

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of

SEATTLE MOBILITY COALITION

from a decision by the Seattle City Council
Central Staff

Hearing Examiner File:
W-23-001

**ORDER ON MOTION
TO DISMISS IN PART**

The Respondent Seattle City Council Central Staff (“City”) moved to dismiss W-23-001 in part. Appellant

Seattle Mobility Coalition (“Appellant”) responded to the motion to dismiss. The appeal challenges the February 13, 2023 Determination of Nonsignificance (“2023 DNS”) for proposed 2023 Comprehensive Plan amendments regarding transportation impact fees (“2023 Proposal”).

The Hearing Examiner has reviewed the file in this matter, including the motion documents. For purposes of this decision, all section numbers refer to the Seattle Municipal Code (“SMC” or “Code”) unless otherwise indicated.

The City moved for dismissal of two of three of the Appellant’s claims on the basis of res judicata. The City moved to dismiss Appellant’s claims (1) whether the proposal will result in likely significant environmental impacts; and (2) whether the environmental review of the proposal was piecemealed under SEPA. The City argues that the two claims are barred by res judicata on the basis of the Appellant’s appeal of a 2018 City DNS (“2018 DNS”) for an earlier version of the proposed Comprehensive Plan Amendments (“2018 Comp Plan Amendment”).

The doctrine of res judicata, or claim preclusion, prevents the same parties from relitigating a claim that was raised or could have been raised in an earlier action. *Roberson v. Perez*, 156 Wn.2d 33, 41 n. 7, 123 P.3d 844 (2005). The doctrine is intended to prevent piecemeal litigation and to ensure the finality of judgments. *Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 99, 117 P.3d 117 (2005). Res judicata applies if a subsequent action is identical to an earlier action in (1) identity of persons and parties, (2) the subject matter, (3) the cause of action, and (4) the quality of the persons for or against whom the claim is made. *Id.* Res judicata applies to quasi-judicial decisions. *Clallam County v. W. Wash. Growth Mgmt. Hearings Bd.*, 130 Wn.App. 127, 121 P.3d 764 (2005). “[T]he res judicata test is a conjunctive one requiring satisfaction of all four elements.” *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 866, 93 P.3d 108, 115 (2004). The parties do not dispute that res judicata elements (3) and (4), are met here, and focus their dispute on elements (1) and (2) – whether the subject matter and the cause of action are identical.

The Motion argues that the subject matter of the two appeals is identical because the 2023 Proposal is substantively the same as the 2018 Comp Plan Amendment “with only a few minor changes.” Motion at 8. However, the appeal challenges the 2023 DNS not the 2023 Proposal.

The State Environmental Policy Act (“SEPA”) requires reviewing agencies to make a threshold determination. See e.g. RCW 43.21C.033 and WAC 197-11-310. The City has successfully argued in past litigation that where the Examiner finds error in the threshold determination for a DNS, the Examiner cannot “remand” the DNS to the Department for additional review, but instead where error is found in a threshold determination a new threshold determination must be made (over which the Examiner has no jurisdiction unless a new appeal is filed). Accordingly, the Examiner’s 2019 Decision (which found error with the threshold determination for the 2018 DNS) required the Department to conduct new environmental review and issue a new threshold determination, which it did in the form of the 2023 DNS.

Appellants argue:

[SEPA] requires a threshold determination based on ‘actual consideration of potential environmental significance,’ using the baseline of environmental conditions at the time of the proposal under review – rather than at the time of a previous proposal. See *Lassila v. Wenatchee*, 89 Wn.2d 804, 817, 576 P.2d 54 (1978); *King Cnty. v. Friends of Sammamish Valley*, 525 P.3d 214, 235 (Wash. Ct. App. 2023). Because the City must reach a new conclusion based on new information, it would violate this public policy (and make no sense) to say that the City’s process of conducting environmental review may be litigated while the correctness of the outcome of that process is a foregone conclusion. Thus, precluding the Coalition’s claim that the DNS was clearly erroneous on this basis would be an improper use of the equitable doctrine of res judicata.

Both in briefing and at hearing the Appellant argued that the 2023 DNS is a distinct new decision based on new environmental review, and that this alone is enough to defeat the application of res judicata by showing that the subject matter is not the same with regard to an appeal of an earlier DNS. The Examiner agrees.

The City Motion to Dismiss in Part is **DENIED**.¹

Entered August 4, 2023.

 /s/Ryan Vancil
Ryan P. Vancil, Hearing Examiner

¹ As all four elements to support application of res judicata must be met, and in this case the element requiring the subject matter to be identical is not met, this decision does not reach the question of whether the cause of action is identical.

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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 **ORDER ON MOTION TO DISMISS** to each person listed below, or on the attached mailing list, in the matter of **SEATTLE MOBILITY COALITION**. Hearing Examiner File: **W-23-001** in the manner indicated.

Party	Method of Service
Appellant Legal Counsel Courtney Kaylor McCullough Hill PLLC courtney@mhseattle.com David P. Carpmann McCullough Hill PLLC dcarpmann@mhseattle.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
Department Legal Counsel Liza Anderson Seattle City Attorney's Office Liza.Anderson@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: August 4, 2023.

/s/Angela Oberhansly

Angela Oberhansly, Legal Assistant