reduce drainage from the school site to offsite  
areas by 2/3 to 3/4, a tremendous improvement over existing stormwater drainage conditions.  
(*Testimony of Ms. Kinkead*).

20 56. There was no credible evidence presented by the appellants on stormwater/drainage  
issues that would serve as a basis to reject the challenged MDNS.

### 21 ***Discussion.***

22 57. While the findings above attempt to address most of the primary arguments and issues  
23 raised in the appeal documents and hearing testimony, none of the issues raised in this appeal,  
24 whether specifically discussed in this Recommendation or not, were supported by credible  
and sufficient evidence sufficient to sustain appellants’ burden of proof, especially given the  
25

1 substantial weight that must be accorded the challenged decision. Comments raised about  
2 most issues appeared to be speculative – though with genuine concern for the neighborhood  
3 and environment – and were not supported by convincing studies or any preponderance of  
4 factual evidence on the subject.

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

12 59. Personal preferences for a meeting, additional or more expansive notices, in the  
13 absence of any legal requirement to hold a meeting or provide broader notices, do not serve  
14 as a basis to overturn the challenged MDNS. More significantly, the appeal hearing itself  
15 provided the appellants an open record hearing opportunity to fully explain and present  
16 evidence supporting their assignments of alleged errors in the MDNS. They failed to meet  
17 their burden. Notices were mailed to adjacent property owners. Information was posted on  
18 the District’s website, including copies of the studies and reports attached to the SEPA  
19 Checklist. Simply put, appellants failed to demonstrate how an additional public meeting or  
20 additional noticing efforts would have established the existence of any potential, significant  
21 impact that is not already considered, addressed, and/or mitigated in the challenged MDNS.

22 60. The MDNS appendices include detailed findings and analysis that serve as support  
23 for the challenged threshold determination. The opinions and findings summarized in all of  
24 the MDNS appendices and District exhibits was boosted by credible testimony provided at  
25 the appeal hearing, from Ms. Johnson, Ms. Kinkead, Ms. Peterson, Mr. McBryan, and Mr.  
26 Ding.

61. 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.

62. 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

1 “monitoring” an impact. WAC 197-11-768. The Examiner finds and concludes that the  
2 challenged MDNS should be upheld, because substantial evidence in the record establishes  
3 how it includes measures intended to appropriately avoid and/or mitigate potential impacts.

4 **V. CONCLUSIONS OF LAW.**

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

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

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

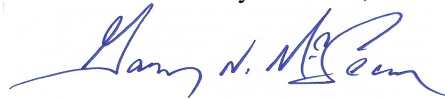
15 4. For reasons set forth in the Findings of Fact, all of the appellants specific issues on  
16 appeal must fail, because the District successfully presented credible testimony and  
17 documentary evidence, including unrebutted expert reports, to prove that the MDNS is  
18 supported by a preponderance of evidence in the Record. This is of particular importance in  
19 an appeal such as this, where the challenged threshold determination is accorded substantial  
20 weight.

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

23 **VI. RECOMMENDATION.**

24 The above-captioned appeal should be denied. The Mitigated Determination of Non-  
25 Significance (MDNS) for the John Rogers Elementary School Replacement Project should  
26 be affirmed.

ISSUED this 29<sup>th</sup> Day of March, 2023



Gary N. McLean, Hearing Examiner

RECOMMENDATION TO THE SUPERINTENDENT,  
RE: APPEAL OF SEPA MDNS ISSUED FOR THE  
JOHN ROGERS ELEMENTARY SCHOOL  
REPLACEMENT PROJECT

GARY N. MCLEAN  
HEARING EXAMINER FOR SEATTLE PUBLIC SCHOOLS