

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

In the Matter of the Appeal filed by)
)
CHRIS JACKINS, ET AL,)
Appellants,)
)
of a SEPA Determination of Nonsignificance)
(DNS) for the Maple Elementary School)
Field Improvements Project issued on March)
10, 2023, 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 record includes substantial evidence verifying that the District's SEPA official made the challenged threshold determination based upon information reasonably sufficient to evaluate the environmental impacts of the Maple Elementary School Field Improvements proposal. The Examiner is not left with a definite and firm conviction that a mistake has been committed. The challenged DNS should be affirmed.

II. APPLICABLE LAW.

Jurisdiction.

The appellants challenge a SEPA Determination of Non-Significance (DNS) issued by the Seattle Public Schools SEPA Responsible Official for the Maple Elementary School Field Improvements Project. Through the course of the appeal hearing process, the school

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1 district representatives did not question the timeliness or assert other potential procedural
2 defects, like standing issues, that might prevent this appeal from going forward.

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

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

7 To satisfy their burden challenging the DNS, an appellant must present actual
8 evidence of probable significant adverse impacts of the Project. *Boehm v. City of Vancouver*,
9 111 Wn.App. 711, 718-719, 47 P.3d 137 (2002).

10 A "clearly erroneous" standard applies when reviewing SEPA threshold
11 determinations made by local and state governmental entities, such as the MDNS challenged
12 in this matter. *King Cty. v. Washington State Boundary Review Bd. for King Cty.*, 122 Wn.
13 2d 648, 661, 860 P.2d 1024 (1993). A challenged DNS may be reversed if, although there is
14 evidence to support it, the reviewing authority is left with the definite and firm conviction
15 that a mistake has been committed. *See Norway Hill Pres. & Prot. Ass 'n v. King County
16 Council*, 87 Wn.2d 267, 274, 552 P.2d 674 (1976). In reviewing a SEPA threshold
17 determination, the Hearing Examiner must first determine whether "environmental factors
18 were considered in a manner sufficient to amount to prima facie compliance with the
19 procedural requirements of SEPA." *Sisley v. San Juan County*, 89 Wn.2d 78, 84, 569 P.2d
20 712 (1977) (quoting *Juanita Bay Valley Com. v. Kirkland*, 9 Wn. App. 59, 73, 510 P.2d 1140
21 (1973)). An agency must make SEPA threshold determinations based upon information
22 reasonably sufficient to evaluate the environmental impact of a proposal. *WAC 197-11-335*
23 Again, the appellants bear the burden of proof.

24 ***Challenged DNS is entitled to substantial weight.***

25 Procedural determinations by the school district's SEPA responsible official shall be
26 entitled to substantial weight in the administrative appeal and any subsequent proceedings.
Board Policy No. 6890, at Sec. 8(f); H.Ex. Rule 2.24. Such deference is further mandated by
Washington caselaw, including *Anderson v. Pierce County*, 86 Wn. App. 290 (1997) (holding
that substantial weight is accorded to agency threshold determinations), and is consistent with
WAC 197-11-680(3)(a)(viii) ("Agencies shall provide that procedural determinations made
by the responsible official shall be entitled to substantial weight."). However, substantial
weight, like judicial deference to agency decisions, is neither unlimited nor does it
approximate a rubber stamp. *See Swinomish Indian Tribal Cmty. v. W. Wash. Growth Mgmt.
Hearings Bd.*, 161 Wn.2d 415, 435 n.8, 166 P.3d 1198 (2007); and *Concerned Friends of
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

1 agency’s SEPA official does not require an environmental impact statement (as it did not
2 here), then the decision is clearly erroneous. *King County*, 122 Wn.2d at 667; *Norway Hill*,
3 87 Wn.2d at 274.

3 III. RECORD.

4 The Record for the matter includes all exhibits marked and numbered during the
5 course of the appeal hearing. Copies of all materials in the record and a digital recording of
6 the appeal hearing are maintained by the District. The challenged DNS and SEPA Checklist
7 issued for the Maple Elementary School Field Improvements Project, as issued on or about
8 March 10, 2023, and the single written appeal, filed in a timely manner on April 10, 2023,
9 are all part of the Record. Lists of exhibits admitted into the record during the appeal hearing
10 for Appellants and the District are provided below:

