

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

In the Matter of the Appeals of

**FRIENDS OF CHEASTY and  
PATRICIA NAUMANN**

from a SEPA determination by  
the Superintendent, Department  
of Parks and Recreation

Hearing Examiner Files:

**W-15-008**

**W-15-009**

Department Reference:  
3020881

**Introduction**

Pursuant to the State Environmental Policy Act, Chapter 43.21C RCW (SEPA), as adopted in Chapter 25.05 Seattle Municipal Code, the Superintendent of the Department of Parks and Recreation issued a Determination of Nonsignificance for a bicycle and pedestrian loop trail system in the Cheasty Greenspace. Friends of Cheasty and Patricia Naumann each appealed the environmental determination.

The appeal hearing was held before the Hearing Examiner on November 9, 10, and 13, and December 9, and 11, 2015. Parties represented at the hearing were Appellant Friends of Cheasty ("Friends"), by Ryan Vancil, attorney-at-law; Appellant Patricia Naumann, *pro se*; and the Superintendent of the Department of Parks and Recreation ("Department") by Liza Anderson, Assistant City Attorney. The record closed on January 13, 2016, following the Examiner's site visit and receipt of the parties' closing memoranda.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code ("SMC" or "Code") unless otherwise indicated. Having considered the evidence in the record and inspected the site, the Examiner enters the following findings of fact, conclusions and decision on the appeals.

**Findings of Fact**

**Site and Vicinity**

1. Cheasty Greenspace ("the Greenspace") is addressed as 2627 South Andover Street and is located on the east side of Beacon Hill. It is bordered by South Andover Street on the north, South Columbian Way on the south, the New Rainier Vista residential development on the east, and Cheasty Boulevard, a designated landmark, on the west. West of Cheasty Boulevard is the Jefferson Park golf course and residential development. The Greenspace is part of a larger greenspace that extends one and one-half miles in a north-south direction between South Bayview Street at the north and South Angeline Street at the south.

2. The Greenspace is approximately 28.5 acres in size and was transferred to the Department from the City's former Executive Services Department in 2000, along with other open space parcels, for "open space, park and recreation purposes". Exhibit 140.

3. The Greenspace as it existed in 2003 is fully described in Exhibit 42, the Vegetation Management Plan. It is one of the few areas of undeveloped forest in an otherwise urban area. The Greenspace slopes down from west to east and includes steep slopes, slide areas, wetlands, seeps and watercourses, and wildlife habitat. The forest canopy is composed primarily of deciduous tree species, including many big-leaf maple trees, with occasional mature conifers. There is a relatively intact understory of native species, but in some places, there is a significant infestation of non-native invasive species, such as English ivy and Himalayan blackberry. There are numerous social trails in the Greenspace, as well as some dump sites and evidence of encampments. It could be described as a recovering urban forest. It is part of the Department's urban forest restoration efforts. With the assistance of volunteers, significant sections of the Greenspace have been cleaned up, with encampments, dumped items, and invasive species removed, soil restored, and native species planted.

#### Proposal

4. The proposal is to construct a mountain bicycle and pedestrian loop trail system in the Greenspace. It is being put forward by a private group, which is responsible for project construction and raising most of the required funding. The Department would oversee construction of the project, which is presently in the schematic phase at approximately the 60 percent to 65 percent design level.

5. The proposed pedestrian trail would be constructed to Department standards, which call for compacting the surface and recommend a crushed rock surface for standard trail sections. Exhibit 20. The standards also address turnpikes, footbridges and railings, and include a full section on various drainage measures. Because the Department has no standards for mountain bicycle trails, those would be constructed to standards promulgated by the International Mountain Bicycle Association ("IMBA"). See Exhibit 118. No technical trail features ("TTFs") are proposed for the bicycle trail.

6. The bicycle trail is intended to be one to three feet wide and one and one-half miles long. Banking the trail would require an additional three feet in width. The pedestrian trail would be four feet wide and one and one-third miles long. Both would be soft surface trails, but for the bicycle trail, the organic layer would be scraped away to expose the mineral soil to be used as trail tread. See Exhibit 14 at 18. According to the IMBA standards, manual or mechanical compaction of the bicycle trail is important for a smooth and predictable trail and reduces trail maintenance. Vegetation along the trails would be pruned at three to eight feet in height to maintain good sight lines where the bicycle and pedestrian trails intersect.

