

BEFORE THE HEARING EXAMINER  
IN AND FOR THE COUNTY OF SNOHOMISH

**In Re Residential Treatment Facility  
North,**

No. 22-102230 CUP

Kathleen Richardson,

Appellant,

Tulalip Tribes,

Applicant,

Order Granting Motions to Dismiss

Snohomish County Planning and  
Development Services Department,

Respondent.

1 Respondent Snohomish County Planning and Development Services department (PDS)  
2 moved to dismiss the SEPA appeal, claiming that the appellant either failed to identify any  
3 probable significant adverse environmental impacts or cannot prove any probable  
4 significant adverse environmental impacts.<sup>1</sup> Applicant Tulalip Tribes joined in PDS' motion.<sup>2</sup>  
5 Appellant Kathleen Richardson opposed the motion. For the reasons described below, the  
6 motions are granted.

7 **STANDARD OF REVIEW**

8 A SEPA appeal is evaluated under the "clearly erroneous" standard, *i.e.*, the Hearing  
9 Examiner may only overturn the SEPA threshold decision if he is left with the definite and  
10 firm conviction that a mistake has been made. SCC 30.61.310(1) (2003). The Hearing  
11 Examiner must give substantial weight to the decision of the responsible SEPA official.  
12 RCW 43.21C.090; *King County v. Central Puget Sound Growth Management Hearings*  
13 *Board*, 91 Wn. App 1, 30, 951 P.2d 1151 (1998); SCC 30.61.310(3) (2003). As appellant,<sup>3</sup>

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<sup>1</sup> Ex. P.4.

<sup>2</sup> Ex. P.5.

<sup>3</sup> The fact that appellant is not represented by a lawyer does not excuse her from providing admissible facts proving the essential elements of her case. See *Eagle Ridge Homeowners Association v. Nikonchuk*, 21 Wn.

1 Ms. Richardson has the burden of proving by substantial evidence that the responsible  
2 official failed to consider probable, significant adverse environmental impacts. *Indian Trail*  
3 *Property Owner's Assn. v. City of Spokane*, 76 Wn. App. 430 441, 886 P.2d 209 (1994).  
4 SCC 30.61.310(3). "Significant" means "a reasonable likelihood of more than a moderate  
5 adverse impact on environmental quality." WAC 197-11-794. "Probable" means likely or  
6 reasonably likely to occur." WAC 197-11-782.

7 If PDS and Tulalip Tribes show the absence of evidence to support Ms. Richardson's  
8 appeal, Ms. Richardson must set forth specific facts showing a genuine issue of fact exists  
9 for trial.

10 The nonmoving party cannot rely on "speculation, argumentative assertions  
11 that unresolved factual issues remain, or in having its affidavits considered at  
12 face value." The nonmoving party must present more than "[u]ltimate facts" or  
13 conclusory statements to defeat summary judgment. If the plaintiff "fails to  
14 make a showing sufficient to establish the existence of an element essential  
15 to the party's case, and on which that party will bear the burden of proof at  
16 trial," summary judgment is proper.

17 *M.E. through McKasy v. City of Tacoma*, 15 Wn. App. 2d 21, 31–32, 471 P.3d 950, 956  
18 (2020), *rev. denied sub nom. M.E. through Wilson v. City of Tacoma*, 196 Wn.2d 1035, 478  
19 P.3d 90 (2021) (citations omitted). Ms. Richardson bears the burden of proof at trial and  
20 must show sufficient admissible facts to establish the essential elements of her case. In  
21 other words, she must offer sufficient admissible facts demonstrating a likely moderate or  
22 worse impact on environmental quality; conclusions without specific, admissible facts are  
23 insufficient. Appellant criticizes the threshold SEPA determination, but does not offer  
24 admissible facts demonstrating that the alleged failures will probably result in significant  
25 adverse environmental impacts.

## 26 **ALLEGED ERRORS**

### 27 **1. ADJACENT PARCEL**

28 Ms. Richardson argues the adjacent parcel that was the subject of the boundary line  
29 adjustment should have been considered in the threshold determination because Tulalip  
30 Tribes anticipates developing the adjacent parcel.<sup>4</sup> Further, she alleges the proposal's  
31 impacts on the adjacent parcel, such as elements of the on-site sewer system (septic

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App. 2d 1029, *rev. denied*, 200 Wn.2d 1002, 516 P.3d 373 (2022) (citations omitted) ("The Court of Appeals does not "consider conclusory arguments that are unsupported by citation to authority." "Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration." We recognize the Nikonchuks are appearing pro se. Nevertheless, **a pro se litigant is held to the same standard as licensed counsel.**" (Emphasis added.)).

