

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

LOWER WOODLAND NEIGHBORS ASSOCIATION,	)	
	)	No. 06-2-40603-6SEA
	)	
Plaintiffs,	)	DEFENDANT CITY’S
	)	HEARING BRIEF
vs.	)	
	)	
CITY OF SEATTLE,	)	
	)	
Defendant.	)	
	)	

---

**I. INTRODUCTION**

Plaintiff Lower Woodland Neighbors Association (“LWNA”) challenges the Determination of Non-Significance (“DNS”) that was issued by the City of Seattle’s Department of Parks and Recreation (“Parks”) for the skate park it proposes to build in the Lower Woodland Park playfield complex. Specifically, LWNA challenges the City Hearing Examiner’s decision affirming the DNS, and Parks’ decision to go forward with the project. LWNA claims that, in addition to not addressing all the negative impacts of the skatepark, Parks “piecemealed” the SEPA review because it didn’t consolidate SEPA review of the skatepark project with that for a planning document for siting future skateparks throughout the City.

1 The parties agreed that a statutory writ of review (certiorari) is the appropriate judicial  
2 remedy, since projects on park property are excluded from the definition of a “land use decision”  
3 in the Land Use Petition Act. RCW 36.70C.020(1)(a). On a writ of review, the superior court  
4 acts in appellate capacity to review for error of law the record of a quasi-judicial body.  
5 *Sunderland Family Treatment Services v. City of Pasco*, 127 Wn.2d 782, 788, 903 P.2d 986  
6 (1995); *Kerr-Belmark Const. Co. v. City Council of City of Marysville*, 36 Wn. App. 370, 371-  
7 712, 674 P.2d 684 (1984); *G 3 Properties, Inc. v. Board of County Com'rs of Yakima County*, 27  
8 Wn. App. 625, 630, 620 P.2d 108, review granted, reversed on other grounds, 96 Wn.2d 359,  
9 635 P.2d 721 (1980).

## 10 II. COUNTERSTATEMENT OF RELEVANT FACTS

### 11 A. Plaintiff’s So-Called “Statement of Facts” Is Argument.

12 In the first part of the “Statement of Facts,” plaintiff goes on for six pages about lack of  
13 public process in deciding on the site of the skatepark. Only in Seattle could someone complain  
14 about lack of public process after two workshops, two Council committee meetings, four  
15 community meetings and five Board meetings, including a public hearing! Documentary Record  
16 (“DR”) at 15, 159, 185-86, 189-90, 198-202, 215, 227-28. What is remarkable about this litany of  
17 complaints is that it is not tied to any required SEPA public process, nor indeed to any process  
18 violation cognizable in law. There were no SEPA process violations.

19 Similarly, LWNA’s brief goes on and on about alleged violations of the Parks Department’s  
20 2003 Skateboard Park Policy, even going so far as to include a map to show that the proposed  
21 skatepark is in the same quadrant of the City as the Ballard skatebowl. This revelation is meant to  
22 demonstrate that Parks has violated its own internal policy goal 6.3: “The department will seek to  
23 distribute facilities throughout the City, with the goal of providing at least one skateboard park in

1 each quadrant of the City, and generally will not seek to develop skateboard parks as stand alone  
2 facilities.” DR at 163. It is doubtful whether a “goal” can ever be violated, particularly where, in  
3 this case nothing about the Lower Woodland Skatepark proposal prevents skateparks from being  
4 developed in other quadrants of the City. Notably, the policy does not require that a skatepark be  
5 built in each quadrant before another one can be built, as LWNA implies. More importantly, once  
6 again this so-called policy violation has nothing whatsoever to do with SEPA and the DNS  
7 supposedly at issue in this case. LWNA merely seeks to disguise the thinness of its case while  
8 trying to make the Parks Department look as if it ignores the law.

