

**BEFORE THE HEARING EXAMINER**  
**City of Seattle**

In the Matter of the Appeal of	)	Hearing Examiner File:
	)	
<b>SAFE AND AFFORDABLE SEATTLE</b>	)	<b>MUP-18-019</b>
	)	
from a SEPA determination and temporary use	)	Department reference:
decision by the Director, Seattle Department of	)	Project 3030888-LU
Construction and Inspections, to allow a	)	
transitional encampment on the property	)	<b>SDCI's MOTION FOR PARTIAL</b>
<u>located at 1601 15<sup>th</sup> Avenue W</u>	)	<b>DISMISSAL</b>

The Seattle Department of Construction and Inspections (SDCI) respectfully requests that, pursuant to Hearing Examiner Rules (HER) 2.16 and 3.02, the Hearing Examiner partially dismiss the appeal by Safe and Affordable Seattle and Elizabeth A. Campbell in the above-captioned matter. Under HER 3.02, the Examiner may dismiss an appeal without a hearing if the appellant fails to state a claim for which the Examiner has jurisdiction to grant relief or if the appeal is without merit on its face. This appeal presents issues that the Examiner lacks jurisdiction to address and states claims that are without merit because they either pertain to subjects that are beyond the scope of a MUP decision relating to SEPA and the temporary use of property or pertain to whether a use has been correctly classified under the Land Use Code, which is not timely.

**Background**

The appeal is from a decision by the Director on a land use application to allow a transitional encampment interim use for up to 80 people.<sup>1</sup> The proposal includes tiny houses, tent spaces, portable toilets, a kitchen, and related accessory facilities for up to 6 months. Parking for 4 to 6 vehicles is proposed. The property is currently occupied by a transitional encampment of smaller size but is otherwise currently undeveloped. Notice of publication of MUP No. 3030888 was provided in the SDCI Land Use Information Bulletin dated July 5, 2018.

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<sup>1</sup> The Land Use Code defines a "transitional encampment" as "... a use having tents or a similar shelter, including vehicles used for shelter, that provides temporary quarters for sleeping and shelter. The use may have common food preparation, shower, or other commonly-used facilities that are separate from the sleeping shelters."

## Argument

The appeal raises six objections to the decision. As explained below, five of these objections are without merit or outside the Hearing Examiner's jurisdiction. Preliminarily, SDCI notes that none of the six objections speak to compliance with the criteria for granting a six-month temporary use permit, which is analyzed on pages 3 through 5 of SDCI's MUP decision. Because the appellant did not raise specific objections to the temporary use analysis, SDCI asks that the Examiner exclude any argument or evidence on this subject from an appeal hearing on this matter.

Argument on each numbered objection in the appeal is as follows:

1. The first objection is that the Port of Seattle ("Port") should have participated in the SEPA checklist preparation and "analysis" of the project. Whether an environmental review was required when the Port leased the property to the City is beyond the scope of the current appeal, which is limited to review of the City's environmental determination on the City project application. The Port may be the property owner, but it is not the project applicant. Seattle Municipal Code (SMC) Section 25.05.100 requires an "applicant" to submit the environmental checklist. An "applicant" is defined in part in Section 25.05.716 as "any person or entity . . . applying for a license from an agency." The definition of "license" at SMC Section 25.05.760 includes a permit application. The applicant for the project under appeal is Low Income Housing Institute (LIHI), not the Port. The Examiner has no jurisdiction to decide whether the Port should have conducted SEPA.

Even if it is determined that the Port is a party to the agency action under appeal, the SEPA determination before the Examiner is comprehensive and considers the Port lease as part of the review. The existence of the lease and the need for future amendment of the lease is disclosed in the checklist at item A.7 on page 2. The analysis of environmental impacts is done with awareness of the lease. Nothing in the SEPA regulations compels the Port to appear as a party or conduct a separate SEPA analysis. In fact, state law and the City's local SEPA regulations require a single environmental document and consolidated hearing rather than piecemealing of SEPA appeals.<sup>2</sup> The City is also properly considered the lead agency for purposes of this SEPA review.

The first objection should be dismissed.

2. The second objection is that "[t]here are multiple intentional and substantial misstatements of facts about this project . . ." in the checklist provided to SDCI. The appellant does not identify any specific facts or omissions that are incomplete, misleading, or inaccurate. An appellant in a Hearing Examiner proceeding cannot make

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<sup>2</sup> See WAC 197-11-060 (3)(b) and SMC 25.05.060.C.2 (Proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document.) See also WAC 197-11-680 and SMC Sections 25.05.680.A.1 and 23.76.022.C.1 requiring consolidation of appeals in a single hearing before one hearing officer.

unsubstantiated allegations of misstatements, "lack of candor," or omissions without identifying what items the appellant is concerned about so that SDCI, as the respondent, can address any actual issues that are identified. It is insufficient for an appellant to state a disagreement with a project proposal or the conclusions reached in a SEPA checklist and decision without providing enough information to set forth a *prima facie* case for the appeal. The second objection should be dismissed because it fails to state a claim for which relief can be granted.

