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7 BEFORE THE HEARING EXAMINER
8 FOR THE CITY OF SEATTLE
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10 In the Matter of the Appeals of:) Hearing Examiner File No.:
11) MUP-17-001
12 END PRISON INDUSTRIAL)
13 COMPLEX, et al.)
14 From a decision by the Director,) DCI Project No. 3020845
15 Department of Construction and) APPELLANTS' RESPONSE TO
16 Inspections, on a Master Use Permit) MOTION TO CLARIFY

17
18 Appellants EPIC, et al. hereby respond to Patrick Donnelly's Motion for Clarification as
19 follows:

20 **I. RESPONSE TO MOTION TO CLARIFY**

21 The impropriety of Mr. Donnelly's Motion notwithstanding, Appellants provide the
22 following clarification for the benefit of the Hearing Examiner and the proper respondents.
23

24 Appellants quote Mr. Donnelly's requests in italics and then respond.

- 25 • *"New public notice should have been provided when the project changed during public*
26 *review and the City obtained new information." Appeal, p. 1. The Applicant requests*
27 *clarification regarding what changes and new information are alleged.*
28

29 REPSONSE TO MOTION TO CLARIFY- 1

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1 Appellants' issue refers to all changes that were made to the project and all new
2 information developed or received after the original notice was provided, without limitation. As
3 the County's architect and permitting agent, Mr. Donnelly fully understands such changes and
4 new information and, therefore, does not need clarification. After discovery is complete,
5 Appellants will be in a position to understand the nature of these changes fully and new
6 information and to present arguments about the most significant of them to the Hearing
7 Examiner. Respondents will then have an opportunity to argue that these changes and new
8 information were not significant enough to warrant new notice.
9

10 The Director's decision under review does not contain a detailed description of the project
11 and, therefore, Appellants do not currently understand precisely what project has been approved.
12 Rather, the decision suggests that the Director is approving a specific project described in
13 records that have been submitted to the Department. Appellants are seeking these records and
14 will take depositions to understand the precise project that has been approved.
15

16 Based upon inside sources informed about the project, Appellants believe that changes
17 were made to the project, including, but not limited to, building floor plans, but Appellants must
18 conduct the discovery described above to determine precisely what those changes are. For
19 example, various officials have cited differing numbers of beds and the maximum capacity for
20 the jail. Some of these changes are reflected in the various plans submitted by Mr. Donnelly as
21 the County's agent, which the architects were supposed to outline with bubbles. Mr. Donnelly is
22 therefore fully informed of the project changes that occurred during the pendency of the permit
23 processing.
24

25 Similarly, as the County's architect and permit agent, Mr. Donnelly is fully informed of
26 new information that was developed or obtained while the permit was pending, including, but not
27

1 limited to, information about the floor plans, use of the buildings, need for the waivers, and
2 information about toxins. Appellants are not able to limit their issue until after discovery is
3 complete and they have worked with their experts to identify and understand the new
4 information and its significance.

- 5 • *“The decision was arbitrary and capricious and not supported by substantial evidence.”*
6 *Appeal, p. 1. The Applicant requests clarification regarding what aspects of the decision*
7 *are alleged to be arbitrary and capricious and not supported by substantial evidence and*
8 *what Seattle Municipal Code (“SMC”) provisions, if any, form the basis for this claim.*

9
10 The appropriate standard of review is a matter of law that is not the proper subject of a
11 motion for clarification. Appellants contend that each aspect of the decision that is challenged
12 separately in the appeal also constitutes an example of an arbitrary and capricious action that is
13 not supported by substantial evidence. Appellants do not intend for this appeal issue to broaden
14 the subjects of the appeal proceeding.

- 15 • *“A new SEPA analysis should have been required due to the changes that have occurred*
16 *since the original mitigated determination of non-significance was issued, including . . .*
17 *(5) changes to the project; (6) failure of the project to conform to the mitigation required*
18 *in the MDNS; and (7) failure to comply with substantive criteria of the land use code.”*
19 *Appeal, p. 1. The Applicant requests clarification regarding (1) what changes to the*
20 *project are alleged; (2) which MDNS conditions Appellants are referring to; and (3)*
21 *which Land Use Code criteria the Appellants rely on.*

22
23 With regard to the project changes, Appellants incorporate their response to the first
24 request for clarification, above. Appellants are not prepared to limit their appeal issues on
25 MDNS conditions at this time, and instead intend to litigate all noncompliance with the MDNS

1 conditions and mitigation requirements, including but not limited to those relating to
2 contamination on and adjacent to the site.