9 **B. Factual Background.**

10 Because the preliminary design of the proposed Ballard Commons park did away with the  
11 existing skatepark, Parks began looking for a site to replace it in January of 2004. DR 158-59. In  
12 February of 2004, the Department convened a Skateboard Park Advisory Committee (SPAC) to  
13 help plan and design skateparks pursuant to the Skateboard Park Policy adopted by the Department  
14 in 2003. The 23-acre sports complex at Lower Woodland Park<sup>1</sup> was identified as the best  
15 replacement location that same month. *Id.* The site for the proposed skatepark is an un-  
16 programmed open space tucked in between the “cloverleaf” softball fields immediately to the north  
17 and northeast and the soccer field immediately to the south and southeast. See the approximation of  
18 the site at Exhibit 2, DR 80. The site is made up of a bare unused patch of dirt where wood chips

---

19  
20 <sup>1</sup> In footnote 2 of the Plaintiff’s Opening Brief, LWNA accuses the City of overstating in the DNS the size of the  
21 Lower Woodland Park sports complex as 43 acres (or about half of the total park area), when it is actually  
22 approximately 23 acres, in order “to make it appear that that further development would not significantly affect the  
23 environment.” This mistake was carried over by the DNS drafter from the Environmental Checklist, where it first  
appears (at DR 119), although the Checklist gets it right in other places. Sometimes a mistake is just a mistake, and  
does not evidence of a malevolent government scheme to harm the environment. In any case, the mistake inadvertently  
does the opposite of what LWNA claims: it makes the impact seem somewhat more significant. The fact that the  
developed part is really only 23 acres, not 43, shows that the conversion of less than half an acre of the  
approximately 86 acres (DR 134) comprising all of Lower Woodland Park is most definitely *not* a significant loss of  
open space in the park.

1 were formerly stored on the west, an asphalt roadway used by Parks maintenance trucks and  
2 passers-through in the middle, and a patch of grass underneath four trees on the west. Exhibits 6, 8  
3 and 9, DR 109, 111-114; Transcript (“Tr.”) at 85-90.

4 Although the Ballard Commons design was revised in May of 2004 to include a small  
5 skatebowl, the proposal to develop a larger skatepark at Lower Woodland continued. During the  
6 spring of 2004, two workshops to develop the basic design of the Lower Woodlands Skatepark were  
7 held. An application for funding it was submitted to the state Interagency Committee for Outdoor  
8 Recreation ((IAC) in August, 2004. DR at 65-74. In September, 2004 the Department briefed the  
9 Board of Park Commissioners (Board) on the Lower Woodland Project. DR at 175-76. At Parks’  
10 behest, the City Council approved funding of the Lower Woodland Skatepark in the 2005 budget in  
11 November, 2004. DR at 177-79. In April and June of 2005 the Board endorsed siting a skatepark at  
12 Lower Woodland Park. DR at 180-202. At the June 9, 2005 meeting, the Board specifically  
13 endorsed the “chip site” at Lower Woodland (so-called because Parks gardeners stored wood chips  
14 there). A skatepark designer was hired, and public meetings regarding the design were held in the  
15 fall and early winter of 2005. DR at 159. In the fall of 2005, the City Council included additional  
16 funding for the skatepark in the 2006 budget. DR at 203-05. In March of 2006, the City was  
17 notified that the Lower Woodland Skatepark had received IAC funding. DR at 206.

18 As detailed in memoranda to the Board dated June 2, 2005 and January 16, 2006, while  
19 there was a lively debate as to where within Lower Woodland Park the skatepark should be sited,  
20 the Department did not stop moving forward to plan, design and construct a skatepark at Lower  
21 Woodland Park since it was first chosen as the location in February, 2004. DR at 210-16. After a  
22 public hearing held on January 26, 2006, the Board once again endorsed the “chip site” at Lower  
23 Woodland Park at its February 9, 2006 meeting. DR at 27-28.

1 As for the citywide skatepark system planning process, it began in the fall of 2005 at the  
2 behest of Council Member David Della, chair of the City Council’s Parks, Education, Libraries &  
3 Labor Committee, just as the Parks Department decision-making process for the Lower Woodland  
4 Skatepark was concluding. The late Tatsuo Nakata, Councilmember Della’s then legislative aide,  
5 took the lead in developing a legislative (as opposed to executive) proposal for how skateparks  
6 should be sited and developed city-wide. See draft resolution at DR 229-234. On February 21,  
7 2006, the City Council adopted Resolution 30843, establishing an advisory task force to develop a  
8 comprehensive skatepark system plan, with Parks in the role of implementing a plan decided upon  
9 by a Task Force in which it would only be a non-voting member. Basically, the City Council  
10 substituted its own skatepark planning effort for that of the Parks Department. However, section 8  
11 of the Resolution makes a point of directing that the skatepark system plan “shall not delay or halt  
12 existing efforts to plan, design and construct skateparks in Seattle.” The subsequent work of the  
13 Task Force will treat the Lower Woodland Skatepark as an existing facility, as part of the  
14 assessment of the current supply of Seattle skate facilities under Section 6 (c) of Resolution 30843.

