

Benjamin S. Schroeter (pro se)

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KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

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Benjamin S Schroeter,	)
	)
Plaintiff/Petitioner	)
	)
vs.	)
	)
City of Seattle; One Reel Productions, a	)
	)
Washington nonprofit corporation	)
	)
Defendants/Respondents	)

Cause No.:

SEPA APPEAL; PETITION FOR WRITS OF  
REVIEW AND MANDAMUS AND PETITION  
FOR DECLARATORY JUDGMENT AND  
INJUNCTIVE RELIEF

CHRISTOPHER A. WASHINGTON

I. INTRODUCTION

1. Plaintiff/petitioner Benjamin S. Schroeter brings this action to obtain judicial review of the City of Seattle Parks Department's ("Parks") continued issuance of Special Event Permits for large events both public and private in Gas Works Park without first conducting the required SEPA environmental review to determine potential impacts and hazards said events may cause as is required by State Environmental Policy Act, Ch. 43.21 RCW.

2. Currently Parks is in process of issuing a permit to One Reel Productions for a large event on July 4<sup>th</sup> (The Chase Family 4<sup>th</sup>) that is currently in the "application" process; application number SO9JY129. Although it is only in the application process, this event has been rubber stamped with approval by the Parks Special Events office and will be permitted as it has every year for some time. For this event petitioner seeks an injunction precluding the issuance of any permits since SEPA has not been performed.

3. Some of these events in and around Gas Works Park, (a partially-remediated toxic waste site,) are of such size and scope that clearly the city is required to perform a SEPA environmental review to establish if said events:

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- a. Are produced safely and do not dislodge or stir up any of the existing toxics below ground that may contaminate park patrons and their pets; neighborhood residents; and the park itself.
- b. May impact park patrons' and neighborhood residents' health, safety, and comfort from loud associated noise.
- c. May impact park patrons' and neighborhood residents' health, safety, and comfort from associated traffic.
- d. May impact park patrons and neighborhood residents' health, safety, and comfort from generated pollution or waste (human or otherwise.)
- e. May impact park patrons and neighborhood residents' access to public and private areas.
- f. May impact wildlife and protected species that share the park and the waters surrounding the park.

4. No environmental review, or SEPA work has ever been done for any Special Events Permits issued for Gas Works Park despite the fact that Parks' knowledge that these large permitted events will likely cause temporary (if not permanent) significant negative impacts to the park and surrounding residents.

5. Petitioner requests alternative relief pursuant to a statutory writ of review, Ch. 7.16 RCW; a constitutional writ of review; a statutory writ of mandamus, a constitutional writ of mandamus; the Declaratory Judgment Act, Ch. 7.24 RCW; and/or SEPA.

## II. PARTIES AND DECISION

6. The petitioner is Benjamin S. Schroeter, a lifelong Seattle resident and user of Gas Works Park. Petitioner is also a holder of a Washington State fishing license and uses the park and surrounding waters for year round fishing activities.

7. Defendants/respondents are the City of Seattle and One Reel Productions.

8. *Schroeter has standing by the City's failure to conduct environmental review for One Reel's proposed use of the park.* The decisions at issue here prejudice Schroeter by interfering with his use and enjoyment of the park. Since no environmental review is being done, nor is any monitoring for the possible release of dangerous chemicals being undertaken, there is currently no way to determine if the park is safe from contaminants or if the fish in Lake Union have been killed by fireworks debris.

9. Protection of the environment are among those interests that the City must consider in performing its duties and in applying the requirements of SEPA. Judgment in favor of Schroeter would substantially eliminate or redress the prejudice caused or likely to be caused by the City's decisions because such a judgment would require adequate environmental review to be concluded before any work is done or approvals for the events are granted.

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2 **III. STATEMENT OF FACTS**

3 10. Gas Works Park is one of the City of Seattle's most famous and acclaimed parks. It is approximately 20.5 acres  
4 and sits prominently on the shores of Lake Union. Originally, it was the site of a Native American fishing village. In the early  
5 1900s, it was owned privately to produce gas from coal, among other uses. In 1962, the City of Seattle purchased the site from  
6 the Washington Natural Gas Company. Efforts in the 1970s and 1980s were made to remediate contaminated areas of the park.