3 Appellants' claim about noncompliance with substantive criteria of land use code refers
4 to the same criteria specifically enumerated in other issues in the notice of appeal.

- 5
- 6 • *“The mitigation imposed under SEPA was inadequate to mitigate . . . (4) violations of*
7 *law and public policy; (5) failure to conform to mitigation required by the MDNS; and*
8 *(6) failure to conform to the land use code.” Appeal, p. 1. The Applicant requests*
9 *clarification regarding: (1) what provisions of law and public policy Appellants claim*
10 *were violated; (2) which MDNS conditions Appellants are referring to; and (3) which*
11 *Land Use Code criteria the Appellants rely on.*

12

13 Appellants' claim about noncompliance with law and public policy refers to the same law
14 and policy specifically enumerated in other issues in the notice of appeal and also includes the
15 City and County's policies on youth detention and social justice analysis.

16

17 Appellants are not prepared to limit their appeal issues on MDNS conditions at this time,
18 and instead intend to litigate all noncompliance with the MDNS conditions and mitigation
19 requirements, including but not limited to those relating to cleaning up of contamination on and
20 adjacent to the site.

21

22 Appellants' claim about noncompliance with substantive criteria of land use code refers
23 to the same criteria specifically enumerated in other issues in the notice of appeal.

- 24
- 25 • *“The City and County improperly piecemealed the project in violation of SEPA.” Appeal,*
26 *p. 1. The Applicant requests clarification regarding what aspects of the project*
27 *Appellants believe were piecemealed.*

1 Appellants' piecemealing claim refers to the County's plan for apartment development on
2 the site.

- 3 • *"The City failed to acknowledge that the residential development is an integral part of*
4 *the project . . ."* Appeal, p. 1. The Applicant requests clarification identifying the
5 *residential development proposal to which Appellants refer.*

6 Appellants refer to the County's plan for apartment development on the site.

- 7 • *"The City failed to require compliance with conditions of the MDNS, which constituted*
8 *substantive criteria for the project."* Appeal, p. 1. The Applicant requests clarification
9 *regarding which MDNS conditions Appellants are referring to.*

10 Appellants are not prepared to limit their appeal issues on MDNS conditions at this time,
11 and instead intend to litigate all noncompliance with the MDNS conditions and mitigation
12 requirements, including but not limited to those relating to contamination on and adjacent to the
13 site. Appellants incorporate by reference their response to the first request for clarification.

- 14 • *"Due to undisclosed changes to the project . . . the public was not provided a reasonable*
15 *opportunity to participate . . ."* Appeal, p. 2. The Applicant requests clarification
16 *regarding what changes to the project are alleged.*

17 Appellants incorporate by reference their response to the first request for clarification.

- 18 • *"The plans and documents submitted by King County were inaccurate and inconsistent*
19 *and do not contain sufficient detail . . ."* Appeal, p. 2. The Applicant requests
20 *clarification regarding what inaccuracies, inconsistencies and omissions are alleged.*

21 Appellants incorporate by reference their response to the first request for clarification.

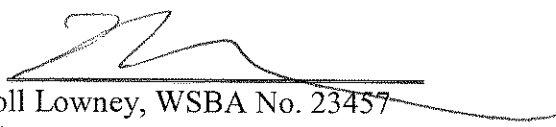
22 Appellants intend to challenge each of the inaccuracies, inconsistencies and omissions in the
23 County's submittals. They cannot further limit their appeal issue until discovery is completed,
24

1 allowing Appellants to fully understand the approved project, and until they have worked with
2 their experts to evaluate the problems with the documents and understand their significance.

3 As the County's architect and permitting agent, Mr. Donnelly is fully knowledgeable
4 about the plans and documents submitted by King County and, therefore, does not require
5 clarification. The constantly shifting and vague plans and documents are the reason that
6 Appellants cannot understand precisely what project was approved and must conduct discovery
7 on that subject. After that discovery is completed and Appellants have obtained advice from
8 experts, Appellants will be in a position to argue to the Hearing Examiner that certain problems
9 in the plans and documents require reversal of the Director's decision. Respondents at that time
10 will have the opportunity to contend that these problems are nonexistent or harmless.
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14 RESPECTFULLY SUBMITTED this 2nd day of February, 2017.
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