15 *Id.*

16 **B. Procedural Background.**

17 LWNA appealed the skatepark DNS to the City’s Hearing Examiner on June 26, 2006.  
18 DR at 374-75. On August 30, 2006, it filed a motion for summary judgment, asking that the  
19 Examiner find as a matter of law that the DNS violated WAC 197-11-060(3)(b), for not  
20 reviewing the environmental impacts of the skateboard project in conjunction with the City  
21 Council’s proposed city-wide siting plan. DR at 250-59. The Parks Department responded by  
22 asking that it be granted summary judgment on the issue. DR at 235-42. In response to the  
23 LWNA reply brief’s rhetorical question (DR at 144) “[j]ust what is it about SEPA and

1 environmental review that the Seattle Department of Parks and Recreation doesn't get?", the  
2 Hearing Examiner dismissed their motion, granting summary judgment to Parks instead. The  
3 Examiner determined that the Lower Woodland skatepark project and the City-wide skatepark  
4 planning effort were separate projects that did not depend on each other for their justification or  
5 implementation. DR at 139-41.

6 The remaining issues proceeded to hearing on October 31, 2006. Those issues were  
7 whether the DNS had failed (1) to adequately consider or disclose the loss of open space and  
8 displacement of users: (2) to consider cumulative impacts of converting grassy open space to  
9 single user-group facilities; (3) to adequately consider aesthetic impacts from a large concrete  
10 bowl, and (4) to consider the prejudicial effect of approving the proposal on the siting decisions  
11 for additional skate parks. DR 7.

12 At the hearing, one of LWNA's witnesses testified that she would not be able to walk her  
13 dog in the vicinity of the skatepark as her dog hated skateboarders. Tr. at 23. Another witness  
14 who lives at least 400 feet away from the site across the heavily used arterial Greenlake Way N.  
15 testified that she would lose her view of the trees beyond. Tr. at 34. This claim was patently  
16 erroneous as the skateboard facility will be mostly below grade with the most visible aspect  
17 being a 3-4 foot tall chain link fence, as demonstrated by Parks witness David Graves and Parks  
18 exhibits. Tr. at 92-95; Exhibit 7, DR at 110, concept drawing oriented with the southerly  
19 direction being at the top of drawing; Exhibit 10, DR at 115, elevation looking east toward  
20 Greenlake Avenue; Exhibit 11, DR at 116, photograph looking east at project site with ink  
21 markings approximately indicating the site (and showing trees towering above). All three  
22 LWNA witnesses testified to observations of numerous recreational uses being made of the site,  
23 such as walking, jogging, running, cross-country, bicycling, warming up, spontaneous playing,

1 and watching the sports events on the abutting playfields. Tr., *passim*. But, while the LWNA  
2 testimony and pictures would lead one to believe that this little un-programmed spot is the most  
3 intensely used and irreplaceable site in all of Parks' 6,200 acres, the aerial maps in evidence and  
4 the testimony of two parks employees told a different story. Don Allen, the maintenance crew  
5 chief since 2005 for the North/Central park areas (which includes Woodland Park and  
6 Greenlake) and who visits the Lower Woodland Playfields every single day ( Tr. at 61) testified  
7 that most of the use is as a thoroughfare by passers-through (joggers, walkers, etc.), bicyclers on  
8 the way to the adjacent BMX jumps site. It is part of a route for organized cross-country foot  
9 races, and children from a nearby daycare who play on the BMX moguls also play on the former  
10 chip site. The major impact for these users, including the cross-country race, is that the path they  
11 use will be diverted to go around the skatepark rather than following the existing linear path. Tr.  
12 at 63-66. The grass patch is mostly used for warming up for soccer players; the main impact on  
13 them is that there won't be as much unprogrammed space for warming up activities. Tr. at 75.  
14 David Graves, who wrote the DNS decision, also testified that the site is mainly used by people  
15 passing through it, and that Lower Woodland has enough space such that the unplanned  
16 recreational uses that now go on in the empty space that is the site will continue to go on in the  
17 future.<sup>2</sup> Tr. at 82-83, 100-01.

18 The Deputy Hearing Examiner held for Parks on all issues, concluding that the DNS was  
19 not issued in error and should be affirmed. DR at 5-7. This judicial appeal ensued. On judicial  
20 appeal, LWNA appears to have abandoned its claims that the DNS failed to consider cumulative  
21 impacts and aesthetics. It put on no evidence of there being any cumulative impact. In case,  
22 however, LMNA is saving the aesthetics discussion for its reply brief, the Court's attention is

23 \_\_\_\_\_  
<sup>2</sup> Except walking dogs that hate skateboarders.

