

**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 Aki Kurose Middle School )  
Addition and Modernization Project issued on )  
February 27, 2025, by the )  
)  
**SEATTLE PUBLIC SCHOOLS’ SEPA** )  
**RESPONSIBLE OFFICIAL,** )  
)  
Respondent )  
)  
\_\_\_\_\_ )

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

**I. SUMMARY OF RECOMMENDATION.**

Based on the 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 Aki Kurose Middle School Addition and Modernization 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 Aki Kurose Middle School Addition and Modernization Project. Through the course of the appeal hearing process, the

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1 school district representatives did not question the timeliness or assert other potential  
2 procedural defects, like standing issues, that might prevent this appeal from going forward.  
3 The district's counsel submitted briefing papers, seeking dismissal of certain issues before  
4 the hearing, which the Examiner addressed during the hearing and in this Decision.

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

8 While the appellants raise issues well outside the normal SEPA review process, the  
9 Hearing Examiner is without inherent or common-law powers and, as such, may exercise  
10 only those powers conferred by rules and policies specifically granted by the government  
11 agency. *Chaussee v. Snohomish County Council*, 38 Wash. App. 530, 636, 589 P.2d 1084  
12 (1984). The Hearing Examiner does not have the discretion to grant equitable remedies  
13 unless the ability to do so is expressly granted in authorizing regulations. *Id.*, see also  
14 *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 843 (1995) (scope and nature of an  
15 administrative appeal must be determined by the provisions of the statutes and ordinances  
16 which authorized them). This is shown in Board Policy No. 6890, referenced above. In this  
17 matter, the Examiner's authority is limited to making a recommendation to the  
18 Superintendent regarding SEPA threshold determinations, and should not opine on  
19 constitutional, equitable, public relations or political concerns of the sort sometimes raised in  
20 the course of a hearing. Issues raised by the appellants that fall outside the SEPA review  
21 process are outside the jurisdiction of the Examiner and cannot serve as a basis for relief in  
22 this SEPA appeal process.

### 23 ***Burden of Proof on Appellants, Standard of Review.***

24 To satisfy their burden challenging the DNS, an appellant must present actual  
25 evidence of probable significant adverse impacts of the Project. *Boehm v. City of Vancouver*,  
26 111 Wn.App. 711, 718-719, 47 P.3d 137 (2002).

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

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(1973)). An agency must make SEPA threshold determinations based upon information reasonably sufficient to evaluate the environmental impact of a proposal. *WAC 197-11-335*. Again, the appellants bear the burden of proof.

Evidence needed and the standard of proof needed to prevail in an appeal of a SEPA threshold determination is different than approval criteria that might apply to permits or other approvals that could be required for aspects of a particular project. For instance, approval criteria to obtain a departure, a building/development permit, a right-of-way use permit, a tree cutting permit, or other regulatory approval from the City of Seattle are not the same. Arguments to the effect that a SEPA determination should be based on subsequent development permit approval criteria are without merit.

Conclusory statements alleging adverse impacts, standing alone, do not support reversal of a SEPA DNS. A party that bears the evidentiary burden cannot rely on bare conclusory assertions in an attempt to meet its burden. *Am. Family Mut. Ins. Co., SI v. Wood Stoves Etc., Inc.*, 24 Wn. App. 2d 26, at ¶ 9, 518 P.3d 666 (Div. I, 2022).

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

Procedural determinations by the school district's SEPA responsible official shall be 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 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.

**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 DNS and SEPA Checklist issued for the Aki Kurose Middle School Addition and Modernization Project, as issued on or about February 27, 2025, and the single written appeal, filed in a timely manner on or