9 APPELLANTS’ EXHIBIT LIST:

- 10 1. Maple Elementary School project DNS and Final Checklist
- 11 2. Appeal filing by Chris Jackins, et al, of Maple Elementary School project DNS
- 12 3. Newspaper article “Boston bans artificial turf in parks due to toxic ‘forever chemicals’”,
13 September 30, 2022, The Guardian British daily
- 14 4. Excerpt [page 234] from the book “Flush” [2022] by author Bryn Nelson, PhD, which states that
15 “Some recent reports suggest that “forever chemicals,” the giant family of poly- and perfluoroalkyl
16 substances (PFAS) used in products like firefighting foams and pans and dental floss, have
17 infiltrated aquifers, wells, and biosolids used as fertilizers.”
- 18 5. Article Seattle Times: "How Did PFAS Get Into Well Water on San Juan Island" May 8, 2023.
19 *Not admitted, objection sustained.
- 20 6. Article “Get Off Our Turf, Toxic Chemicals”, Toxic-Free Future, February 10, 2014
- 21 7. Article “Per- and Polyfluoroalkyl Substances (PFAS) and Your Health”, ATSDR Agency for
22 Toxic Substances and Disease Registry (www.atsdr.cc.gov/pfas)
- 23 8. Article “Athletic Playing Fields and Artificial Turf: Considerations for Municipalities and
24 Institutions”, TURI Toxics Use Reduction Institute, University of Massachusetts Lowell
- 25 9. Article “No to PFAS – forever chemicals”, (www.gorealgograss.com/pfas)
- 26 10. Article “Artificial Turf Concerns – Safer Alternative? Natural grass managed organically”, TURI
Toxics Use Reduction Institute, University of Massachusetts Lowell
11. Newspaper article “Artificial turf potentially linked to cancer deaths of six Phillies ball players -
report”, March 10, 2023, The Guardian British daily
12. News Release “EPA Proposes Designating Certain PFAS Chemicals as Hazardous Substances
Under Superfund to Protect People’s Health”, EPA United States Environmental Protection
Agency, August 26, 2022. *Not admitted, objection sustained.
13. Fact Sheet “Q&A: PFAS Information for Families”, Northwest PEHSU Pediatric Environmental
Health Specialty Units, Environmental & Occupational Health Sciences, School of Public Health,
University of Washington
14. Consensus Study Report “Guidance on PFAS Exposure, Testing, and Clinical Follow-Up”,
National Academies Sciences Engineering Medicine, July 2022
15. News report, “Wu blocks new artificial turfs in Boston parks, refrains from calling it a ban”, GBH
News 89.7, October 5, 2022

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- 1 16. “Environmental Health Impacts of Synthetic Turf and Safer Alternatives”, transcript from CHE
- 2 Partnership Webinar, January 27, 2022, Collaborative on Health and the Environment; Icahn
- 3 School of Medicine at Mount Sinai Institute for Exposomic Research; TURI Toxics Use
- 4 Reduction Institute, University of Massachusetts Lowell; Northeastern University College of
- 5 Science
- 6 17. CBS Sports report “Seahawks coach Pete Carroll: NFL needs to ‘seriously’ look into risks of
- 7 playing on artificial turf fields”
- 8 18. “NCHR Letter to Members of the Board of the Los Gatos Union School District on Artificial Turf
- 9 and Playgrounds”, Diana Zuckerman, PhD, President, National Center for Health Research, April
- 10 18, 2022
- 11 19. News release, “California makes strides to ban toxic forever chemicals in artificial turf”, April 20,
- 12 2023, Environmental Working Group. *NOTE: Testimony of Ms. Dickeman, and new District
- 13 Ex. 9, established that the proposed ban in California would apply to products with PFAS levels
- 14 at or about one part per million.
- 15 20. News article on action by Vermont State Senate, “Senate advances bill to protect from PFAS and
- 16 other toxics in cosmetics, textiles and turf”, April 12, 2023
- 17 21. City of Seattle Sustainable Purchasing Policy
- 18 22. Synthetic Turf and Heath Islands, Article, National Parks and Recreation Magazine
- 19 23. 23-1 - 23-13 Statement and photos from Maple neighbor Nick Gregoric, including 12 photos and
- 20 descriptions of trees around the Maple project site taken Monday May 1, 2023 (*Testimony
- 21 established that most all photos show trees that are not on school property, but on adjacent land
- 22 or rights-of-way).