7. The trails are intended to be primarily on grade. Bicycle trails that traverse very steep slopes would likely be located on an elevated structure supported by a timber retaining wall with pin piles and back-filled with crushed rock. See Exhibit 14 at 32. On less steep slopes, a bench cut trail would be used, which entails digging the trail, cutting the backslope above the trail to an

acceptable angle, and broadcasting all cut materials downslope from the trail. *See* Exhibit 118 at 140-143.

8. The proposed bicycle trail is to be designed for beginning riders. For that reason, and because of its small size, it is expected to attract riders primarily from the surrounding area, and no parking is proposed.

9. The goal for the proposal is to adjust the trail location to avoid trees and relocate native vegetation that is growing within the trail alignment. Where trees must be removed for the project, other trees would be planted according to the Department's policy on tree removal, Exhibit 25.

10. Friends' certified arborist and urban forester testified that the proposal would require removal of some trees and that others would die gradually due to their roots either being cut during construction, smothered by compaction during construction or through daily trail usage, or due to project-related alterations in drainage patterns. Because the declining trees would present a potential hazard to those using the trails, they would need to be removed. The arborist estimated that the proposal would result in at least a 10 percent short-term loss of total vegetative cover within the Greenspace and a long-term loss of 15 to 20 percent.

11. The Department's forest ecologist and arborist testified that tree roots could be cut for the trail without damaging them, and they can withstand limited amounts of compaction, but that grading close to a tree's dripline could cause the tree to die.

12. Several parts of the trail shown in the current schematic design, Exhibit 5, include switchbacks, usually in the combined trail segments. The bicycle trail standards note that switchbacks require a minimum six-foot-wide radius.

13. The trail would include three wetland crossings, which would be accomplished with elevated boardwalks on precast concrete or pin-pile supports to minimize the impacts to the wetlands. There was conflicting testimony as to whether the supports for the boardwalk crossings would be considered fill and thus be regulated by the US Army Corps of Engineers. However, the Checklist acknowledges that a permit may be required from the Corps. The pedestrian and bicycle trails would be combined for the crossings and would be five feet wide at those points.

14. "Fall zones" are "areas adjacent to a trail or TTF that the rider may deviate into should they fail to negotiate the trail or TTF." Exhibit 147 at 20. Testimony at hearing established that fall zones would likely be needed at the proposed trail's wetland crossings. Bicycle trail design standards for TTF fall zones state that fall zones "will be clear of potential hazards to a minimum of 3' on all sides of the TTF up to 12" height ... Hazards include but are not limited to rocks, stumps, logs, branches or sharp shrubs." Exhibit 147 at 21. There is no evidence in the record of different standards for fall zone areas adjacent to a trail.

15. The proposal is a pilot project, with the trail's environmental impacts and social use and impact to be monitored for 15 months following completion of construction.<sup>1</sup> There are monitoring criteria and an evaluation checklist, but no defined standards for determining whether or not the project is a success. *See* Exhibit 117. At the end of the pilot, the Department will determine whether the trail will remain open for bicycle use and whether to allow construction of additional enhancements, such as freeride trails and skill-building areas.

16. The applicant secured a preliminary geotechnical evaluation for the proposal (site visit and reconnaissance) in the fall of 2014. Exhibit 8 ("Stantec Report"). The four-page report addresses general site conditions, the site's geologic context, the consultant's review of LIDAR maps and available prior geotechnical work, and the general geologic hazards in the area. It concludes that the entire Greenspace is located within a Landslide Hazard/Steep Slope area and is likely within an Erosion Hazard area, with several relatively recent slides documented north of, or in the north portion of the site. The consultants determined that an acceptable route for the trail and any future cross trails could be located on the site if specific landslide hazard areas were avoided, further geotechnical analysis was done once the trail alignment was laid out, and adequate measures were in place to minimize erosion. Exhibit 8 at 3-4.

17. The Department received a geotechnical engineering report on the proposal from HWA Geosciences, Inc. ("HWA Report") in January of 2015.<sup>2</sup> Exhibit 10.<sup>3</sup> HWA evaluated the site's geologic conditions and provided preliminary technical recommendations for design and construction of the proposed trail facilities based upon the general understanding of the trail alignment at that time. The report agrees that the "entire greenspace gives the overall impression of an area that is unstable over the long term based on steepness of slopes and uneven topography, ground water seeps, and type of forest." Exhibit 10 at 3. The report notes the inclination of observed slopes and the composition of surficial soils. It identifies three areas of recent slope instability, including an area to the west of a six- to ten-foot-high soldier pile wall with tiebacks that is located along the eastern portion of the site and retains the toe of the slope within the Rainier Vista common space.<sup>4</sup> The report also addresses subsurface conditions based on examination and testing done on six hand borings taken at the site, and ground water conditions on the site.