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about March 12, 2025, 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. Aki Kurose Middle School project DNS and Final Checklist
2. Appeal filing by Chris Jackins, et al, of Aki Kurose Middle School project DNS
3. Aki Kurose Middle School project Draft Checklist
4. Aki Kurose Middle School Cultural Resources Assessment Short Report, September 4, 2024, redacted version, submitted by ESA to Seattle Public Schools
5. Letter of March 2, 2025, from Chris Jackins to City of Seattle Landmarks Preservation Board and to Washington State Department of Archeology & Historic Preservation, together with a copy of comments on the Draft SEPA Checklist for the Aki Kurose Middle School Demolition, Modernization and Addition Project which Chris Jackins submitted to the Seattle School District on November 13, 2024
6. Letter of March 13, 2025, from City of Seattle Landmarks Preservation Board together with a copy of June 18, 2021 Denial of Aki Kurose Designation, replying to March 2, 2025, letter from Chris Jackins
7. Aki Kurose Middle School Seattle Landmarks Nomination, February 17, 2021
8. Seattle Times article "School Board's clumsy act embarrasses and annoys", January 26, 2000 – via NewsBank from Seattle Downtown Public Library
9. Seattle Times article "Seattle schools, doctor's heirs tussle over naming", January 7, 2010 – via NewsBank from Seattle Downtown Public Library
10. Seattle Times article "Seattle schools, doctor's heirs tussle over naming building in his honor", January 7, 2010 – via microfilm from Seattle Downtown Public Library, with some added photos and headings
11. "Detailed Notes" used by Mr. Jackins during his hearing testimony, with 10 pages.

**DISTRICT'S EXHIBIT LIST.**

1. Final SEPA Checklist and DNS with Appendices
2. Sara Wilder Resume
3. Charlie Vogelheim Resume
4. Tod McBryan Resume
5. Katie Carroz Resume
6. Sara Wilder Testimony Presentation
7. Combined DAHP and Tribal Correspondence
8. Updated Arborist Report

During the appeal hearing, the appellants appeared pro se, with Mr. Jackins' serving as the designated representative and only witness for the group of appellants named in his appeal statement. The District was represented by counsel, Katie Kendall and Isaac Patterson, from the McCullough Hill law firm. The appellants' hearing representative 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

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1 hold pro se litigants, including appellants, to the same standard as attorneys. *State v. Irby*, 3  
2 Wn.App. 2d 247 (Div. I, 2018), citing *State v. Bebb*, 108 Wn.2d 515, 524 (1987); *Audit &*  
3 *Adjustment Co. v. Earl*, 165 Wn. App. 497 (Div. II, 2011), citing *Westberg v. All-Purpose*  
4 *Structures, Inc.*, 86 Wn. App. 405, 411, 936 P.2d 1175 (1997).

5 Below is a list of individuals called to present testimony under oath at the duly noticed  
6 appeal hearing for this matter, with the Examiner, all party representatives, and most  
7 witnesses appearing in-person, in a District conference room, with other witnesses and  
8 observers using an online platform coordinated by District staff, on April 28, 2025. Brief  
9 summaries of topics raised in testimony are provided below but should not be read to modify  
10 or diminish full testimony provided by each witness, all of which has been considered in  
11 preparing this Recommendation:

- 12 1. Chris Jackins, the named appellant, served as the designated hearing representative for the appeal  
13 he filed on his own behalf and two other individuals, and as a witness called by appellants to  
14 address issues raised in their appeal. Mr. Jackins prepared detailed written notes, which he  
15 distributed throughout the hearing at various points during his presentation, including an opening  
16 statement, testimony about specific issues raised in his written appeal, and a closing statement,  
17 comprised of 10 numbered pages, included in the record as Appellant Ex. 11. Mr. Jackins'  
18 testimony raised general concerns about a proposed message board sign, general concerns about  
19 noise that might be generated by drilling of geothermal wells, parking concerns and how  
20 inadequate parking might impact neighborhood traffic, concerns about mud and puddles where  
21 people might park along the west side of 39<sup>th</sup> Ave S., concerns that final tree removal and tree  
22 protection plans should be confirmed with the arborist to prevent confusion and accidental removal  
23 of any trees that do not need to be removed, concerns that trees 174 and 175 are misidentified as  
24 along 38<sup>th</sup> instead of 39<sup>th</sup> and general hope that both trees can be retained because they are located  
25 away from parts of the school building that will be demolished, concerns about view impacts if a  
26 third floor is ever added, concerns about potential truck traffic, concerns about adequacy of  
cultural resource review, concerns about potential impacts on historic and cultural resources,  
concerns about how renaming the building over 25 years ago and subsequent communications  
with DAHP or inadequate information provided to DAHP and the like might have an impact on  
whether the Landmarks Preservation Board or DAHP might recognize the historic significance of  
Dr. Caspar Sharples, for whom the school building was originally named. Of all the issues  
addressed by Mr. Jackins, he grew the most agitated and angry while responding to questions from  
the District's counsel, about the school renaming issue. Clearly, he holds very strong opinions  
about the subject, and used the appeal hearing forum to vent his frustration with how the matter  
was handled by the District. In the end, he did not present a preponderance of evidence to support  
any of the grounds for appeal over which the Examiner holds jurisdiction to make a  
recommendation, so his appeal should be denied.
2. Sara Wilder, the District's lead architect for this project, resume included in the record as District  
Ex. 2, provided a brief overview of the project to open the hearing, and was later recalled to  
provide details and information on topics addressed in the appeal statement. Confirmed that there  
are no plans to build a third floor as part of this project, that "Departures" require a separate city  
review and approval, explained need for reader board to serve the diverse community in the area,  
appeared to understand that trees to be retained and protected should be confirmed before  
construction work begins.