23 *Note – the District objected to numerous articles and copies of news stories included amongst

24 Appellants’ exhibits, including Exs. 5 and 12, which were not admitted based on relevance, among

25 other reasons (Ex. 5 discusses contamination in well water on the San Juan Islands, possibly

26 caused by fire retardant substances, and Ex. 12 addresses superfund cleanup issues, without

adequate connection to artificial turf issues raised in this appeal), Rather than striking multiple

items from the record, the Examiner noted all objections and explained that the weight of evidence

presented may be diminished where an article or exhibit does not discuss turf issues, does not cite

to a qualified expert as basis for article, or does not provide information that would serve as a

basis to reject the challenged SEPA determination.

DISTRICT’S EXHIBIT LIST.

1. Final SEPA Checklist and DNS with Appendices
2. Resume of Lisa Adolfson
3. Resume of Conrad Plyler (not admitted, because Mr. Plyler was not called to testify)
4. Resume of Andy Rasmussen
5. Photographs of Existing Site Conditions
6. Maple Elementary Arborist Report
7. Synthetic Turf Carpet PFAS Analysis – provides chart using test level identified as nanograms per gram [*Note: “Nano” means one-billionth of a unit]; confirms that “As shown in Table 1, PFAS were not detected above the laboratory reporting limit in any of the tested synthetic turf carpets.”
8. PFAS Study One-Pager
9. [added during hearing] California Assembly Bill 1423, from February of 2023, referenced in Appellants’ Ex. 19, proposes regulating PFAS in products when at or above testing threshold

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level at one part per million, NOT the parts per trillion level suggested by Ms. Dickeman in her testimony. Bill reads in relevant part as follows: *“(c) “Regulated PFAS” includes either of the following: (1) PFAS that a manufacturer has intentionally added to a product and that has a functional or technical effect in the product. (2) The presence of PFAS in a product or product component at or above one part per million, as measured in total organic fluorine.”*

During the appeal hearing, the appellants appeared pro se, with Mr. Jackins’ serving as the designated representative for the group of appellants named in his appeal statement, with his fellow-appellant, Ms. Dickeman, conducting cross-examinations of some District witnesses. The District was represented by counsel, David Carpman and Isaac Patterson, from the McCullough Hill law firm. The appellants’ hearing representatives and the District’s attorneys were given wide latitude to call witnesses, submit exhibits, and cross-examine witnesses called by the other side, all as they saw fit, to focus attention on topics or issues 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.

Below is a list of individuals called to present testimony under oath at the duly noticed appeal hearing for this matter, with the Examiner, all party representatives, and witnesses appearing in-person in a District conference room on May 17, 2023:

1. Lisa Adolfson, Pacific Northwest Water Resources Director, Environmental Science Associates, Inc. (“ESA”), called by the District to provide a project overview, and to provide expert testimony regarding the project and the SEPA process and analyses of several elements of the environment, served as project manager overseeing SEPA review for this project; resume included in the record as District Ex. 2. Ms. Adolfson expressed her opinion that this limited project received a robust review, and that it involves nothing unusual. She described existing site conditions on the school’s small field area, with bare spots, some grass, all sloping down toward I-5 to the west of the site, noting that the field gets muddy during wet period, especially winter, because the site is not well drained, so it cannot be used for its intended purpose. She summarized how the project goals are to improve site conditions so it can be used all year, satisfy ADA standards, increase landscaping, among other things. She credibly summarized how the project would result in lower maintenance work, little/no mowing, fertilizing, watering and the like, that stormwater would be properly filtered through appropriate sand in full compliance with city requirements. She explained how cork infill will be cooler than rubber material previously used on turf surfaces. She addressed Appellants’ concerns about trees, confirming that no trees will be removed, and that the project will result in planting 13 additional trees, and will protect existing tree root zones and the like by satisfying arborist recommendations included in Ex. 6. She verified that the small, existing covered play area space will not be reduced by this project, and that the field area is not included as a “shared use” site shared with Seattle Parks/adult recreation programs – it will only be used by elementary school children.
2. Chris Jackins, the named appellant, served as the designated hearing representative for the appeal

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1 he filed on his own behalf and several other individuals and as a witness called by appellants to
2 address several issues raised in their appeal. Mr. Jackins prepared detailed written notes, which
3 he distributed throughout the hearing at various points during his presentation, including an
4 opening statement, testimony about specific issues raised in his written appeal, and a closing
5 statement, comprised of 6 numbered pages, included in the record as Appellant Ex. 24. Mr.
6 Jackins testimony focused on three main areas: 1) challenging the proposed use of artificial turf
7 2) the alleged lack of a covered play area; and 3) alleged impacts to trees.