1 directed to the testimony of David Graves at Tr. 90-97, the DNS at DR 21. Instead, LWNA  
2 attempts to raise new issues and new challenges to the DNS. Now the charges are that the City  
3 ignored general SEPA policies, and illegally “balanced” the beneficial aspects of the proposal  
4 against its adverse impacts. The Court will look in vain for the Hearing Examiner’s responses to  
5 these challenges, because they were not made below.

### 6 **III. ARGUMENT**

#### 7 **A. Standard of Review.**

8 SEPA requires a reviewing court to give “substantial weight” to a governmental agency’s  
9 determination that an EIS is not required. RCW 43.21C.090; *Boehm v. City of Vancouver*, 111  
10 Wn. App. 711, 47 P.2d 137 (2002); *Anderson v. Pierce County*, 86 Wn. App. 290, 936 P.2d 432,  
11 (1997). The courts have determined that substantial weight is given by using the “clearly  
12 erroneous” standard. A decision is clearly erroneous only if the court is left “with the definite  
13 and firm conviction that a mistake has been committed.” *Cougar Mountain Associates v. King*  
14 *County*, 111 Wn.2d 742, 747, 765 P.2d 264 (1988). In this matter, neither the Hearing  
15 Examiner’s grant of summary judgment on the “larger proposal” issue, nor the Deputy Hearing  
16 Examiner’s decision affirming the DNS on the remaining SEPA issues was at all erroneous, let  
17 alone clearly erroneous.

#### 18 **B. The Decision to Site the Skatepark at Lower Woodland Playfields Serves** 19 **SEPA Policies.**

20 LWNA’s choice of SEPA policies to invoke as the reason why the NDS should be  
21 reversed and an EIS prepared is more than a little ironic. It is the LWNA members who are  
22 trying to shut skateboarders out of the playfields, thus depriving them of the “variety of  
23 individual choice” and “wide sharing of life’s amenities” referenced in the SEPA policy  
statement, while they as neighbors have the whole of Lower Woodland Park as well as adjacent



1 Greenlake Park in which to pursue unstructured recreational activities, such as now take place on  
2 the empty patch of earth slated to be the skatepark site. LWNA makes such pious, self-serving  
3 arguments as a project opponent: the City asks the court to recognize that the project proponent  
4 has acted as a responsible environmental steward in full compliance with the SEPA policies in  
5 locating the skatepark within an already developed sports complex, thereby saving precious  
6 green space.

7 **C. The City Considered All Relevant Environmental Factors.**

8 First, LWNA misstates the law: it is not a true statement that a DNS may be issued only  
9 if there will be no probable adverse impacts from a proposal. Opening Brief at 15. The dividing  
10 line between a DNS and an EIS for a proposal is the presence or absence of probable significant  
11 adverse impacts. See WAC 197-11-330; 194-11-340. EISs must be prepared for proposals  
12 “significantly affecting the quality of the environment.” RCW 43. 21C. 030(2). “Significant” as  
13 used in SEPA means “a reasonable likelihood of more than a moderate adverse impact on  
14 environmental quality”. WAC 197-11-794.

15 Second, in wrongly claiming that City did not address impacts on recreation, LWNA  
16 ignores the specific portions of the DNS and the Environmental Checklist. Instead, LWNA  
17 harps on the largely irrelevant reports of Strategic Advisor Susan Golub to the Board of Park  
18 Commissioners, accusing her of the crime of “single-minded focus” on doing the job she was  
19 assigned, to lead the effort to build a skatepark at Lower Woodland. DR 158. Ms. Golub was  
20 not the person assigned to do the environmental review, nor would it have been appropriate for  
21 Parks to assign her that job as she was the proponent of the project. When LWNA does address  
22 the actual environmental documents or testimony it is to quote bits and pieces out of context.  
23 The checklist has quite bit more to say about recreational uses of the site than LWNA would lead

1 one to believe. Under the subject of Land Use, the checklist does not say there is no current  
2 recreational use of the site: it says the site area has no designated use other than to serve as a  
3 wide buffer area between the soccer field (Field #2) and the four softball fields. (Emphasis  
4 added) DR at 128. It notes that the comprehensive plan designation as Public Open Space (*id.*)  
5 and that the skateboard park use is consistent with existing active recreational uses. DR at 129.  
6 Under the section for identifying impacts on recreation, the Checklist provides as follows (DR at  
7 130):

8 **12. Recreation**

9 **a. What designated and informal recreational opportunities are in the immediate  
10 vicinity?**

11 Nearby Greenlake Park provides over three miles of shoreline pathway, a  
12 community center, aquatic facilities and a landscaped park. Adjacent Lower  
13 Woodland Park woodland provides opportunity for picnickers and hikers. Within  
14 the playfield area are baseball, softball and soccer fields, tennis courts and a track,  
15 together with an informal series of mounds for BMX bicyclists to practice jumps.