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3. Todd McBryan, with the Heffron Transportation engineering firm, resume included in the record as District Ex. 4, referred to Transportation Technical Report, included in the record as Attachment B to the SEPA Checklist for this project, explained that truck volumes will not have a significant impact on traffic in the area [note: the school will be closed during construction, so baseline traffic associated with the school's regular operations will be greatly reduced], confirmed his professional opinion that there will not be significant traffic impacts associated with this project. Mr. Jackins had no questions for Mr. McBryan, and offered no professional reports or other expert evidence to rebut his testimony or traffic reports included as part of the record.
4. Charlie Vogelheim, a professional arborist, with Tree Solutions, Inc., resume included as District Ex. 3, with District Ex. 8 as his updated Arborist Report for this project. Confirmed that the project should only need to remove 1 on site tree, and 2 off-site [i.e. street/right-of-way] trees, with Tree No. 174 as the only onsite tree to be removed. He confirmed location of trees on 39<sup>th</sup> instead of 38<sup>th</sup>. He recommended that someone should be present onsite when construction/excavation work occurs near trees that are to be preserved.
5. Katie Tarroe, Senior Environmental Planner with ESA, the District's lead environmental consulting firm, resume included in the record as Ex. 5. Mr. Tarroe explained how various environmental issues were considered during the review and comment process, including noise, cultural resource issues, views, light, glare, among others. She explained how SEPA regulations do not require a public meeting, but the District invited and responded to written comments regarding its draft SEPA checklist prepared for this project, with responses included as Attachment H.
6. Vincent Gonzales, the District's Project Manager for the Aki Kurose project, directed attention to parts of the record showing outreach and communication between District and tribal entities, how local tribe asked for native plants to be included in the project, how materials about the school renaming back in 1999 are included as part of the record as part of Attachment G, that the DAHP Historic Property Report from 2024 (See Ex. 1, including .pdf pages 331, 336, and 342) shows that DAHP has/had access to Landmark, school district, and media materials about the school renaming controversy issue; explained that the proposed reader board addressed in materials will most likely be a "Datronic" (sp?) product like ones currently used at other Seattle schools, about 4 ft wide and 20 inches tall, indicated that they have been used about 12 years without problems

Earlier this week, the Examiner visited the school site and surrounding area to observe trees and other conditions discussed by witnesses during the appeal hearing. Upon consideration of all the evidence, testimony, codes, policies, regulations, and other information contained in the record, and site visit observations, the undersigned Examiner issues the following Findings, Conclusions, and Recommendation.

#### IV. FINDINGS OF FACT.

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

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1 ***Background Information, Project Description.***

2 2. Aki Kurose Middle School is located at 3928 S Graham Street, in the City of Seattle's  
3 Rainier Valley neighborhood, on a 4.8-acre site bounded by S Graham Street to the south,  
4 39th Avenue S to the west, Brighton Playfield to the north, and 42nd Avenue S to the east.

5 3. The school building dates back to 1952 and was designed by William Mallis. The  
6 building occupies most of the site. The existing building is a one- and two-story structure  
7 with courtyards open to the north, facing Brighton Playfield. The building was constructed  
8 as five units (Units A–E), with concrete walls defining the units. The building has received  
9 minor updates over the past 70 years.