8
9
10 3. Nancy Dickeman, listed as an appellant, called as an appellant witness, submitted written
11 comments included in the record as Appellant Ex. 25, with about 5 typed pages, focused on her
12 health concerns associated with synthetic fields. Ms. Dickeman is not a doctor, or scientist, and
13 holds an MA in English from the University of Washington. She describes herself as having about
14 10-years of ‘experience working with health professionals regarding toxic chemicals, health
15 studies, and safer alternatives’. Under cross examination, Ms. Dickeman acknowledged that
16 multiple exhibits were not scientific, expert reports, with some as blog posts, some with
17 information contrary to claims made by appellants (see Ex. 11), some not relevant to turf issues,
18 and other problems making such documents less reliable as resources and evidence to support the
19 appeal. On the issue of testing for PFAS levels in water or other materials, particularly turf, Ms.
20 Dickeman advocated zero or parts per trillion as the level that should be used for materials used
21 at schools. She acknowledged that the California legislature’s 2023 bill, referenced in Appellants’
22 Exhibit 19, would only regulate PFAS in products when at or over one part per million. (See new
23 District Ex. 9).

24
25 4. Andy Rasmussen, Principal, Weisman Design Group, landscape architect for about 30 years,
26 resume included in the record as District Ex. 4, provided technical description of turf system, with
special drainage system including pipes, crushed rock layer, shock padding atop, then turf, with
cork as infill to keep blades of synthetic grass upright; rebutted appellants’ concerns about safety,
injuries, noting how the new field system will include ‘cushioning’ which is safer than existing
conditions, how turf contractor will be required to annually certify “cushioning” performance of
field (“D-Max” testing) to ensure safety, minimize injuries; noted that elementary school field use
is vastly different than high-level play associated with professional sports referenced in some
appellant testimony and evidence; rebutted appellants’ concerns that finer forms of sand/‘silica’
might be used on site leading to airborne dust/inhalation problems, describing larger rounded sand
material that will be used to minimize airborne dust/sand problems. He confirmed that no trees
will be removed as part of the project; that his professional experience shows that the turf system
drainage means that freezing/ice should never be a problem, because no water will be kept up at
the surface on the field which drains very fast. He confirmed lower maintenance-needs for the
turf system.

19 Before the hearing, the Examiner visited the school site and surrounding area. Upon
20 consideration of all the evidence, testimony, codes, policies, regulations, and other
21 information contained in the record, and site visit observations, the undersigned Examiner
22 issues the following Findings, Conclusions, and Recommendation.

23 IV. FINDINGS OF FACT.

24 1. Any statements of fact found in any other section of this Recommendation that are
25 deemed to be findings of fact are hereby adopted as Findings of Fact by the undersigned

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1 Examiner and incorporated into this section by this reference. The use of captions is for
2 convenience of the reader and should not be construed to limit or modify the application of a
3 particular fact to some other topic or issue addressed elsewhere in this or any other portion
4 of this Recommendation.

5 ***Background Information.***

6 2. Maple Elementary School is located 4925 Corson Ave. S., in the City of Seattle,
7 bounded by Maple Wood Playfield to the north, single-family residences along S Pearl Street
8 to the south, Corson Avenue S to the east, and Interstate 5 (I-5) to the west.

9 3. There is no dispute that the existing, small play field area on the school property
10 includes bare spots and irregular grass, meaning the site is muddy and unavailable for its
11 intended use by school children during much of the winter/wet season.

12 4. Seattle Public Schools (SPS or the District) is proposing to improve the existing
13 “grass” field at Maple Elementary School (*See Ex. 1, SEPA Checklist, Figure 1, Vicinity Map,*
14 *and Figure 2, Site Plan Sheets L1.01 and L1.02*).

15 5. The SEPA Checklist explains that a group known as “The Friends of Maple”
16 community group received a capital improvement grant from the City of Seattle to prepare a
17 master plan for the Maple Elementary School in 2018. That master planning process,
18 conducted through the Self-Help division of SPS, included community meetings and robust
19 input from Maple Elementary School staff, students, parents, and community members. SPS
20 is implementing portions of the approved master plan and has reviewed the current field
21 drawings with members of that group, the Parent Teacher Student Association (PTSA), and
22 principal, and the group is in favor and full support of the project. (*Ex. 1, .pdf page 10*). The
23 appellants did not dispute or challenge this portion of the SEPA checklist.