18. At hearing, the geotechnical engineer who co-authored the HWA report explained that with the exception of a few areas at the north end of the site, he anticipated that the site would experience shallow surface instability and not a deep-seated, rotational slide.

19. The HWA Report concludes generally that the proposed trail

is feasible from a geotechnical standpoint but will require some modifications to avoid areas of observed instability and seepage. If properly designed, we do not

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<sup>1</sup> The record includes references to a three-year pilot project and references to a 15-month pilot project, which appears to be the current plan. For purposes of this decision, the length of the pilot project is immaterial.

<sup>2</sup> The report is addressed to ESA, the Department's environmental consultant for the project.

<sup>3</sup> Exhibit 10 is dated January 25, 2014, but it references the Stantec report, Exhibit 8, which is dated November 7, 2014, so the correct date for Exhibit 10 is likely January 25, 2015.

<sup>4</sup> There is also a smaller soldier pile wall near the Vista Park Entry. *See* Exhibit 5.

anticipate that construction of the proposed trail will result in increased slope instability. However, specific attention will need to be paid to the final trail alignment, grades, drainage and surfacing to limit the amount of maintenance required to maintain a functional and environmentally friendly trail system.

The report then goes on to address issues requiring attention during final design of the trail system and makes specific recommendations on drainage, mountain bike trail surfacing, trail maintenance, and structures.

20. The HWA Report's recommendations on drainage address trail sloping and permanent erosion control measures but also include measures to control seepage or runoff, including ditching or perforated pipes along the sides of trails or tight-lining runoff. The geotechnical engineer's testimony also emphasized that slope stability on the site would likely be improved if water is properly collected and dispersed away from the slope.

21. The HWA Report's recommendations on trail surfacing state that "appropriate mountain bike trail surfacing will likely vary along the alignment and will be dependent on the subsurface soils, slope conditions, seepage conditions, trail grade and the anticipated trail usage." It then lists the trail surfacing options recommended by the IMBA and states that it "is likely that some if not all of these options will need to be implemented into the trail design during the final design process." Exhibit 10 at 10. The options include compacting native soil, placing imported crushed rock surfacing on the trail, and using ditches and culverts, collection and tight-line, and regrading. Exhibit 10 at 10-11.

22. The Department received a report on wetlands and wildlife habitat on the site from an environmental consultant, ESA. See Exhibit 15. ESA performed a field investigation on December 19, 2014 and January 15, 2015, focusing on the preliminary trail alignment. The habitat assessment, completed by a "master birder," describes the habitats in detail and concludes that the forest and wetland habitats in the study area "provide substantial wildlife habitat." It lists the bird species observed during the investigation as well as those likely to inhabit the Greenspace and describes them as common residents in Puget Sound lowlands, which are more tolerant of humans, but notes that neotropical migrant birds are likely breed in the area during spring and summer.

23. Friends' master birder testified that more than two site visits were required to identify all the birds in the Greenspace, that it is most productive to visit the site outside of the winter months, and that ESA's listing of birds likely to inhabit or nest in the Greenspace was conservative. She divided the likely inhabitants into four categories: residents, those fleeing winter weather elsewhere, those using the Greenspace only for rest and nesting, and those passing through from Canada and Alaska during the spring and fall months, i.e., using the Greenspace as a travelway. She expressed many concerns about the impacts of the proposal on birds, particularly during nesting season, but stated that the greatest impact was the access that it would give to humans (and potentially dogs) to bother the birds, which could cause them to flush repeatedly and possibly leave.

24. Wetlands were identified by ESA based on conditions at the time of the investigation and classified in accordance with the Department of Ecology's Wetland Rating System. A formal wetland delineation was not within the consultant's scope of work. Although temperatures on the date of ESA's December field investigation ranged from 33 degrees to 50 degrees, temperatures during the preceding two days ranged from 18 degrees to 30+ degrees, and from 26 degrees to 37 degrees.