7 11. In 1971, the Gas Works Park master plan was adopted. In 1973, Gas Works Park was opened to the public.

8 12. The park (or sections thereof) have been closed to the public several times over the years for continuing cleanup of  
9 the toxic wastes that permeate the site and the City entered into a Consent Decree with the Department of Ecology in 1999 (and  
10 then revised the agreement in 2005.) Despite the clean bill of health for public use, there are still toxic contaminants existing in a  
11 remediated form in the ground in the park. These contaminants could be disturbed by activities during construction and staging of  
12 events during the massive 4<sup>th</sup> of July event. There are also unremediated areas in the park that are fenced off to the public.

13 13. In 2002, the Washington State Governor's Council on Historic Preservation voted unanimously that Gas Works  
14 Park be on the State Register of Historic Places. Thousands of people use Gas Works Park each year. The park contains a  
15 playground, numerous bike and walking paths, picnic areas, and areas to view the beautiful landscapes of Lake Union and the  
16 surrounding city.

17 14. Plans to use Gas Works Park for One Reel's "Summer Nights" concert series was announced at a public meeting in  
18 Wallingford on December 22, 2005 followed by a city press release on approximately as December 23, 2005. At that time, it was  
19 announced that Gas Works Park would be the new permanent home for the concert series.

20 15. In February of 2006 a suit against Parks and One Reel was filed in King County Superior Court by Friends of Gas  
21 Works Park; this action was seeking similar relief to the relief sought here: that Parks' had failed to do any SEPA work for this  
22 activity.

23 16. On June 27<sup>th</sup> 2006 a motion for summary judgment hearing requested by Parks' was heard in the courtroom of  
24 Chief Civil Judge Dean S. Lum. Judge Lum denied Parks' motion and stated quite clearly that he believed that the issue of  
25 producing such a large event on top of a toxic waste site should entertain SEPA review before proceeding and that if the case  
26 went forward that he was inclined to rule in favor of Friends. Friends then dismissed the complaint in a settlement after the city  
27 agreed to conduct environmental review prior to issuing any permits for the concert series.

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1           17. Yet the very next year Parks issued a permit to a production company for a "secret" birthday bash for Seattle  
2 business mogul Stuart Sloan. Through the process of the issuance of the permit(s) Parks' misrepresented the size and scope of  
3 the event to local residents who became concerned with all the building and heavy machinery in the park. In the end, the  
4 footprint for the event was similar in size and scope as the proposed Summer Nights concerts and quite obviously was the exact  
5 type of activity that Judge Lum indicated should have a SEPA review.

6           18. Petitioner Schroeter could not fathom how Parks could have misunderstood Judge Lum's words at the 6/27/06  
7 hearing and launched a Public Records Request seeking documents related to events at Gas Works Park. The production of  
8 documents was hindered and delayed by the city with Schroeter eventually having to sue the city. Many documents were  
9 withheld for over a year and that case was recently settled and a penalty was paid by the city to the petitioner.

10           19. Public records produced by the city showed that special privileges were extended to certain corporate permit  
11 holders (such as One Reel) that were denied to smaller applicants including, but not limited to, allowing large machinery on the  
12 grass (the grass being part of the "cap" along with 12 to 18 inches of soil that cover the toxic stew below) and allowing untrained  
13 persons to access closed unremediated areas. These requirements that are normally in place are intended to protect the cap and  
14 are for the safety of all park visitors.

15           20. Petitioner Schroeter visited the "set-up" of the 2008 4<sup>th</sup> of July event on 07/03/08 and photographed large chunks  
16 of the sod and grass cap that had been ripped away by heavy machinery. Schroeter then fled the park as he did not want to be  
17 exposed to toxic chemicals that may have wafted out of the perforated cap.

18           21. Petitioner has made repeated requests that Parks' follow the law and do SEPA work, but Parks' continues to assert  
19 that they are exempt from the law.

20           22. To date, no environmental review has been conducted by the City of Seattle for large events that use Gas Works  
21 Park. To date, no environmental checklist has been submitted by One Reel or the Parks Department to the City of Seattle as the  
22 basis for any environmental review.