10 4. Because the current building does not meet Seattle Public Schools' Standard Middle  
11 School Educational Specification (SPS 2021b) for 1,000-student capacity, SPS explored  
12 options that ranged from modernization and addition to partial building demolition and  
13 addition.

14 5. SPS proposes to: (1) demolish the northwest one-story portion of the structure (Unit  
15 A), which is approximately 25,000 square feet; (2) modernize Units B–E, which are  
16 approximately 135,000 square feet in total; build a new approximately 59,000-square- foot  
17 two-story classroom wing addition attached to the existing school building in the northwest  
18 portion of the site; (3) build outdoor learning areas; and (4) add vehicular parking. These  
19 additions and improvements will modernize the school facilities and provide additional  
20 capacity to serve the school's needs.

21 6. When the project is fully constructed, the campus will be approximately 195,000  
22 square feet and will have permanent capacity for up to 1,000 grade 6–8 students (the project  
23 does not propose on-site portables). The proposed 1,000-student capacity represents an  
24 increase of 132 students above the school's existing 868-student *permanent* capacity (not  
25 including portables) and an increase of 100 students above the school's existing 900-student  
26 *operating* capacity (including portables). Units B–E will receive seismic upgrades, major  
structural system upgrades or replacements, and envelope updates while maintaining the  
overall historic character of the building. The project will also include the following:

- Construction of a conditioned bridge connecting the east and west wings of the existing building.
- Site improvements for student learning and gathering in the main courtyard.
- Construction of a new student courtyard at the building addition in the northwest portion of the site.
- New water systems for domestic and fire protection, sanitary sewer, storm drainage, and frontage street improvements. Relocation of portables.

- Construction of a bike storage shelter near the new addition.
- Installation of energy-efficient systems including geothermal wells, for which the depth of ground disturbance is expected to be 350 to 400 feet.

7. During construction, the school will be temporarily closed and students will attend school in a different building. *(See Dist. Ex. 1, SEPA Checklist, Description and Location of Proposal, on pages 3-5).*

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

8. At issue in this appeal is the SEPA Determination of Non-Significance (DNS) issued for the Aki Kurose Middle School Project on or about February 27, 2025. A single written appeal of the DNS was submitted by Chris Jackins and two other individuals. There is no dispute that Mr. Jackins appeal was timely. The District's counsel moved to dismiss topics that are outside the jurisdiction of the Examiner, but did not contest the appeal going forward to hearing based on timeliness or standing issues. As explained in this recommendation, the appeal should be denied, because it was not supported by a preponderance of evidence.

9. The District prepared and issued a Draft SEPA Environmental Checklist for the Aki Kurose Middle School Project on or about October 18, 2024, inviting public comments in the following weeks. Comments received helped inform revisions to the final SEPA checklist, on which the DNS is based. The responses to written comments received are credibly summarized in the SEPA Public Comments and Seattle Public Schools Responses, which are included with the SEPA checklist as Attachment H. *(See DNS on appeal, Mr. Podesta's February 20, 2025 cover memo explaining SEPA comment process, part of District Ex. 1, on .pdf page 4).*

10. Based on the Final SEPA Checklist, public comments, an arborist report, transportation technical report, site plans and design materials, a Greenhouse Gas Emissions Worksheet, Historic and Cultural Resources background materials, and other environmental information, the District's designated SEPA Environmental Official formally issued a Determination of Non-Significance (DNS) for the Project on or about February 27, 2025. *(Ex. 1, with signature of SEPA Responsible Official dated Feb. 20, 2025, but the "Date of Issuance" provided on the notice reads Feb. 27, 2023, which is of no consequence in this matter, because there is no dispute that the pending appeal was timely).*

11. As noted above, there is no dispute that the pending appeal process was commenced upon the District's receipt of Mr. Jackins' timely written notice of appeal on or about March 11, 2025. A copy of the Jackins appeal is on file with the District.

12. Following proper notices issued to all parties of record, a prehearing motion resulting in a Prehearing Scheduling Order by the Examiner addressing witness and exhibit disclosures

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1 to provide a fair and efficient process for all participants, the appeal hearing for this matter  
2 took place in person in a District conference room, during the workday on April 28, 2025.