25. ESA identified nine wetlands and two potential wetlands and classified all of them as either category III or IV wetlands. The report notes that the "primary sources of wetland hydrology include groundwater seeping from the hillsides and precipitation." Exhibit 15 at 3. The two potential wetlands were said to warrant further investigation. ESA determined that none of the watercourses on the site meet the requirements for classification as a stream.

26. Dr. Sarah Cooke, Appellant Friends' biologist, wetland ecologist and field ecologist, who also has a degree in forestry, investigated the Greenspace in July of 2015. She found additional wetlands that she considered to be in good to very good condition, as well as two large watercourses that would likely be classified as streams and thus regulated. *See* Exhibit 36. Dr. Cooke questioned the accuracy of ESA's wetland reconnaissance because wetland delineations must be done during the growing season, and ESA's work was done following two nights with sub-freezing temperatures. She referred to an e-mail message from a senior scientist with the Corps, Exhibit 143, which states, in part:

As you are aware, the growing season can be year-round here ... and it is possible that the ground could be frozen AND it still be the growing season, but that would be the exception I believe ... Given a lot of plants would be absent or dormant and given winter id of plants can be quite problematic, doing a wetland delineation in the dead of winter would typically raise eyebrows and get scrutinized ... We would need to do a confirmation of the delineation sometime the following spring to verify the wetland boundary.

27. Using the wetlands rating sheet, Dr. Cooke reviewed the wetlands identified by ESA and determined that at least some likely merited higher wetland ratings than those assigned by ESA. She also noted the complete absence of hydrologic data for the site as it relates to wetlands. In addition, Dr. Cooke agreed with Friends' arborist that the Department had not addressed the project's likely effects on the root impact zone for trees.

28. On February 13, 2015, the project architect, HWA geotechnical engineer, HWA engineering geologist, ESA project biologist, and others conducted a schematic trail alignment walk through the Greenspace to update the trail alignment. During the walk, numerous adjustments were made to the alignment, such as moving the trail further back from the soldier pile wall in the northeast section of the Greenspace, moving an entry point away from the traditional location of a Cooper's hawk nest, and moving the trail uphill to reduce the wetland crossing at the west side of the Greenspace. *See* Exhibit 127. The resulting schematic trail alignment is reflected in Exhibit 5.

## Environmental Review

29. The Department's project manager completed the June 4, 2015 SEPA checklist for the proposal, Exhibit 2 ("Checklist"). Parts of the HWA Report and ESA report are included in the checklist under the review of impacts to earth, water, plants, and animals. Exhibit 5 was attached to the checklist.

30. The Checklist lists grading and construction permits as permits/approvals needed for the proposal, and affirms that a state NPDES permit and federal Section 404 permit may be needed.

31. The Checklist states that for the pedestrian trail, approximately 27,456 square feet of material will be cleared and 340 yards of washed engineered gravel will be installed, and for the bicycle trail, approximately 23,760 square feet of material will be cleared. The total area of clearing and excavation is stated as 1.175 acres, and the total impervious surface as 2.3 percent of the site. The Checklist also addresses construction-related erosion, stating that best management practices will be used to control it.

32. Testimony at hearing established that the Checklist's estimates on clearing and excavation did not account for all required clearing and grading, such as that required for banking the bicycle trail, bench cuts on slopes other than the steepest ones, and the radius required for numerous switchbacks in the trail.

33. Acting as the Department's SEPA responsible official, a senior planner in the Department reviewed a May 20, 2015 version of the SEPA checklist and the "graphics and additional studies attached to it" and issued an analysis of the proposal and a Determination of Nonsignificance ("DNS"). Exhibit 43. Since the proposal was not yet at the final design stage, the analysis constitutes a planning level assessment of project-related impacts. The analysis lists expected short-term construction-related impacts, such as potential soil erosion and disturbance to subsurface soils, traffic and parking, and noise. Construction traffic and parking and construction noise are addressed briefly. The analysis concludes that applicable codes and regulations provide sufficient mitigation for short term impacts.

34. The DNS analysis of long-term project impacts addresses noise, environmentally critical areas ("ECAs"), and historic resources. With respect to noise and historic resources, the analysis determines that no long-term adverse impacts are anticipated. For ECAs, which include steep slopes, potential and known slide areas, hillside seeps and wetlands, and wildlife habitat, the analysis states that

trail construction methods are also designed to minimize the disturbance of the subject ECAs and limit the potential for stormwater to adversely affect the site stability and the ECAs ... To minimize the potential for impacts to the wetland areas, the pedestrian and bicycle trails will be combined and the trail will span the wetland on a bridge or boardwalk structure to limit the disturbance of the wetlands during construction and post construction during trail usage.