23           23. Only one lane arterials exist to access Gas Works Park currently. Gas Works has public parking for approximately  
24 121 cars of which a large portion of that will be taken over by the permit holder as a staging ground for large events. Thus, it is  
25 clear that an immense amount of parking will spill onto surrounding streets during large events. Parking and traffic congestion  
26 significantly impacts the surrounding neighborhood on the 4<sup>th</sup> of July to the point that Seattle Police must provide hundreds of  
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1 officers to direct traffic throughout the Wallingford neighborhood and beyond and they even close streets and arterials such as the  
2 Aurora Bridge.

3 24. This year, with the cancellation of the Ivar's fireworks show downtown over Elliot Bay, the police are estimating  
4 that as many as 50,000 more people may descend upon the surrounding Lake Union neighborhoods. At a Parks' Special Events  
5 Committee hearing on May 13<sup>th</sup> 2009 Seattle Police staff expressed extreme concern over the lack of any planning by Parks and  
6 One Reel to consider the impacts of the additional burdens that will come with more people in attendance for this event. The  
7 primary concerns raised were:

8 a. That the park will become overcrowded and there must be controls to monitor crowd size and prevent entry  
9 when it gets full.

10 b. That there will be serious problems with the "overflow" crowds not allowed entry that will have no toilet  
11 facilities (as One Reel only provides them inside.) This scenario will likely lead to event attendees urinating  
12 and defecating wherever they can find a place, (likely on local homeowners properties.)

13 c. That the unknown amount of extra attendees will bring traffic in some areas to a virtual standstill until long  
14 after midnight.

15 25. To date, no mitigation measures or mitigation plan for the significant impacts to be caused by the event in Gas  
16 Works Park has been adopted or required by the City.

#### 17 **IV. STATEMENT OF ERRORS COMMITTED**

18 26. Petitioner contends that the following errors were committed by the City of Seattle:

19 Based upon the above, the City has not met, among others, the following requirements of SEPA:

20 i. The purpose of SEPA is "to provide consideration of environmental factors at the earliest possible  
21 stage to allow decisions to be based on complete disclosure of environmental consequences." King County v.  
22 Boundary Review Board, 122 Wn.2d 648, 664 (1993). See also WAC 197-11-055(1) ("the SEPA process  
23 shall be integrated with the agency activities at the earliest possible time to ensure that planning decisions  
24 reflect environmental values . . .").

25 ii. SEPA requires environmental review for any "new and continuing activities (including projects and  
26 programs) entirely or partly financed, assisted, conducted, regulated, licensed, or approved by agencies."  
27 WAC 197-11-704(1).

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1 B. Petitioner has no appeal nor any plain, speedy, and adequate remedy at law within the meaning of RCW 7.16.040.

2 The Court should issue a statutory writ of review to review the exercise of those functions and to determine whether the  
3 City has exceeded its jurisdiction or acted illegally, or whether there is any other basis under RCW 7.16.120 to set aside  
4 the action at issue herein.

#### 5 **VII. PETITION FOR DECLARATORY JUDGMENT**

6 A. Petitioner incorporates by this reference all of the allegations and claims stated above.

7 B. Petitioner requests the Court, pursuant to RCW 7.24, et seq., to declare and affirm that any decisions by the City  
8 approving or enabling these events to go forward in Gas Works Park were based upon an inadequate environmental  
9 review and are inadequate and invalid under SEPA. Therefore, the Court should declare that and any decisions  
10 approving large scale events in the park are vacated until full and adequate environmental review for the events are  
11 conducted by the City.

12 C. Petitioner also request the Court to declare that any future decision or application to allow use of Gas Works Park  
13 for large scale events must be based upon full compliance with all of SEPA's requirements.

#### 14 **VIII. PETITION FOR STATUTORY WRIT OF MANDAMUS**

15 Pursuant to Ch. 7.16 RCW, Petitioner requests issuance of a statutory writ of mandamus and alleges as follows in  
16 support of its request:

17 A. Petitioner hereby incorporates all allegations and claims stated above.

18 B. Petitioner has no appeal nor any plain, speedy, and adequate remedy at law to address the City of Seattle's acts and  
19 omissions within the meaning of RCW 7.16.160 and, thus, requests this Court to grant a statutory writ of mandamus  
20 compelling the City to conduct complete and adequate environmental review pursuant to SEPA for all decisions  
21 allowing use of any part of Gas Works Park for large scale events by One Reel or any other production company.