16 **b. Would the proposed project displace any existing recreational uses? If so,  
17 describe.**

18 No.

19 There is nothing incorrect about this “No” answer. Far from denying the existence of  
20 current public recreational use of the site, as LWNA alleges, the DNS explains why there is no  
21 displacement of such use, and thus, no significant adverse impact upon it:

22 . . . Numerous areas around each of the sports fields still remain as areas for  
23 warming up prior to events or as staging areas. The remaining 47<sup>3</sup> [*sic*] acres of  
Lower Woodland Park provide open space opportunities and areas for passive  
recreation. Access across the Lower Woodland Playfields to the undeveloped  
westerly half of the park, including picnic areas, Frisbee golf course, open lawn  
areas for activities for Frisbee throwing and kite flying, and the dog off-leash area  
is readily available via numerous pathways. Since the proposed skatepark will be  
located within the developed sports complex of Lower Woodland Playfields, no

---

<sup>3</sup> Should be” remaining 63 acres.”

1 significant adverse open space impacts are anticipated and no mitigation is  
2 necessary.

3 DR at 19. And, as Don Allen testified, the majority of the users of the space are passers-through  
4 who will still have a north-south route through this portion of the Park as well as the existing  
5 east-west paths through the Playfield. Tr. at 63-70. LWNA alleges that the DNS is defective for  
6 not doing actual counts of people using the site, but the testimony of both Mr. Allen and Mr.  
7 Graves demonstrated the Department's familiarity with the uses made of the site by the public.  
8 Under these circumstances, this was "information reasonably sufficient to evaluate the  
9 environmental impact" of the proposal under WAC 197-11-335. No studies of displaced  
10 populations was necessary since, as Mr. Graves testified, no displacement occurred because the  
11 design of the project provided for the through-users and the rest of the park easily accommodates  
12 the other types of casual use made of it. Tr. at 100-101. LWNA's comparison of this modest  
13 skatepark project to the 94 slip marina (the pilings for it by themselves covered more area than  
14 does the skatepark) approved without any SEPA analysis at all in *Sisley v. San Juan County*, 89  
15 Wn.2d 78, 569 P.2d 712 (1977) is inapposite.

16 **D. The City Did Not Engage in Balancing Beneficial Impacts of the Proposal  
17 Against Adverse Impacts.**

18 Once again there is no citation to the DNS in LWNA's baseless claim that Parks illegally  
19 balanced the beneficial aspects of the skatepark against its adverse impacts, citing as evidence  
20 Ms. Golub's "dogged pursuit of funding" for the project. Opening Brief at 15. Once again,  
21 LWNA improperly attempts to use evidence outside of the threshold determination process to  
22 shore up its claim of SEPA violation, instead of pointing to a section of the DNS that contained  
23 improper balancing. The prohibition against balancing is found in the WAC section that  
describes the threshold determination process, WAC 197-11-330. The threshold determination

1 made in this case was the DNS, and it contains no comparison and no weighing of the casual  
2 recreational use being made of the site versus the proposed skateboard use. Quite the opposite,  
3 since it determined there were no significant adverse impacts on existing recreational uses since  
4 they could be easily accommodated in other parts of Lower Woodland Park.

5 **E. The Hearing Examiner Correctly Determined as a Matter of Law that the**  
6 **Lower Woodland Skatepark Proposal and the Later Council-Sponsored**  
7 **Citywide Skatepark Planning Process Are Not “Closely Related” Projects.**

8 On appeal to Superior Court, LWNA seeks to improve its position by injecting a new  
9 element into its argument. In this revised scenario, because the Park Department was following  
10 its own internal policy and procedure adopted in 2003 regarding skatepark development (DR at  
11 162-64) when it proposed the Lower Woodland project,<sup>4</sup> somehow or another the project  
12 “always depended on the larger citywide-network proposal for its justification.” Opening Brief  
13 at 18. This new twist does not aid its case, because the only fact the internal departmental policy  
14 and the City Council-sponsored citywide planning effort begun in 2006 have in common is that  
15 both deal, at least in part, with skatepark siting. It is clear from Resolution 30843 that the City  
16 Council decided to pre-empt the Department’s control of the siting process with its task force-  
17 developed comprehensive skatepark system plan, while saving skatepark projects developed by  
18 Parks that the Council had already decided to fund. DR at 293-95. This is City politics, not  
19 SEPA.