3 13. The specific “errors” and/or aspects of the challenged SEPA threshold determination  
4 that are at issue in any appeal are as set forth – and are limited to those raised – in the  
5 appellants’ written appeal statement. As explained in HEx Rule 2.24: (a) The Hearing  
6 Examiner accords deference or other presumption to the decision being appealed as directed  
7 by applicable law; (b) Where the applicable law provides that the appellant has the burden  
8 of proof – as is the case for appeals of SEPA threshold determinations – the appellant must  
9 show by the applicable standard of proof that the Responsible Official's decision or action  
10 does not comply with the law authorizing the decision or action; and (c) Unless otherwise  
11 provided by applicable law, the standard of proof is a preponderance of the evidence.

12 14. During the appeal hearing, the only witness for the appellants, Mr. Jackins, failed to  
13 provide any preponderance of evidence or controlling legal authority to demonstrate that any  
14 of the issues raised in his written appeal would serve as a basis to grant this appeal and reject  
15 the SEPA DNS at issue. Washington courts do not consider assignments of error unsupported  
16 by argument or authority. (See *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801,  
17 809, 828 P.2d 549 (1992)).

18 15. While Mr. Jackins mentioned general concerns that parking and construction truck  
19 traffic may be a concern, he offered no evidence or legal authority to establish that any  
20 parking or truck traffic related issues would serve as a basis to reject the challenged DNS.  
21 The school will be closed and students will be relocated to another facility during  
22 construction, so volumes of traffic associated with regular school operations will be greatly  
23 reduced or eliminated while construction work occurs on the site. Further, the SEPA  
24 Checklist includes an unrebutted Transportation Technical Report prepared by qualified  
25 professionals from *Heffron Transportation, Inc.*, included as Attachment B to the District’s  
26 SEPA Checklist, which credibly addresses transportation related issues associated with this  
project, including vehicle parking and truck traffic.

16 16. Regarding Noise, the appellants failed to present a preponderance of evidence to  
17 establish that the project is likely to generate significant noise impacts. The SEPA Checklist  
18 confirms that construction activities will be restricted to hours set by Seattle city codes, and  
19 that contractors must comply with the City’s noise ordinance. (See *SEPA Checklist*, on pages  
20 16-17).

21 17. With respect to any reader board sign that the District might choose to install as part  
22 of the project, the appellants failed to present a preponderance of evidence to establish that  
23 such sign will result in adverse impacts, but the District could do a better job of detailing  
24 photos or examples of the sign that they plan to use. If such sign is of the size and sort  
25 credibly described by Mr. Gonzales, the project should not result in any adverse  
26

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environmental impacts.

18. On the subject of trees, the appellants failed to present a preponderance of evidence that the project will result in significant, adverse impacts on trees. In fact, the project will significantly increase vegetation and tree canopy on the project site, with only 3 trees to be removed that will be replaced by replanting about 54 trees. (*Testimony of Ms. Wilder; Testimony of Mr. Vogelheim*).

19. The District's project team and contractors for this proposal should make every effort to preserve large trees wherever feasible, and if both trees 174 and 175 can be retained, they should be protected during construction work and frontage improvements that might occur. Site visits confirm the large canopy provided by Tree 175 (the Photinia) while it is in full bloom, so retaining such tree appears to be in the public's interest, and the appellants should be pleased that it is not identified for removal. As for Tree 174, the large arbor vitae growing immediately next to 175, it was difficult to discern why that tree is marked for removal. As it became evident during testimony from District witnesses, final construction site plans should be verified by critical team members, including without limitation the architect and arborist, to verify that all significant trees are appropriately identified and marked as needed, and that only trees genuinely requiring removal are removed. (*Testimony of Mr. Gonzales; Testimony of Mr. Vogelheim; Testimony of Ms. Wilder*).

20. As recommended by the project arborist, an arborist should be on site to observe excavation or similar construction work that might impact trees that are to be retained on the site. The appellants failed to rebut the revised Arborist report, (*Ex. 8*) which concludes that following replacement/replanting and tree protection measures, there will be no significant adverse impacts regarding trees.

