

NOTICE OF APPEAL
City of Seattle Department of Transportation

Seattle Department of Transportation
SEPA Determination of Non-Significance

City of Seattle Scooter Share Program and Seattle Municipal Code
Chapter 11.46 and 15.17 Amendments

APPELLANT INFORMATION:

Appellant: Douglas B. MacDonald, 902 North 79th Street, Seattle. WA 98103.
dbmacdonal@earthlink.net

Authorized Representative: *Pro se.*

DECISION BEING APPEALED:

Issuance on December 9, 2019 of a SEPA Determination of Non-Significance.

The appellant is an interested person to the non-project Proposal for which the DNS has been issued by virtue, among of other things, being dependent for mobility on the City's sidewalks and all other elements of its right-of-way and its transit system. Because of partial visual impairment, the appellant is unable to hold a driver's license with the result (and for other reasons such as being a "senior" citizen (aged 74) that matters of safety, accessibility and convenience of the City's right-of-way are a matter of direct personal interest as well as matters of broad interest to citizens generally that the appellant has standing to raise ("stakeholder").

GROUND FOR OBJECTION TO THE DETERMINATION OF NON-SIGNIFICANCE (DNS):

Under the City's SEPA Ordinance the DNS fails to support/document a threshold determination (SMC 25.050.310) that the Proposal does not require the preparation of an Environment Impact Statement. The inadequacy of the DNS is based on the failure by SDOT to properly use the environmental checklist ("Checklist"¹) for the purposes of making a threshold determination as well as several other departures from policies and requirements of the City's SEPA Ordinance. The result is that the SEPA process conducted by SDOT fundamentally fails to meet the basic policy of

¹ Seattle Department of Transportation. "Scooter Share Program and Seattle Municipal Code Chapters 11.46 and 15.17 Amendments SEPA Checklist," December 2, 2019.

SEPA to inform decision-makers and citizens of the probable significant adverse environmental impacts of proposed actions.

1. The Proposal to which the DNS is directed fails to meet the standard established for review in the SEPA ordinance: that its environmental effects can be meaningfully evaluated. The DNS therefore reaches an invalid threshold determination.

2. The Checklist is inadequate in its failure to identify the Proposal's probable significant adverse environmental impacts (SMC 25.050.330). For that reason, the responsible official has erred in making the DNS threshold determination, which error has been furthered and compounded by disregard of important policy requirements of SEPA, namely that agencies shall to the fullest extent possible:

(i) Emphasize important environmental impacts and alternatives [alternative analysis as well as impact analysis has not been properly performed for this proposal]; and

(ii) Prepare environmental documents that are . . . supported by evidence that the necessary environmental analyses have been made. SMC 25.050.030 (B).

The error has been furthered and compounded by the responsible official's failure to take into account these SEPA policy prescriptions:

(i) The same proposal may have a significant adverse impact in one location but not in another location;

(ii) Several marginal impacts when considered together may result in significant adverse impact;

(iii) A proposal may to a significant degree. . . establish a precedent for future actions with significant effects. . . or may affect public health or safety (SMC 25.05 .330 C).

Further:

A threshold determination shall not balance whether the beneficial aspects of proposal outweigh its adverse impacts, but rather shall consider whether a proposal has any any probable significant adverse environmental impacts. (SMC 25.05.030(E)).

3. The DNS, supported by preparation of an insufficient SEPA Checklist, does not conform to the "cumulative effects policy" for SEPA review set forth in Seattle Municipal Code 25.05.670, *to wit*:

"A project or action which by itself does not create undue impacts on the environment may create undue impacts when combined with the cumulative effects of prior or simultaneous development; further it may directly induce

other developments due to causal relationship, which will adversely affect the environment.

An individual project may have an adverse impact on the environment or public facilities and services which though acceptable in isolation could not be sustained given the problem of development of subsequent projects with similar impacts.”

Cumulative effects not reviewed in the Checklist are germane to probable significant adverse environmental effects relating to the Elements of the Built Environment for “Transportation” and “Public services and utilities” (SMC 25.05.444 (A)(3), (B)(3, 4) with respect to:

(i) SDOT’s declared expectation that in the next three to five years what SDOT has characterized as “new mobility options” – including but not limited to motorized scooters or “e-scooters” that are the subject of this proposal -- will be considered for regulation as “emerging issues in the right of way.”²

(ii) The operation of the City’s right-of-way affected by the proposal from the Transportation Network Companies (*i.e.*, Uber and Lyft and potentially others) providing “ride hailing” services under permits conferred by the City;

(iii) Increased use and regulation of the right-of-way affected by the proposal by the City for facilitation and efficiency transit services financed in part by the City.

4. The Checklist improperly incorporates by reference (Paragraph 4 of the Checklist) environmental information asserted not to have been prepared by SDOT to support the proposal, *to wit*: the DNS issued by SDOT in September 2018 for the Free-Floating Bike Share Program.

5. The Checklist (Paragraph 8.1.) states that the proposal “is informed by a series of “transportation and policy initiatives” and in listing thereof includes: the Bicycle Master Plan, the Transit Master Plan, and the City Council’s Emerging Mobility Statement of Legislative Intent (SLI 35-3-A-1 [see footnote 2]). The list omits the Pedestrian Master Plan and therefore implies that the proposal has not been informed by the City’s critical policy document seeking to assure the walkability and accessibility of sidewalks and other features of the City’s pedestrian system and in particular the Pedestrian Master Plan’s emphasis on the City’s responsibility for compliance with the Americans with Disabilities Act.

6. Elements of the Environment enumerated for evaluation in the SEPA Ordinance and the prescribed Checklist have not been properly evaluated to determine the proposal’s potential for significant adverse environmental impacts. These Elements of the Environment are: “Air;” “Environmental health;” “Transportation;” and

² See Seattle Department of Transportation, “Emerging Technology and Mobility Options Operating in City Right -of-Way – Response to Statement of Legislative Intent 35-3-A-1-2019,” June 2019, 4.


"Public services and utilities" (SMC 25.05.444 (A)(2, 7) and (B)(3, 4)). Evidence will show that the proposal will have probable significant adverse impacts on Elements of the Environment.

7. There is nothing in the record that SDOT has considered impacts on SEPA's Elements of the Environment through its own studies apart from what is relied upon in the Checklist, or that SDOT consulted with other agencies to the point of informing conclusions about potential impacts of the Proposal.

With respect to the entirety of the foregoing, discovery through production of documents and responses to interrogatories are expected to be required to further develop the evidentiary record regarding the foregoing from the City.

RELIEF REQUESTED:

1. That the Hearing Examiner find that the SDOT responsible official for the DNS improperly determined that the proposal does not have a probable significant adverse environmental impact (threshold determination) and therefore SEPA requires preparation of an Environmental Impact Statement for the proposal.
2. In the alternative, that the Hearing Examiner direct SDOT to withdraw the DNS with the instruction that SDOT perform analysis of impacts sufficiently definite to allow environmental analysis for a proper threshold determination on the proposal.

Signature: 
Douglas B. MacDonald

Date: December 30, 2019

Notice of Appeal and appeal fee delivered to:

Office of Hearing Examiner. Seattle Municipal Tower, 705 5th Avenue, Suite 4000, Seattle. WA 98104.

Copy of the Notice of Appeal delivered by email to: Joel Miller joel.miller@seattle.gov and Jill Macik jill.macik@seattle.gov Seattle Dept. of Transportation.