No adverse ECA related impacts from the proposed construction and subsequent use are anticipated. Compliance with the City's ECA Ordinance will adequately mitigate the potential for any adverse ECA related environmental impacts associated with this project and thus no conditioning is necessary or warranted.

Exhibit 43 at 4-5.

#### Applicable Law

35. SEPA provides that a threshold determination shall be prepared "at the earliest possible point in the planning and decision making process, when the principal features of a proposal and its environmental impacts can be reasonably identified." SMC 25.05.055 B. "A proposal exists ... when an agency has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and the environmental effects *can be meaningfully evaluated*." SMC 25.05.055.B.1 (emphasis added). "The fact that proposals may require future agency approvals or environmental review shall not preclude current consideration, as long as proposed future activities are specific enough to allow some evaluation of their probable environmental impacts." SMC 25.05.055.B.1.a.

36. An agency is to make the threshold determination "based upon information reasonably sufficient to evaluate the environmental impact of the proposal." SMC 25.05.335. "A threshold determination shall ... consider whether a proposal has any probable significant adverse environmental impacts ...." SMC 25.05.330E.

37. For purposes of SEPA, "probable" is defined as "likely or reasonably likely to occur...." SMC 25.05.782. "Significant" is "a reasonable likelihood of more than a moderate adverse impact on environmental quality." SMC 25.05.794. "A proposal's effects include direct and indirect impacts caused by a proposal." SMC 25.05.060 D.

38. If the responsible official reasonably believes that a proposal is likely to have a probable significant adverse environmental impact, an environmental impact statement is normally required. SMC 25.05.330. If the responsible official determines that there will be no probable significant adverse environmental impact, a determination of nonsignificance is to be issued. SMC 25.05.340.

39. The City's SEPA Overview Policy states, in part, that "[m]any environmental concerns have been incorporated in the City's codes and development regulations. Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation" subject to some exceptions. SMC 25.05.665.

#### **Conclusions**

1. The Hearing Examiner has jurisdiction over this appeal pursuant to SMC 25.05.680. The Department's DNS is to be accorded substantial weight, and the party appealing the decision bears the burden of proving that it is "clearly erroneous". SMC 25.05.680 B.3. A decision is clearly erroneous if, although there is evidence in the record to support it, the Examiner is "left



with a definite and firm conviction that a mistake has been committed." *Moss Bellingham*, 109 Wn. App 6, 13, 31 P.3d 703 (2001)(citations omitted).

2. SEPA requires "actual consideration of environmental factors before a DNS can be issued." *Norway Hill Preservation and Protection Ass'n. v. King County*, 87 Wn.2d 267, 275, 552 P.2d 674 (1976). The record must "demonstrate that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA." *Id.* at 276 (citation omitted).

3. Appellant Friends and Appellant Naumann both argue in their written closings that the Department's SEPA analysis was premature in light of the present stage of the proposal. Appellant Friends asserts that there are no pending government approvals for the project, and both Appellants argue that at this stage, the environmental impacts of the proposal cannot be meaningfully evaluated. Neither appellant raised this issue as it is stated in their closings, and it is therefore foreclosed. Regardless, the evidence shows that the Department has a goal of allowing construction of a bicycle and pedestrian trail in the Greenspace, the principal features of the proposal have been identified, the Parks Superintendent has authorized a pilot project, and the project has been assigned a project number by the Department Planning and Development ("DPD").<sup>5</sup> The question of whether there was "information reasonably sufficient to evaluate the environmental impact of the proposal" is addressed below as part of the discussion of appeal issues related to specific elements of the environment.

4. Appellant Naumann contends that the Department lacked sufficient information to evaluate the geotechnical impacts of the proposal and related drainage and erosion impacts.<sup>6</sup> She produced numerous documents that, taken together, indicate that the Greenspace contains steep slopes, groundwater seeps, and several known slide areas, and that there have been other slides nearby. As noted, this information and more, including the composition of surficial soils and recommendations on permanent drainage and erosion control measures, was included in the HWA Report, much of which was then copied into the SEPA Checklist and relied on by the responsible official in issuing the DNS. The Report and the geotechnical engineer's testimony establish that this is a challenging site and that additional work is required before grading and construction permits could be issued. But for issuance of a threshold determination, SEPA requires only "information reasonably sufficient to evaluate the environmental impact of the proposal." SMC 25.05.330.E. The HWA Report and Stantec Report fulfill that requirement with respect to the geotechnical and related drainage and erosion impacts of the project. There is no clear error here.