24 ***Project Description.***

25 6. Improvements at the Maple Elementary School field will include installation of a new
26 synthetic turf (with sand underdrain and cork infill) playfield with a concrete perimeter
jogging path, installation of a new amphitheater, new benches, new picnic tables, a natural
learning area, and new play equipment at the existing play area. (*Project Description details
are found on page 2 of the DNS, Ex. 1, .pdf page 10, and are republished in several findings
below*). There will be no reduction in the amount of outdoor play area space currently present
on the site. (*Testimony of Ms. Adolfson*).

7. Stormwater runoff will be collected in catch basin structures and the playfield
underdrain system and routed to a proposed StormTech Chamber detention system placed
below the field.

1 8. New trees and shrubs will be planted at landscape areas. In fact, the project will add about
2 13 new trees to the site. *(Testimony of Ms. Adolfson).*

3 9. A seal coat will be applied over the existing asphalt hard surface play area and surface
4 games will be restriped to match existing games. Installation of the natural learning area will
5 include a picnic table and log seating, boulders, crushed gravel surfacing, and landscape beds
6 with trees and shrubs.

7 10. Along the eastern edge of the site, a new 12-inch wide concrete mow strip will be placed
8 under the fence to allow easier maintenance of grass and new chain-link fabric at the existing
9 fence will be installed. Existing landscape beds will be restored by removing weeds by hand
10 and adding mulch.

11 11. At the north play area, the project will remove and replace portions of the existing cracked
12 asphalt with new asphalt and new lawn areas. The existing fencing will be slightly modified
13 to provide a more secure play area. Existing play equipment will be replaced in its current
14 location.

15 ***SEPA Threshold Determination issued for the project – a DNS; Appeal.***

16 12. At issue in this appeal is the SEPA Determination of Non-Significance (DNS) issued
17 for the Maple Elementary School Field Improvements Project, issued on or about March 10,
18 2023. A single written appeal of the DNS was submitted in a timely manner, on or about
19 April 10, 2023, filed by Chris Jackins and several other individuals. There is no dispute that
20 Mr. Jackins appeal was timely, and the District did not contest it going forward to hearing.
21 As explained in this recommendation, the appeal should be denied, because it was not
22 supported by a preponderance of credible evidence of the same expertise and weight as that
23 presented by the District’s qualified consultants’ exhibits and hearing testimony.

24 13. The District prepared and issued a Draft SEPA Environmental Checklist for the
25 Maple Elementary School Project on or about December 16, 2022, inviting public comments
26 in the following weeks. *(See DNS on appeal, Mr. Podesta’s March 3, 2023 cover memo
explaining SEPA comment process, part of District Ex. 1).*

14. The District considered all written comment letters, emails, or post-cards received
during the SEPA comment period and included them with specific responses from the District
as Appendix B to the final SEPA Checklist. *(See DNS, SEPA Checklist, Appendix B, labeled
“Response to Public Comments”, a 5-page document, responding to 13 comments, some of
which overlap and repeat similar themes, from four different people, including Mr. Jackins,
who is shown to have provided about 11 of the comments).*

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1 15. Based on the Final SEPA Checklist, public comments, site plans and design materials,
2 a Greenhouse Gas Emissions Worksheet, and other environmental information, the District’s
3 designated SEPA Environmental Official formally issued a Determination of Non-
4 Significance (DNS) for the Project on or about March 10, 2023.

5 16. As noted above, there is no dispute that the pending appeal process was commenced
6 upon the District’s receipt of Mr. Jackins’ timely written notice of appeal on or about April
7 10, 2023. A copy of the Jackins appeal is on file with the District.

8 17. Following proper notices issued to all parties of record, a prehearing motion process
9 resulting in a Prehearing Scheduling Order by the Examiner addressing witness and exhibit
10 disclosures to provide a fair and efficient process for all participants, the appeal hearing for
11 this matter took place in person in a District conference room, during the workday on May
12 17, 2023.

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

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

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

24 20. Mr. Jackins’ written appeal speaks for itself, and his testimony at the appeal hearing
25 focused on just three main issues: 1) challenging the proposed use of artificial turf; 2) the
26 alleged lack of a covered play area; and 3) alleged impacts to trees. (*Appeal statement;*
Testimony of Mr. Jackins; Ex. 24, Mr. Jackins’ written hearing notes).

