

**FINDINGS AND DECISION  
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Appeal of

Hearing Examiner File:  
**W-19-004**

**INGE ANDERSON**

from a Determination of Non-Significance  
issued by the Director, Seattle Parks and  
Recreation

**Introduction**

The Seattle Parks and Recreation (“Department” or “City”) issued a Determination of Non-Significance (“DNS”) for a proposed erosion control and drainage project at the Westcrest Park Dog Off Leash Area (“Proposal” or “Project”). The Appellant, Inge Anderson (“Appellant”), exercised the right to appeal pursuant to Chapter 25.05 Seattle Municipal Code.

The appeal hearing was held on December 16, 2019, before the undersigned Hearing Examiner. Parties represented at the proceeding were: the Appellant, by herself *pro se*, and the City, by David Graves. The record was closed at the conclusion of the hearing.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (“SMC” or “Code”) unless otherwise indicated. After considering the evidence in the record and reviewing the site, the Examiner enters the following findings of fact, conclusions and decision on the appeal.

**Findings of Fact**

1. The DNS describes the proposal as:

Seattle Parks and Recreation is proposing to address erosion and other drainage related problems, such as standing water, at the Westcrest Park Dog Off Leash Area (OLA). The scope of work includes but is not limited to stabilizing erosion, improving drainage and stormwater conveyance, installing stormwater outfalls, fencing, grading, sediment traps for sediment management, mulch and hydroseed restoration, and other stormwater control measures. Approximately 2,500 cubic yards of grading is proposed.

2. The Department determined that no probable significant adverse environmental impacts were likely to occur as a result of the Proposal, and that preparation of an environmental impact statement (“EIS”) was not required. The DNS was issued on June 3, 2019.

3. The Appellant filed an appeal of the Director's decision on June 24, 2019.
4. The Appellant identified the following objections in her Notice of Appeal:
  - There is no adequate information to be found on the website.
  - Mr. David Graves has no answer, but is willing to hear comments.
  - The appeal time-frame has started without any important information released.
  - The closure of the park, without being offered an alternative will cause hardship.
5. At the hearing the Appellant presented testimony and documents describing current dog park conditions, and how the Proposal will impact use of the park area. The Appellant also discussed her challenge in getting accurate information about the proposal. Appellant indicated that she lives next door to the park with her dog, and that closing the off-leash area will cause great burden to her and her dog. Appellant described an alternative for increasing the off-leash area during temporary closures, and how the Proposal was providing inadequate off-leash opportunities.
6. The Appellant indicated that there was a lack of information available about the proposed drainage plans, and other aspects of the Proposal. The Appellant did not identify any specific SEPA procedural violation concerning project planning transparency.
7. The Appellant argued that the Department did not adequately consider the presence of Great Blue Heron habitat. The Appellant did not raise this issue in her Notice of Appeal, and this issue should be dismissed on that basis alone. In addition, Appellant's concern that Great Blue Heron were not considered in the DNS review, when they were not listed in the SEPA checklist for the Proposal, is not determinative. In addition to the checklist the Department may consider other comments, documents, and also the City's critical areas mapping. The record reflects that the presence of Great Blue Heron was in the record, prior to the DNS being issued.
8. The Appellant did not introduce any evidence indicating that significant impacts were likely to result from the Proposal.
9. Mr. Graves testified about the nature of the proposal, and indicated that the impacts identified by the Appellant had been identified and considered in the DNS review.
10. SMC 25.05.330 directs that, in making the threshold determination, the responsible official shall determine "if the proposal is likely to have a probable significant adverse environmental impact . . ." If the responsible official "reasonably believes that a proposal may have" such an impact, an environmental impact statement is required. SMC 25.05.360.



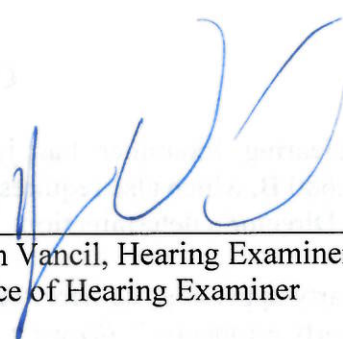
### Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to SMC 25.05.680.B, which also requires that the Hearing Examiner give substantial weight to the Director's determination.
2. The party appealing the Director's determination has the burden of proving that it is "clearly erroneous." *Brown v. Tacoma*, 30 Wn. App. 762, 637 P.2d 1005 (1981). Under this standard of review, the decision of the Department may be reversed only if the Hearing Examiner is left with the definite and firm conviction that a mistake has been committed. *Cougar Mt. Assoc. v. King County*, 111 Wn. 2d 742, 747, 765 P.2d 264 (1988).
3. The burden of proving the inadequacy of a threshold determination is high, and can be particularly difficult to meet for a citizen not familiar with the evidentiary standards that must be met to prevail on appeal. To meet its burden of proof under SEPA, the Appellant must present actual evidence of probable significant adverse impacts from the Proposal. *Boehm v. City of Vancouver*, 111 Wn. App. 711, 719, 47 P.3d 137 (2002); *Moss v. City of Bellingham*, 109 Wn. App. 6, 23, 31 P.3d 703 (2001). As noted above, "significance" is defined as, "a reasonable likelihood of more than a moderate adverse impact on environmental quality." WAC 197-11-794. This burden is not met when an appellant only argues that they have a concern about a potential impact, and an opinion that more study or review is necessary.
4. The Appellant did not introduce evidence demonstrating any significant impacts that are reasonably likely to result from the Proposal. While the Proposal will have some negative impacts to the Appellant, and perhaps other users of the park, the evidence submitted by the Appellant did not demonstrate that those impacts had a reasonable likelihood of causing more than a moderate adverse impact on environmental quality. In addition, the record reflects that the impacts detailed by the Appellant were impacts identified by the Department, and considered in accordance with required SEPA analysis.
5. There is no evidence in the record that the Proposal would have a significant adverse impact.
6. The Appellant has not met her burden of proving that the Director's SEPA threshold determination is clearly erroneous.

### Decision

The Director's decision to issue a Determination of Nonsignificance for the proposed ordinance is not clearly erroneous, and is **AFFIRMED**.

Entered this 21<sup>st</sup> day of January, 2020.



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Ryan Vancil, Hearing Examiner  
Office of Hearing Examiner

### Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final SEPA decision for the City of Seattle. Judicial review under SEPA shall be of the decision on the underlying governmental action together with its accompanying environmental determination. Consult applicable local and state law, including SMC Chapter 25.05 and RCW 43.21C.076, for further information about the appeal process.

If a transcript of the hearing is required by superior court, the person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, Room 1320, 618 Second Avenue, Seattle, Washington 98104, (206) 684-0521.


**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Findings and Decision** to each person listed below, or on the attached mailing list, in the matters of **Inge Anderson**, Hearing Examiner File: **W-19-004**, in the manner indicated.

<b>Party</b>	<b>Method of Service</b>
<b>Appellant</b> Inge Anderson inge.t.anderson@gmail.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
<b>Department</b> David Graves David.Graves@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

Dated: January 21, 2020

  
Galen Edlund-Cho  
Legal Assistant