5. Both Appellants assert that the Department failed to adequately analyze or mitigate the proposal's impacts on wetlands, including drainage/hydrologic impacts to wetlands. The Department's closing brief notes that both the ESA Ecologist and the Department's SEPA responsible official testified that a wetland delineation would be done before construction permit

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<sup>5</sup> The Department name has recently changed to the Department of Construction and Inspections.

<sup>6</sup> Ms. Naumann raised numerous issues in her appeal but her presentation at hearing focused on geotechnical and related erosion and drainage impacts and wetland impacts.

applications were submitted to DPD. That assurance is not included in any of the SEPA documents.

6. Citing SMC 25.09.330.B, the Department also argues that it is the ECA Code, not SEPA, that requires a wetland delineation. Parks Closing Statement at 19. In the ECA Code, SMC 25.09.330 addresses application submittal requirements for all activities that are not exempt from such requirements, and subsection B of that section does require information on the location and boundaries of wetlands and their buffers. However, the ESA Report advised, and witnesses mentioned during the hearing, that the trail proposal may be exempt from the ECA Code's requirements pursuant to SMC 25.09.045.H.f (public projects where intrusion into an ECA or buffer benefits the public). If the proposal met the criteria for such an exemption, found in SMC 23.09.045.H.1, it would be exempt from the ECA Code's application submittal requirements and wetland development standards, but subject to any "specific mitigation measures for impacts to all environmentally critical areas and their buffers before, during and after construction" that might be imposed by DPD. SMC 23.09.045.H.2. But again, the issue in this appeal is whether there was information that was reasonably sufficient for the Department to evaluate the proposal's impacts on wetlands when the DNS was issued. Without sufficient information, the Department could not know whether or not "compliance with the City's ECA Code will adequately mitigate the potential for adverse ECA-related impacts."

7. Using a wetland reconnaissance rather than a wetland delineation at this stage of the project is not fatal. But the wetland reconnaissance on which the Department relied did not provide reasonably sufficient information for the Department to evaluate the proposal's impact on wetlands. It was done in December following two nights of sub-freezing temperatures rather than during the growing season. Further, the more persuasive evidence in the record shows that the reconnaissance overlooked wetlands, erred in classifying all wetlands found on the site as category III (1 wetland) or category IV (8 wetlands), and erred in determining that none of the watercourses on the site meet stream classification requirements. There is also no review in the record of impacts to wetlands from the clearing required for fall zones associated with the three wetland boardwalk crossings or from likely falls by beginning riders. Under SEPA's procedural requirements, the impacts must be disclosed and analyzed regardless of whether the Code provides authority to mitigate them.

8. The Department also lacked sufficient information to evaluate the proposal's drainage/hydrologic impacts as they relate to wetlands. As noted, the HWA Report acknowledged long-term drainage issues related to the trails and recommended solutions to address the likely impacts on slope stability, i.e., controlling seepage and runoff and dispersing the water away from the slope, either elsewhere on the site or into the City's stormwater system. The ESA report states that the "primary sources of wetland hydrology include groundwater seeping from the hillsides and precipitation." Exhibit 15 at 3. But there is nothing in the documents reviewed by the responsible official, or in this record, that evaluates the impact to the wetlands from the alterations to the site's hydrology as a result of the proposal. The general reference in the SEPA analysis to compliance with the ECA Code is not sufficient. This is clear error.

9. Appellant Friends asserts that the proposal would have significant adverse impacts on wetlands. Dr. Cook clearly expressed this opinion, but the evidence does not demonstrate that it is necessarily correct. Until wetland impacts are analyzed more thoroughly, it cannot be determined whether or not the proposal's likely adverse impacts on wetlands would be significant.

