

**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

In the Matter of the Appeal of

**FREDERICA MERRILL**

from a Determination of Non-significance  
issued by the Director of Department of  
Planning and Development

Hearing Examiner File:  
**W-10-001**

**SECOND ORDER ON  
MOTIONS TO DISMISS  
AND TO CLARIFY**

The Department of Planning and Development (Department) sought an order dismissing this appeal. The Intervenor, El Centro De La Raza, filed a Consolidated Motion to Dismiss and Motion for Clarification seeking dismissal of three appeal issues and dismissal or clarification of the remaining issues. The Hearing Examiner issued an order dismissing appeal issues 1 and 2, denying the motions to dismiss appeal issue 8, and reserving ruling on the remainder of the motions to dismiss/clarify until further discovery was completed and the parties had been given an opportunity to provide additional briefing on the motions. The Appellant was given until March 26 to file a second response to the motions. No second response was filed, and the Examiner now rules on the remaining issues raised by the motions to dismiss/clarify.

SMC 25.05.680 B.2 requires that an appeal "set forth in a clear and concise manner the alleged errors in the decision." Hearing Examiner Rule (HER) 3.01 (d)(3) is similar, requiring that an appeal include "appellant's specific objections to the decision or action being appealed". "Complaints that fail to give the opposing party fair notice of the claim asserted are insufficient." *Pacific Northwest Shooting Park Ass'n. v. City of Sequim*, 158 Wn.2d 342, 352, 144 P.3d 276 (2006) citing *Dewey v. Tacoma Sch. Dist.*, 95 Wn. App. 18, 26, 974 P.2d 847 (1999). The Intervenor asks that appeal issues 3 through 7 and 9 through 13 be dismissed for failure to meet the requirement for specificity and thus, failure to give opposing parties fair notice of the basis for the appeal.

Issue 3 states that the Department erred in issuing the DNS because there is "a reasonable probability that there will be more than a moderate effect on the quality of the environment," but the Appellant has supplied no information on what impacts to the environment are reasonably probable or which elements of the environment would be affected. Issue 4 states that the Department failed to conduct "a comprehensive analysis, address cumulative impacts, or possible alternatives and mitigation measures," but no information has been provided on how the Department's analysis was not comprehensive or what probable cumulative impacts were not considered. Issue 5 alleges that the Department "failed to gather information sufficient to evaluate the probable impact of the nonproject action," but no information has been provided on what impacts or elements of the environment are being referenced.

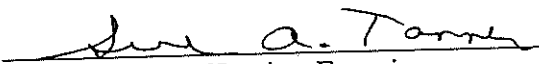
Issue 6 alleges that the Department "failed to meaningfully consider the probable impacts of future development that would be allowed by the proposed changes to the Comprehensive Plan and zoning." Although the appeal failed to specify the probable impacts being referred to, the Appellant stated in her response to the motions to dismiss that this issue is addressed to the impacts of additional density on public services. Issue 6, as clarified, is sufficiently specific to give notice of the basis for the claim.

Issue 7 states that the Department failed to consider the cumulative impact of other Comprehensive Plan amendments being proposed, especially those for adjoining Station Areas," but no information has been provided concerning what cumulative impacts to what elements of the environment are being referenced. Issue 9, states that the "DNS was not based on a record sufficient to demonstrate that actual consideration was given to the environmental impacts. The DNS is full of conclusory assertions, lacks sufficient information, and leaves unanswered a number of questions, and because of that is insufficient to meet the City's obligation under SEPA." Yet no facts have been provided concerning what type of information is missing from the Department's analysis, what conclusory assertions are being referenced, what information has been omitted," or what questions remain unanswered.

Issue 10 alleges that the "DNS was procured by misrepresentation or lack of material disclosure," but the Appellant has provided no factual basis for the allegation. Issue 11 states that the Director's decision was not based on substantial evidence," issue 12 states that the "Director's decision was arbitrary and capricious," and issue 13 states that the "Director's decision is an abuse of discretion." However, no information has been provided on what parts of the decision are deficient and in what ways.

With the exception of issue 6, the remaining issues in this appeal are all broad, conclusory allegations unsupported by any stated facts. They do not meet the requirements of SMC 25.05.680 B.2 and HER 3.01(d)(3), and they fail to give the Department and Intervenor fair notice of the claims being asserted. Therefore, appeal issues 3 through 5, 7, and 9 through 13 are **DISMISSED**. Appeal issues 6 and 8 remain for hearing.

Entered this 29<sup>th</sup> day of March, 2010.

  
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