21 21. Ms. Dickeman’s evidence and testimony focused on her concerns about using
22 synthetic turf. (*Testimony of Ms. Dickeman; Ex. 25, Ms. Dickeman’s written hearing notes).*

23 22. For reasons explained in this Recommendation, this appeal should be denied, because
24 the appellants failed to meet their burden of proof, and the District presented more than a
25 preponderance of credible evidence to support the challenged DNS. The captions provided
26 below are restatements of the primary appeal issues presented during the appeal presentation.
Whether specifically discussed in this recommendation, the full language and substance of

1 each issue mentioned in the written appeal statement has been fully considered and evaluated
2 before issuing this Recommendation.

3 ***Concerns about use of synthetic turf.***

4 23. Appellants concerns about use of tire rubber crumb (TRC) materials in the project are
5 fully addressed by the fact that the synthetic turf field will not use tire rubber materials.
6 Instead, the synthetic turf field will have an adequately sized and type of sand underlay with
7 cork used as infill, to help the grass blades stay upright. (*Testimony of Mr. Rasmussen;*
8 *Response to comments, included as Appdx. B in Ex. 1*). Appellants failed to establish that the
9 type of sand or cork infill will somehow result in any significant, adverse impacts on students
10 using the field. The record is void of any qualified expert testimony or authoritative resource
11 to support Appellants' vague claims raised in the appeal hearing regarding sand inhalation or
12 cork infill problems associated with the synthetic turf system proposed for this project.

13 24. The District's response to SEPA comments includes the following explanation:

14 "The synthetic turf industry is aware of per- and polyfluoroalkyl substances (PFAS)
15 concerns and is voluntarily testing their products for PFAS. The proposed synthetic turf
16 will be sourced from a company with minimal PFAS in the bid process." (*Ex. 1, Appdx.*
17 *D, .pdf page 49*).

18 25. The appellants' written appeal statement did not raise a number of issues specified in
19 their list of alleged health impact topics to be addressed during Appellants' hearing testimony,
20 so the District appropriately objected to consideration of items 3 through 8 listed on
21 appellants' pre-hearing disclosure materials, dated May 5, 2023. The Examiner allowed
22 testimony from appellant-witnesses on all topics, but notes that a reviewing court may
23 conclude that topics 3-8 on page 3 of Appellants' pre-hearing disclosure memo were not
24 properly raised in the written appeal statement as a basis for this appeal, so they cannot serve
25 as a basis to reject the challenged DNS. In any event, the appellants failed to present a
26 preponderance of evidence to affirmatively establish that any significant, adverse
27 environmental impacts will result from this small project – including the use of a synthetic
28 turf system on the field area.

29 26. The SEPA checklist notes that the synthetic field will have a cork infill and not the
30 older standard of tire rubber crumb (TRC) that is associated with emission of volatile organic
31 compounds, leaching heavy metals and other contaminants to water, and a large GHG
32 footprint. The cork infill is often derived from the bark of cork trees and does not require that
33 the trees be felled for production. Additionally, the cork is natural and non-toxic, with the
34 primary disadvantages being that it may degrade slightly over time, it can compact a bit, and
35 may serve as home to some insects. (*Ex. 1, Checklist*).

36 27. While lifecycle assessments of synthetic turf fields with cork infill are not readily

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1 available, the magnitude of the emissions are expected to be well below that of a TRC turf.
2 Lifecycle emissions from a TRC turf are primarily from the production (e.g., oil and gas
3 industry contributions) and disposal phases of the product's life. For cork, the primary source
4 of GHG emissions are expected to be in product handling and transport which would occur
5 regardless of turf type. The proposed cork turf field is not expected to cause a significant
6 increase in the field's overall GHG footprint. (*Ex. 1*).

7 28. General concerns about safety associated with synthetic turf were not adequately
8 supported by a preponderance of evidence. To the contrary, District witnesses credibly
9 established that the play field will not be used for more intense adult sports, as it is not
10 included in any joint use agreement with the Seattle Parks Department; the field is too small
11 for all but “Pee Wee” league sports; the field will be tested for ongoing “cushioning”
12 performance to help minimize injuries; heat concerns are unlikely to occur during the school
13 year itself; cork is far cooler than tire rubber crumb used on previous fields shown with higher
14 temperatures; and ice should not pose a safety hazard on the field because the specially
15 designed drainage system quickly draws away water from the surface meaning there should
16 be no water pooling on the surface to freeze, making it useable even during winter months –
17 unlike current conditions where the field is not usable because of mud and the like.
18 (*Testimony of Ms. Adolfsen and Mr. Rasmussen*).