<sup>4</sup> Ex. O.1.

1 system) and wetland buffer averaging, were not considered in the threshold determination.<sup>5</sup>  
2 The alleged error fails for two reasons.

3 First, she does not allege any probable significant adverse environmental impact resulting  
4 from this alleged failure, but only contends the alleged failure violates a state or county  
5 requirement. In addition, SEPA threshold determinations are based upon a review of the  
6 **proposal's** impacts, not just the impact on the parcel to be developed. SEPA review is not  
7 limited to the parcel to be developed. For example, required drainage reports for  
8 development applications consider both upstream and downstream off-site consequences  
9 of a proposed development.

10 Second, she does not offer any evidence of likely significant adverse environmental impacts  
11 from the alleged failure. It is not enough to argue inadequate consideration—she must  
12 demonstrate with admissible facts that the alleged inadequate consideration would make a  
13 difference.

## 14 **2. FUTURE DEVELOPMENT**

15 Ms. Richardson contends that Tulalip Tribes' plans for the adjacent parcel should have  
16 been considered in the threshold determination; to do otherwise is "piecemeal" development  
17 avoiding comprehensive environmental review that is forbidden by state law. Piecemealing  
18 is the sequential consideration of closely related projects. *Possible* future development is  
19 not closely related to this development for the purposes of a SEPA threshold determination.  
20 Closely related proposals should be discussed in the same environmental document if they:

- 21 (i) Cannot or will not proceed unless the other proposal is implemented  
22 simultaneously with it; or
- 23 (ii) Is an interdependent part of a larger proposal and depends on the  
24 larger proposal as its justification or for its implementation.

25 WAC 197-11-060(3)(b). Even if Tulalip Tribes plan to develop the adjacent property in the  
26 future, the plan does not rise to the level of a closely related project. There is no evidence  
27 that this project cannot or will not proceed unless the other proposal is implemented  
28 simultaneously. Neither is there any indication that it is an *interdependent* part of a larger  
29 proposal **or** depends on the larger proposal; both must be true to be closely related for  
30 SEPA purposes. See *Gebbers v. Okanogan County Public Utility Dist. No. 1*, 144 Wn.App.  
31 371, 384-85, 183 P.3d 324, 330 (2008), rev. denied, 165 Wn.2d 1004. Appellant did not  
32 adduce sufficient evidence in response to the motion to demonstrate any future project is

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<sup>5</sup> The notice of appeal incorrectly assumes that the threshold determination looks only at the parcel to be developed, and not at the proposed development without regard to parcels. Ex. O.1 ("The applicant erroneously contends that by splitting off the subject property from a larger parcel, the larger parcel does not need to be considered as part of this SEPA DNS determination." (p.1); ("Since development is proposed on both parcels, both parcels must be included in the application and fully analyzed prior to issuing the SEPA determination," and "This is an additional reason that both parcels must be evaluated in the SEPA analysis." (p.4)).

1 closely related as defined by law and must be considered as part of the SEPA evaluation of  
2 this project.

### 3 **3. SEPTIC SYSTEM**

4 Another alleged error is the size of the proposed septic system and that the Snohomish  
5 Health District has not yet approved a septic system design. The alleged error mistakenly  
6 assumes that the facility could be built and operated without approval of a septic system.<sup>6</sup>  
7 The development will not receive a certificate of occupancy unless and until it has a  
8 functioning septic system approved by the Health District.<sup>7</sup> For rural subdivisions, SEPA  
9 review is often performed prior to septic system permit approval. There, as here, buildings  
10 cannot be occupied without an approved septic system. Threshold SEPA determinations  
11 are not required to evaluate illegal activities.<sup>8</sup>