21. Mr. Jackins' arguments and written materials related to the school renaming issue do not provide a basis in fact or law that could serve as a basis to reject the challenged SEPA threshold determination. The Examiner carefully read all of the articles and background materials on the subject that were included as Exhibits for the appellants, as well as the District. Despite appellants' assertions to the contrary, there is no credible evidence in this record showing that the District withheld information about the renaming controversy from DAHP, the Landmark Commission, or any other agency. In fact, the issue is and has been very public, as shown in news articles covering the story over the decades since the school was renamed over 25 years ago.

22. As the appellants explained in their written response opposing dismissal of portions of their appeal generally based on the renaming issue: "Appellants know that the Examiner in this venue does not have authority to alter a decision by DAHP or a decision on the renaming of the school, and are not asking the Examiner to do so." (*Appellants' Response opposing dismissal, dated April 17, 2025*).

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1 23. The appellant failed to establish that views might be significantly impacted by this  
2 project, or that the District should have been legally required to study impacts associated with  
3 a possible third floor – which is NOT included as part of this two-story building project. The  
4 District witnesses conceded that if a future project came forward seeking to build something  
5 much taller than the existing building, like three stories or more, then a new environmental  
6 review would likely be required. Such review is not required at this time, because the  
7 building addition that is part of this proposal is only for a two-story structure, the same  
8 general scale as most of the existing building as described by the project architect, Ms.  
9 Wilder.

10 24. In the end, this appeal should be denied, because the appellants failed to meet their  
11 burden of proof, and the record includes more than a preponderance of credible evidence to  
12 support the challenged DNS.

13 25. The appellants failed to show the existence of any *material errors* in the Final SEPA  
14 Checklist or DNS issued for this project, failed to show how the DNS failed to assess potential  
15 impacts, and they failed to show that the proposal will cause any adverse impacts  
16 necessitating an EIS. Typos and mistaken road names were credibly acknowledged and  
17 corrected by District consultants. Such changes do not support rejection of the DNS.

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

23 27. A party is entitled to present evidence and set forth facts based on personal knowledge  
24 but cannot merely state ultimate facts or make conclusory assertions and have them accepted  
25 at face value. *Jones v. State, Department of Health*, 170 Wash.2d 338, at 365 (2010). The  
26 appellants' evidence and testimony in this appeal was mostly a recitation of personal beliefs,  
27 opinions, reliance on media publications, and conclusory assertions. A party that bears the  
28 evidentiary burden cannot rely on bare conclusory assertions in an attempt to meet its burden.  
29 *Am. Family Mut. Ins. Co., SI v. Wood Stoves Etc., Inc.*, 24 Wn. App. 2d 26, at ¶ 9, 518 P.3d  
30 666 (Div. I, 2022). As the only appellant witness, Mr. Jackins failed to present testimony or  
31 evidence sufficient to grant relief under this appeal. The appellants failed to present evidence  
32 from qualified professionals or specific facts that would rebut evidence and information  
33 relied upon in the challenged SEPA determination.

34 28. Paraphrasing the action words contained in the definition given for the word  
35 "mitigation" in the state SEPA regulations, the term "mitigation" does not mean zero impacts,  
36 but means "avoiding", "minimizing", "rectifying", "reducing", "compensating", or

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1 “monitoring” an impact. WAC 197-11-768. The Examiner finds and concludes that the  
2 challenged DNS should be upheld, because substantial evidence in the record establishes how  
3 it includes design considerations, arborist recommendations, and other best practices, to  
4 appropriately avoid and/or mitigate potential impacts.

## 5 **V. CONCLUSIONS OF LAW.**

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

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

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

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

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

## 24 **VI. RECOMMENDATION.**

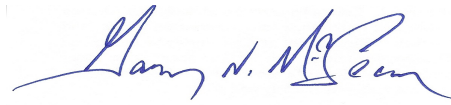
25 The above-captioned appeal should be denied. The Determination of Non-  
26 Significance (DNS) for the Aki Kurose Middle School Addition and Modernization Project  
should be affirmed. Project team members and contractors should fully implement all tree  
protection measures and other construction best management practices provided in consultant  
reports prepared by qualified professionals that are included as part of the record for this  
matter or addressed in this Recommendation to the superintendent.

ISSUED this 16<sup>th</sup> Day of May, 2025

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