3. The third objection again raises the Port's supposed role in SEPA analysis, which has been addressed in response to the first objection. The appellant continues with argument that the existing encampment on the property should already be subject to SEPA, as the area of use has exceeded SEPA thresholds. SDCI previously and correctly determined that the existing encampment is SEPA exempt. A determination of SEPA exemption is not appealable to the Examiner. SDCI has issued four-week temporary use permits per SMC 23.42.040.B to establish the existing encampment. These four-week permits are also not appealable to the Examiner per Table A for SMC 23.76.004 and 23.76.006. Whether SEPA should have been reviewed, or whether previously issued permits are validly issued, are beyond the scope of the Examiner's jurisdiction over this appeal. The third objection should be dismissed, and the appellant barred from introducing into the record any information about permitting that is separate from the current application.

4. The fourth objection states several alleged environmental "effects" on the project that are topics covered by the checklist. SDCI disagrees with the appellants' allegations of harmful effects but agrees these topics are within the scope of an appropriate appeal of the SEPA determination.

5. The fifth objection also fails to state a claim for which relief can be granted. The appellant claims the encampment use is nonconforming but does not state an issue that is within the scope of appeal of the SDCI decision in this matter. A temporary use permit may be issued under the Land Use Code to allow a use not otherwise permitted in the zone or not meeting development standards of the zone. It is irrelevant whether the shelters meet Land Use Code standards and, as noted in the introductory paragraph of SDCI's argument, the appellant has not included an appeal of any of SDCI's analysis of the criteria for issuing the temporary use permit. Whether the shelters used in the encampment meet building and fire codes is an issue beyond the scope of this SEPA appeal, as these are technical codes not within the scope of the Examiner's jurisdiction over land use matters. The fifth objection should be dismissed.

6. The sixth objection should be dismissed because it fails to state a claim for which relief can be granted, is irrelevant, and raises numerous issues that are not within the Examiner's jurisdiction while also mischaracterizing those issues and the facts. The contents of the 2017 Civil Emergency Order are entirely irrelevant. The existing encampment made no use of "interim transitional encampment" regulations and is instead established by temporary use permits that are not part of this appeal. The permitting of this encampment, notwithstanding the issuance of the Emergency Order, never relied on that order but instead simply followed the established procedures for temporary use

permits under SMC 23.42.040. The appellants' complaints about the permit process are irrelevant or not within the scope of this appeal. The sixth objection should also be dismissed.

SDCI further notes that, under the "relief requested" portion of the appeal, the Examiner has no authority to compel the Port to complete a SEPA checklist or any form of environmental review, as the Port is not an agency of City government. The request for remand of the decision is appropriate only in the sense that it can be read to request further evaluation of SDCI's compliance with SEPA, if the Examiner determines that additional review is warranted.

### **Conclusion**

For the reasons stated above, the appeal of Project No. 3030888-LU should be dismissed, except for the specific SEPA checklist items arguably addressed under the appellants fourth objection. The scope of any hearing should be limited as appropriate to address only the issues of noise, air quality, and transportation.

Entered this 16<sup>th</sup> day of August 2018.

  
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William K. Mills, Land Use Planner Supervisor  
SDCI

cc. Elizabeth A. Campbell, appellant  
Ralph Neis, for applicant Low Income Housing Institute

**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

In the Matter of the Appeal of	)	Hearing Examiner File:
	)	
<b>SAFE AND AFFORDABLE SEATTLE</b>	)	<b>MUP-18-019</b>
	)	
From a SEPA determination and temporary	)	Department reference:
use decision by the Director, Seattle	)	Project 3030888-LU
Department of Construction and Inspections,	)	
to allow a transitional encampment on the	)	<b>Certificate of Service</b>
<u>property located at 1601 15<sup>th</sup> Avenue W</u>	)	

The undersigned certifies the following:

1. I am a Land Use Planner Supervisor at Seattle Department of Construction and Inspections (SDCI), representing SDCI in the above-entitled appeal proceeding; I am over the age of majority and am able to testify as to the matters stated herein;
2. On Thursday, August 16, 2018, I delivered SDCI's Motion for Partial Dismissal in this matter, by e-mail and standard mail, to the following named parties:

Elizabeth Campbell,  
for appellant Safe and Affordable Seattle  
4027 21<sup>st</sup> Avenue West, Suite 205  
Seattle, WA 98199  
Ph: (206) 769-8459  
E-mail: [neighborhoodwarrior@gmail.com](mailto:neighborhoodwarrior@gmail.com)

Ralph Neis, for applicant Low Income Housing  
Institute  
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Ph: (206) 765-6730  
E-mail: [rneis@lihi.org](mailto:rneis@lihi.org)

Both e-mail copy and hand delivered hard copy are provided to the Office of Hearing Examiner.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 16<sup>th</sup> day of August 2018.



William K. Mills, Land Use Planner Supervisor  
SDCI

cc. Elizabeth Campbell, for appellant  
Ralph Neis, for applicant