19 29. In response to general SEPA comments on the subject, the District’s written response
20 to public comments included the following public commitment, which should serve to
21 minimize or prevent impacts associated with PFAS substances for this project: “The
22 proposed synthetic turf will be sourced from a company with minimal PFAS in the bid
23 process. The SEPA checklist notes that the synthetic field will have a cork infill and not the
24 older standard of tire rubber crumb (TRC) that is associated with emission of volatile organic
25 compounds, leaching heavy metals and other contaminants to water, and a large GHG
26 footprint.” (*Ex. 1, Appdx. B*).

27 30. In light of the growing public awareness and legitimate concerns about the health
28 effects of Per- and Polyfluoroalkyl Substances (PFAS) [aka PFAS chemicals, or ‘Forever’
29 chemicals] – as reflected in witness testimony and hearing exhibits from both the appellants
30 and the District – the Examiner finds and concludes that the bid documents for this project
31 should be crystal clear and transparent on this topic, and the presence of PFAS substances in
any turf materials should be fully disclosed, but preferably the absence of detectable levels
of such substances should be confirmed.

32 31. The record for this appeal includes information and participation by subject matter
33 experts retained by the District who should be helpful in generating appropriate language and
34 requirements for bid solicitations used for the synthetic turf system. The bid documents
35 should address certification regarding the presence or absence of PFAS substances,
36 performance data, testing protocols, cushioning testing, and sustainability considerations.

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1 32. Bidders should submit appropriate and verifiable certification disclosing the presence
2 of any PFAS chemicals in their turf products, the testing methods/protocols used, and the
3 thresholds applied to provide such certification. Bidders should be encouraged to provide
4 testing of samples from turf systems of the same kind/series as included in any bid proposal,
and samples taken of stormwater at drains on or near the synthetic turf system, if any such
testing has been conducted by local governments or customers in other parts of the country.

5 33. Until or unless the State of Washington adopts specific regulations regulating the use
6 of PFAS chemicals to manufacture components of synthetic turf field systems, bidders should
7 be asked to certify that their proposed turf field system does not involve any PFAS chemicals
8 (currently listed on California's Proposition 65 regulations or identified as target analytes in
9 USEPA Methods for analysis of PFAS, or some other commonly recognized listing of PFAS
10 substances) to manufacture the components of its sports turf field products, or a similar
standard prepared by the District's environmental health consultants based on best available
reports and studies from credible federal or state agencies, research think tanks, medical
journals, or the like.

11 34. Bid documents should include a clear explanation of "cushioning testing" (with
12 frequency and duration of such testing) that will be required to assure ongoing performance
13 of the turf system with cork-infill, and include proposed corrective action measures in the
14 event the turf is not providing sufficient levels of cushioning needed to reduce injuries and
provide a safe play surface for elementary school children. (*Testimony of Mr. Rasmussen*).

15 35. The appellants failed to present a preponderance of evidence to establish that the
16 proposed synthetic turf system, using cork infill instead of tire crumbs, with appropriate
17 certifications from bidders addressing the presence or absence of PFAS substances, will result
18 in significant adverse impacts serving as a basis to reject the challenged DNS. Their appeal
and testimony elevated awareness on the subject, and findings in this recommendation are
provided to assist District personnel in protecting student health and safety to the fullest
extent practicable.

19 ***Covered Play Area.***

20 36. The appellants failed to produce any evidence to establish that the project will result
21 in any changes to the amount of covered play area space available on the school property, let
22 alone any reduction or adverse impacts to existing covered outdoor areas. The District
23 credibly directed attention to existing school site plans showing a small, covered play area
24 that will remain before and after these limited play field improvements are implemented.
(*Testimony of Ms. Adolfson*). In short, there will be no reduction in the status quo of available
covered, outdoor play area on the site. Accordingly, there are no changes to covered play
areas that would result in probable significant adverse environmental impacts. All aspects of

1 the appeal involving covered play areas are unsupported and fail to provide any basis to grant
2 relief.