10. Appellant Friends argues that the Department failed to adequately analyze or mitigate the proposal's impacts on wildlife and wildlife habitat. The evidence in the record shows that although ESA's bird listing was not comprehensive, it was adequate for purposes of the threshold determination. Both the Department's and Friends' experts agreed that the Greenspace provides substantial habitat for birds. Friends' expert's concerns about the impacts of the trails on wildlife, while reasonably likely, were not shown to reach the level of significance. On this record, it does not appear that there is a reasonable likelihood of more than a moderate direct adverse impact on wildlife.

11. Impacts on wildlife habitat are a different matter. As pointed out by the Department, ESA's habitat assessment assumed that the proposal would result in minimal removal of understory and no removal of the tree canopy. The Department's SEPA analysis also assumes that there will be no impacts to wetlands and thus, to wetland habitat. As discussed above, impacts to wetlands require additional evaluation. In addition, the evidence shows that the proposal will likely require considerably more clearing, including clearing of understory, for the trails than was disclosed in the SEPA documents, and that adverse impacts on trees through compaction and altered hydrology, including hydrologic impacts to wetlands, are also likely. These impacts would, in turn, affect wildlife habitat. Because there has been no analysis of this cluster of likely impacts, together with potential mitigation, it cannot be said at this point that the impacts would not be significant.

12. Appellant Friends alleges that the Department failed to consider the proposal's impacts on scenic and aesthetic values and available recreational facilities. Friends presented the testimony of one person who currently walks in the Greenspace and believes that she would no longer experience it in the same way once the trails are constructed. Each individual may experience the Greenspace differently, but there is no objective evidence that the proposal will affect scenic and aesthetic values, or that the addition of a bicycle trail will prevent the use of it for walking.

13. Appellant Friends argues that the Checklist for the proposal was incomplete and misleading, but in a DNS appeal, the issues are whether there was reasonably sufficient information to evaluate the proposal's impacts and whether there was actual consideration of environmental factors. Friends asserts that long-term erosion impacts were not adequately considered, but measures to control long-term drainage/erosion impacts are described in the HWA Report and will also be addressed under existing codes at the permit stage. Friends asserts that clearing estimates are inaccurate and that there is no analysis of the impacts of water diversion. These assertions are supported by the record and have already been addressed above. Friends alleges that potential fill material from trails and boardwalks or bridges was not considered, and that grading and excavation descriptions are inadequate in quantifying impacts. The evidence shows that this is a true statement but does not establish that these impacts would be significant even if the correct amounts had been disclosed.


14. Appellant Naumann argues that the SEPA process was affected by a conflict of interest because the SEPA responsible official is an avid mountain bicyclist, a supporter and former board member of the Evergreen Mountain Bike Alliance, and has been an advocate of opening city parks to bicycles. The Department responds that the appearance of fairness doctrine has not been found to apply to administrative decisions. That is correct, but Ms. Naumann raises the question of an actual conflict of interest on the part of the responsible official. The issue is not one within the jurisdiction of the Examiner in a SEPA appeal, however, and is not addressed.

15. The record shows that the Department did not consider all environmental factors in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA. The DNS is therefore clearly erroneous and must be reversed.

### Decision

The Director's Determination of Nonsignificance is **REVERSED**.

Entered this 26<sup>th</sup> day of January, 2016.

  
Sue A. Tanner  
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 decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is issued.

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. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

**Appellants**

Friends of Cheasty  
c/o Ryan Vancil  
Attorney-at-law  
266 Ericksen Avenue NE  
Bainbridge Island, WA 98110

Patricia Naumann  
4002 29<sup>th</sup> Avenue S  
Seattle, WA 98108

**Department Director**

Jesus S. Aguirre  
c/o Liza E. Anderson  
Assistant City Attorney  
701 Fifth Avenue, Suite 2050  
Seattle, WA 98104


**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 matter of **Friends of Cheasty and Patricia Naumann**, Hearing Examiner Files: **W-15-008 & W-15-009**, in the manner indicated.

Party	Method of Service
Friends of Cheasty c/o Ryan Vancil Vancil Law Offices, PLLC 266 Ericksen Ave NE Bainbridge Island, WA 98110 ryan@vancillaw.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
Patricia Naumann 4002 29 <sup>th</sup> Ave S Seattle, WA 98108 patnaumann@msn.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
David Graves Parks and Recreation David.Graves@seattle.gov  Liza Anderson City Attorney's Office Liza.Anderson@seattle.gov  Alicia Reise Alicia.Reise@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 26, 2016

  
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 Tiffany Ku  
 Legal Assistant