### 12 **4. MAINTENANCE ROAD**

13 Ms. Richardson contends that replacement of an existing travel lane for movement of  
14 livestock with a maintenance road violates the restriction on new impervious surfaces in a  
15 wetland contained in SCC 30.62A.320(1)(c)(ii) and will disrupt the hydrology of the  
16 wetlands. She assumes a maintenance road with an impervious surface violates  
17 .320(1)(c)(ii). Although the maintenance road will not necessarily be constructed with an  
18 impervious surface nor will it necessarily violate .320, she alleges a probable significant  
19 adverse impact, i.e., disruption of wetland hydrology. However, she assumes a violation of  
20 county code and demands the threshold SEPA determination evaluate the consequences of  
21 the violation. Approval of the conditional use permit requires demonstration by the applicant  
22 that compliance with county code is feasible, and compliance with county code is adequate  
23 analysis and mitigation for environmental impacts.<sup>9</sup> The responsible SEPA official is not  
24 required to assume violations of law when making a threshold determination. Further, the  
25 administrative review process by PDS and the quasi-judicial review process by the Hearing  
26 Examiner operate to require an applicant to comply with relevant regulations and  
27 requirements.

### 28 **5. MUNICIPAL WATER SUPPLY**

29 Ms. Richardson also alleges the threshold determination is inadequate because municipal  
30 water has not yet been supplied to the site, despite the city of Stanwood stating it can  
31 provide water. This alleged error fails for numerous reasons. First, the facility will not  
32 receive a certificate of occupancy without a supply of domestic water. Second, applicants

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<sup>6</sup> The proposed development is not in a municipality or an urban growth area and therefore sewer service cannot be extended to it.

<sup>7</sup> The Health District becomes a county department on January 1, 2023.

<sup>8</sup> In this case, operation of the facility without an approved septic system would be contrary to law.

<sup>9</sup> The Hearing Examiner notes that compliance with county development regulations “shall constitute adequate analysis and mitigation of the specific probable adverse environmental impacts of the development activity . . .” SCC 30.61.122 (2016). Thus, if the proposal complies with .320, it necessarily satisfies the requirements of SEPA, and probable adverse environmental impact is unlikely as a matter of law.

1 do not spend the money to construct a water line extension pursuant to a developer's  
2 agreement prior to obtaining initial development approvals. Virtually every approved  
3 development application receives SEPA review and preliminary approval prior to actual  
4 construction of the water line extension. Further, water line extensions are typically  
5 constructed in public rights of way with *de minimis* environmental impact. Absent unusual  
6 circumstances (and none are pleaded here), the threshold SEPA determination for a  
7 development does not need to account for the construction of the water line extension.

## 8 **6. TRAFFIC ANALYSIS**

9 Ms. Richardson alleges two errors relating to traffic; the traffic impact analysis did not  
10 include analysis of the intersection of 76<sup>th</sup> Ave. NW and 300<sup>th</sup> St. NW or the proposed right  
11 turn only requirement for vehicles entering the facility.<sup>10</sup> Threshold SEPA determinations  
12 generally do not account for channelization of traffic because they do not create significant  
13 adverse environmental impacts. Appellant criticizes, but neither identifies nor offers  
14 evidence of a significant, probable adverse environmental impact resulting from the alleged  
15 lack of study of an intersection.

## 16 **7. EMERGENCY SERVICES**

17 Finally, Ms. Richardson contends the threshold determination is inadequate because it did  
18 not assess the impact of the development on local emergency services. She offers no  
19 evidence that the facility's existence will degrade emergency response times.<sup>11</sup>

## 20 **CONCLUSION**

21 A party appealing a threshold SEPA determination must offer admissible proof that the  
22 alleged inadequacies will likely result in significant, adverse environmental impacts.  
23 Criticisms, assumptions, and conclusions without proof of sufficient facts do not overcome  
24 the presumption of adequacy of the SEPA determination.

25 It is therefore ORDERED:

- 26 1. Movants' motions to dismiss the SEPA appeal are granted;
- 27 2. Appellant's SEPA appeal is dismissed with prejudice;
- 28 3. Appellant's notice of appeal and response to the motion to dismiss will be  
29 considered as part of the Hearing Examiner's review of the requested conditional  
30 use permit. The open record hearing on the conditional use permit application will

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<sup>10</sup> Ms. Richardson notes that the channelization requirement will be difficult to enforce. Even if true, assumptions of illegal behavior are not the object of a threshold SEPA determination.

<sup>11</sup> PDS usually routes development proposals to local fire agencies for their comment prior to development activity approval. Fire agency responses are usually included in the Hearing Examiner's record of the land use development application.