22 C. The City is an inferior entity that has failed to perform its duties as required by law.

#### 23 **IX. PETITION FOR CONSTITUTIONAL WRIT OF MANDAMUS**

24 Pursuant to Article VI of the Washington State Constitution, Petitioner requests issuance of a constitutional writ of  
25 mandamus and alleges as follows in support of its request:

26 A. Petitioner hereby incorporates all allegations and claims stated above.

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1 B. If the Court determines, for any reason, that a statutory writ of mandamus is not available to Petitioner to enable it to  
2 obtain the relief requested, then Petitioner asks the Court to exercise its inherent authority to review the decisions and  
3 actions of the City that are at issue in this matter and to compel the City to conduct complete and adequate  
4 environmental review pursuant to SEPA for all decisions allowing use of any part of Gas Works Park for large scale  
5 events by One Reel or any other production company.

6 C. The fundamental rights of Petitioner to be free of arbitrary, capricious, and illegal actions warrant the exercise of this  
7 Court's inherent authority to review the decisions, acts and omissions of the City and issue the requested writ of  
8 mandamus.

#### 9 X. SEPA

10 A. Petitioner incorporates by reference all of the allegations and claims stated above.

11 B. RCW 43.21C.075 provides a basis for challenging whether a government action is in compliance with the  
12 substantive and procedural requirements of SEPA. Here, the City has violated SEPA by failing to require or conduct  
13 any environmental review before allowing One Reel's proposal to go forward without conducting any environmental  
14 review and without considering the need to deny or mitigate One Reel's proposal pursuant to the City's substantive  
15 authority under SEPA.

#### 16 XI. PRAYER FOR RELIEF

17 Having presented Petitions for Statutory and Constitutional Writs of Review, Statutory and Constitutional Writs of  
18 Mandamus, and Declaratory Judgment, Petitioner requests the following relief:

- 19 1. That this Court review the decisions brought before it by way of this petition;
- 20 2. That the Court command the City of Seattle to prepare an index of the record proposed to be submitted to enable the  
21 Court to review the matter, and to work cooperatively with petitioner to determine what records are necessary and  
22 appropriate to complete such judicial review;
- 23 3. That this Court determine and declare that any decision approving or enabling One Reel's 4<sup>th</sup> of July event to go  
24 forward in Gas Works Park is unlawful and invalid pursuant to the requirements of SEPA and therefore is vacated;
- 25 4. That this Court command and compel the City to abstain from any further decisions by the City approving or  
26 enabling the large scale events to take place in Gas Works Park until full and adequate environmental review compliant  
27 with all requirements of SEPA is completed;

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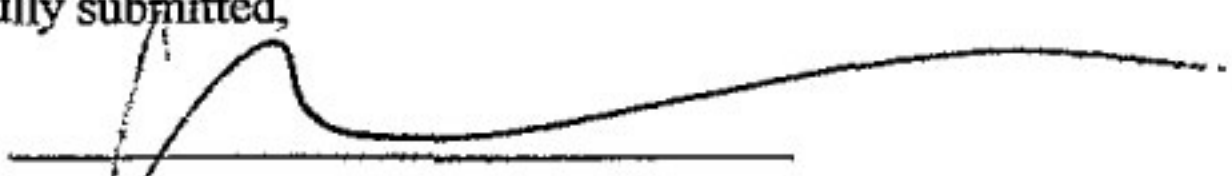
1 6. For leave to amend this petition as may be necessary and appropriate;

2 7. For an award of Petitioner's costs and disbursements incurred in bringing this action and an award of petitioner's  
3 statutory attorney's fee; and

4 8. For such other relief as the Court deems just and necessary.  
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7 Dated this 17<sup>th</sup> day of June, 2009.

8 Respectfully submitted,

9 By:   

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10 Benjamin S. Schroeter (pro se)

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