20 Nothing about the Lower Woodland skatepark proposal violates SEPA’s proscription  
21 against the piecemealing of projects. WAC 197-11-060(3)(b) provides as follows:

22 **Proposals or parts of proposals that are related to each other closely enough to be,**  
23 **in effect, a single course of action shall be evaluated in the same environmental**

---

<sup>4</sup> LWNA apparently believes that Parks depended on its own skatepark policies, at least for the purposes of the argument set forth on page 18 of its Opening Brief. In most of the brief, however, LWNA excoriates Ms. Golub for *not* following these policies, although this argument is not SEPA-related.

1 document. . . . Proposals or parts of proposals are closely related, and they shall  
2 be discussed in the same environmental document, if they:

3 (i) Cannot or will not proceed unless the other proposals (or parts of proposals)  
4 are implemented simultaneously with them; or

5 (ii) Are interdependent parts of a larger proposal and depend on the larger  
6 proposal as their justification or for their implementation.

7 “Piecemealing” occurs where a local jurisdiction allows a portion of a single project to proceed  
8 while another portion of the project awaits approval. *Batchelder v. City of Seattle*, 77 Wn. App.  
9 154, 160, 890 P.3d, 25 review denied, 127 Wn.2d 1022 (1995). It “is the practice of conducting  
10 environmental review only on current segments of public works projects and postponing  
11 environmental review of later segments until the construction begins,” a practice disfavored  
12 “because the later environmental review seems merely a formality, as the construction of the  
13 later segments of the project has already been mandated by the earlier construction.” *Concerned*  
14 *Taxpayers Opposed to Modified Mid-South Sequim Bypass v. State Department of*  
15 *Transportation*, 90 Wn. App. 225, 231, fn.2; 951 P.2d 812 (1998). Improper piecemeal review,  
16 or segmentation of a project, occurs where a development is so interrelated and interdependent  
17 that no part of the project should proceed until all provisions of SEPA have been fully complied  
18 with. *Merkel v. Port of Brownsville*, 8 Wn. App. 844, 847, 509 P.2d 390 (1973) (clearing an upland  
19 forest would have an irreversible effect on the not-yet-approved wetland portion of a project).

20 In this case, clearly there are two separate proposals, not a single course of action. They  
21 are not even “similar actions” for which analysis in a single environmental document is optional  
22 under WAC 197-11-060(3)(c): the proposal at issue is one for a specific skatepark project while  
23 the other is a proposal for adoption of non-project plan for a system of skateparks. They are both  
stand-alone projects, neither dependent on the other for justification or implementation.  
Construction of the Lower Woodland Skatepark does not mandate adoption of a city-wide plan



1 erroneous for failing to consider the environmental impacts of the Lower Woodland Skatepark  
2 project together with the impacts future citywide skatepark system plan ordered by Resolution  
3 30843; to affirm the Deputy Hearing Examiner's decision affirming the DNS on the rest of the  
4 SEPA issues; and to dismiss the writ of review.

5 Dated this 30<sup>th</sup> day of April, 2007.

6 Respectfully submitted,

7 THOMAS A. CARR  
8 Seattle City Attorney

9 By: \_\_\_\_\_  
10 Judith B. Barbour, WSBA #10601  
11 Assistant City Attorney

12 Attorneys for Respondent  
13 The City of Seattle  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

1 **CERTIFICATE OF SERVICE**

2 I certify under penalty of perjury under the laws of the State of Washington that, on this  
3 day, I sent a copy of **Defendant City’s Hearing Brief** by messenger to:

4 David S. Mann  
5 Gendler & Mann, LLP  
6 1424 – 4th Ave., Suite 1015  
7 Seattle, WA 98101

8 the foregoing being the last known address of the above-named party.

9 DATED this \_\_\_\_\_ day of May, 2007, at Seattle, Washington.

10 \_\_\_\_\_  
11 ROSIE LEE HAILEY