3 ***Trees.***

4 37. The written appeal challenges the DNS, generally alleging impacts on trees, without
5 any credible evidence to support such claim. Appellants are correct, that an Arborist Report,
6 which is now included as District Ex. 6, includes a chart appearing to state that two trees are
7 to be removed. A careful review of the Arborist Report itself, and testimony from both
8 District witnesses (Ms. Adolfson and Mr. Rasmussen), confirm that no trees will be removed
9 as part of this project. In fact, additional trees will be planted as part of the landscaping
10 improvements included as part of this project. (*Testimony of Ms. Adolfson*).

11 38. Two trees, numbered 862 and 863, are identified in the Arborist's Report as a Fraser
12 Photinia and a Cherry Laurel, respectively. The two trees are not in the main work area for
13 the project at issue, but the Arborist proposes "Removal" of the two trees, noting that the
14 Photinia has "Compacted soils; thin layer of play chips at base; multistem at 1 feet;
15 mechanical damage on east side; pruned for clearance"; and the Laurel is "Multistem at base;
16 invasive species; blackberry at base; decline in canopy and two dead stems; not high
17 retention value tree; managed for sidewalk; recommend removal." (*See Ex. 6, Arborist
18 Report, particularly 'Table of Trees' describing each tree by number with notes summarizing
19 Arborist's observations, on .pdf page 18 of 46*).

20 39. The project will not have any adverse impact on trees. There is no evidence to support
21 such claim, so alleged tree impacts provide no basis in fact or law to reject the challenged
22 DNS.

23 40. Moving forward, if the District chooses to replace the two trees in poor condition with
24 healthier, native plants, the Arborist report appears to provide a credible basis for removing
25 the Photinia and Laurel trees identified as 862 and 863.

26 ***Discussion.***

41. The appellants failed to show the existence of any material errors in the Final SEPA
42 Checklist or DNS issued for this project, failed to show how the DNS failed to assess potential
43 impacts, and they failed to show that the proposal will cause any adverse impacts
44 necessitating an EIS.

45 42. The appeal hearing provided the appellants an open record hearing opportunity to
46 fully explain and present evidence supporting their assignments of alleged errors in the DNS.
They failed to meet their burden. Appellants failed to establish the existence of any potential,
significant impact that is not already considered, addressed, and/or mitigated in the

1 challenged DNS.

2 43. A party is entitled to present evidence and set forth facts based on personal knowledge
3 but cannot merely state ultimate facts or make conclusory assertions and have them accepted
4 at face value. *Jones v. State, Department of Health*, 170 Wash.2d 338, at 365 (2010). The
5 appellants' evidence and testimony in this appeal was mostly a recitation of personal beliefs,
6 opinions, and conclusory assertions. While sincere and genuinely concerned about student
7 health and safety, neither of the appellant witnesses presented testimony or evidence
8 sufficient to grant relief under this appeal.

9 44. Paraphrasing the action words contained in the definition given for the word
10 "mitigation" in the state SEPA regulations, the term "mitigation" does not mean zero impacts,
11 but means "avoiding", "minimizing", "rectifying", "reducing", "compensating", or
12 "monitoring" an impact. WAC 197-11-768. The Examiner finds and concludes that the
13 challenged DNS should be upheld, because substantial evidence in the record establishes how
14 it includes design considerations, and will include appropriate bid specifications for turf
15 vendors, to appropriately avoid and/or mitigate potential impacts.

11 V. CONCLUSIONS OF LAW.

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

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

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

22 4. For reasons set forth in the Findings of Fact, all of the appellants specific issues on
23 appeal must fail, because the District successfully presented credible testimony and
24 documentary evidence, including un rebutted expert reports, to prove that the DNS is
25 supported by a preponderance of evidence in the Record. This is of particular importance in
26 an appeal such as this, where the challenged threshold determination is accorded substantial
weight.

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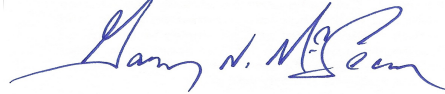
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1 5. Any finding or other statement contained in this Recommendation that is deemed to
2 be a Conclusion of Law is hereby adopted as such and incorporated by reference.

3 **VI. RECOMMENDATION.**

4 The above-captioned appeal should be denied. The Determination of Non-
5 Significance (DNS) for the Maple Elementary School Field Improvements Project should be
6 affirmed. Bid documents should be carefully prepared and include specific language to
7 obtain the information and certifications addressed in this Recommendation.

8 ISSUED this 12th Day of June, 2023

9 

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Gary N. McLean, Hearing Examiner