1 continue as scheduled, but the appeal of the threshold SEPA determination will not  
2 be heard.

3 DATED this 21<sup>st</sup> day of December, 2022.

4 Peter B. Camp

5 Peter B. Camp  
6 Snohomish County Hearing Examiner  
7  
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## 9 **EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES**

10 The following paragraphs summarize the reconsideration and appeal processes. For more  
11 information about reconsideration and appeal procedures, please see chapter 30.72 SCC  
12 and the Hearing Examiner and Council Rules of Procedure.

### 13 **RECONSIDERATION OF SEPA DECISION—WHO MAY PETITION AND DEADLINE**

14 **Only a principal party** (appellant, applicant, or PDS) may request reconsideration of the  
15 **SEPA decision** by the Hearing Examiner by filing a petition for reconsideration. The  
16 petitioner for reconsideration shall mail or otherwise provide a copy of the petition for  
17 reconsideration to all parties of record on the date of filing. SCC 30.72.065.

### 18 **RECONSIDERATION—DEADLINE AND FILING**

19 A petition for reconsideration must be filed **no later than January 3, 2023**.<sup>12</sup> The petition for  
20 reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor,  
21 Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing  
22 Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) or by email to  
23 Hearing.Examiner@snoco.org. Irrespective of method of delivery, a petition for  
24 reconsideration is deemed filed when it is delivered by the close of business on the deadline  
25 or if the email is timestamped on or before the deadline. There is no fee for filing a petition  
26 for reconsideration.

### 27 **RECONSIDERATION—GROUNDS AND FORM**

28 A petition for reconsideration does not have to be in a special form but must contain the  
29 name, mailing address and daytime telephone number of the petitioner, the signature of the  
30 petitioner or of the petitioner's attorney, if any; identify the specific findings, conclusions,  
31 actions and/or conditions for which reconsideration is requested; state the relief requested;

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<sup>12</sup> The tenth day is not a business day. The deadline therefore continues to the next working day.

1 and, where applicable, identify the specific nature of any newly discovered evidence and/or  
2 changes proposed by the applicant.

3 The grounds for seeking reconsideration are limited to the following:

- 4 (a) The Hearing Examiner exceeded his jurisdiction;
- 5 (b) The Hearing Examiner failed to follow the applicable procedure in reaching his  
6 decision;
- 7 (c) The Hearing Examiner committed an error of law;
- 8 (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported  
9 by the record;
- 10 (e) New evidence is discovered which could not reasonably have been produced at the  
11 hearing and which is material to the decision; or
- 12 (f) The applicant proposed changes to the application in response to deficiencies  
13 identified in the decision.

14 Petitions for reconsideration will be processed and considered by the Hearing Examiner  
15 pursuant to the provisions of SCC 30.72.065. Please include the county file number in any  
16 correspondence regarding this case.

17 **APPEAL—SEPA DECISION**

18 The decision on the appeal of the SEPA threshold determination may be appealed by filing  
19 a land use petition in the Snohomish County Superior Court. If no party to the appeal  
20 requests reconsideration, the petition to the Superior Court **must** be filed with the Superior  
21 Court Clerk **no later than 21 days after a final decision is issued by Snohomish**  
22 **County**. The date of issuance is calculated by RCW 36.70C.040(4). If a petition for  
23 reconsideration is filed by any party to the appeal, the Superior Court action **must** be filed  
24 no later than twenty-one days after the reconsideration decision is issued. The date of  
25 issuance of any reconsideration decision is calculated by RCW 36.70C.040(4). For more  
26 information about appeals to Superior Court, including, but not limited to, required steps that  
27 must be taken to appeal this decision, please see the Revised Code of Washington,  
28 Snohomish County Code, and applicable court rules.

29 The cost of transcribing the record of proceedings, of copying photographs, video tapes,  
30 and oversized documents, and of staff time spent in copying and assembling the record and  
31 preparing the return for filing with the court shall be borne by the petitioner. SCC  
32 2.02.195(1) (b) (2013). Please include PDS file number in any correspondence regarding  
33 this case.

1 Appeals will be processed and considered by the County Council pursuant to the provisions  
2 of chapter 30.72 SCC. Please include the County file number in any correspondence  
3 regarding the case.

4 Staff distribution: Rebecca Samy, Snohomish County Planning and Development Services