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8 CITY OF SEATTLE
9 OFFICE OF THE HEARING EXAMINER

10 In the Matter of the Appeal of:
11 PROTECT VOLUNTEER PARK

Hearing Examiner File No.: MUP 17-015
Dept. Reference 3024753

12 **APPLICANT'S REPLY IN SUPPORT OF**
13 **DISCOVERY REQUESTS**

14
15 **I. INTRODUCTION**

16 Seattle Art Museum ("SAM") asked Protect Volunteer Park, the appellant, to provide a
17 membership list and documents related to its organizational structure and purpose. The request
18 was straightforward and narrowly tailored to seek information that is directly relevant to a key
19 jurisdictional issue—the appellant's standing to pursue this appeal under the State Environmental
20 Policy Act, Ch. 43.21C RCW ("SEPA"). The information SAM has requested is well within the
21 scope of allowable discovery. *See* HER 2.02(1).

22 The appellant has nevertheless refused to produce the requested documents, complaining
23 that the request is too burdensome and insisting that its standing should be beyond question. A
24 properly constituted membership organization would have a membership list and documents
25 establishing its structure and mission. If the appellant truly was such an organization, it would
26 have been easier for the appellant simply to share the requested materials than it was to write the

1 response brief it submitted instead.

2 The Hearing Examiner should overrule the appellant's objection and order it to produce a
3 membership list and its organizational documents, including its statement of purpose or mission.

4 II. ARGUMENT

5 The Hearing Examiner's rules allow "appropriate discovery." HER 3.11. The rules define
6 "discovery" as documents and information that is relevant to the subject matter of the appeal as
7 well as that which is reasonably calculated to lead to relevant documents and information. HER
8 2.02(1). The Hearing Examiner may prohibit or limit discovery that is "unduly burdensome,
9 harassing, or unnecessary under the circumstances of the appeal." HER 3.11. The appellant
10 objects to SAM's requests on two grounds, neither of which has any merit.

11 A. The information SAM has requested is well-within the scope of what is discoverable.

12 First, the appellant argues that the requested materials are neither relevant nor likely to
13 lead to relevant materials. The appellant's argument rests on an incomplete standing analysis. In
14 particular, the appellant argues that its mere "interest" in SAM's project is sufficient to confer
15 standing because that is all to which SMC 23.76.022.C.2 refers. However, its interest in the
16 project is not enough in this case because the appellant has appealed the City of Seattle's SEPA
17 threshold determination. This means its standing must be evaluated in the context of SEPA and
18 the case law construing it. *See* SMC 25.05.680 (acknowledging appeals are governed by the
19 SEPA statute and administrative rules in addition to City code); Examiner's Order on Motions to
20 Dismiss/Cross Motion for Summary Judgement, *In the matter of the Appeal of Laurelhurst*
21 *Community Club and Seattle Community Council Federation*, HE File W-11-007 (2011).

22 The information SAM has requested goes directly to the appellant's standing (or lack of
23 standing) under SEPA. Washington courts have developed a two-part test for evaluating standing
24 in the SEPA context. *See Trepainer v. City of Everett*, 64 Wn. App. 380, 382, 824 P.2d 524
25 (1992). First, the interest that the petitioner is seeking to protect must be arguably within the zone
26 of interests to be protected or regulated by the statute. *Id.* Second, the petitioner must allege an

1 “‘injury in fact,’ *i.e.*, that he or she will be ‘specifically and perceptibly harmed’ by the proposed
2 action.” *Id.*

3 Where the appellant is an organization, additional considerations apply. Washington
4 courts recognize that an organization has standing in one of two ways. *See Wash. Trucking Ass’ns*
5 *v. Emp’t Sec. Dept.*, 192 Wn. App. 621, 638, 369 P.3d 170 (2016). First, an organization may
6 have individual standing to pursue claims it directly suffers. *Id.* Second, an organization may have
7 associational standing if three elements are present: (1) the organization has members who have
8 standing in their own right; (2) the interests the organization seeks to protect are germane to its
9 purpose; and (3) neither the claim nor the relief requested require participation of the
10 organization’s individual members. *Id.*

11 In its discovery request letter, SAM sought information that goes directly to the elements
12 of standing outlined above. *See* App. Response Exhibit A. The request seeks information related
13 to the appellant organization’s governance structure and purpose, the members it purports to
14 represent, and its authority to represent those members. That information is not publicly available,
15 because, as the appellant admits, it is not incorporated and registered with the state. All of the
16 information is directly relevant to its standing. The information is therefore discoverable, and the
17 appellant should be required to produce it. *See* HER 3.11, 2.01(I).

18 **B. SAM’s discovery requests are not unduly burdensome or harassing.**

19 Second, the appellant protests that SAM’s request is overly burdensome and can only be
20 intended to harass. This complaint strains credulity—the appellant would have spent less time and
21 expense simply e-mailing its membership list and organizational documents to SAM than it spent
22 researching and writing its response brief. The only situation in which it would not be easy to
23 provide the requested documents is if those documents do not exist, in which case the appellant
24 does not have standing to pursue this appeal.

25 Moreover, the request for a membership list is not harassing. If the appellant is going to
26 intimate that it “represents a broad range of business owners, property owners, and residents in

1 the vicinity of Volunteer Park,” it is only fair that the appellant be expected to identify those
2 people so that SAM can evaluate whether they and the appellant have standing under SEPA. *See*
3 Notice of Appeal at 2. By claiming it represents members and by appealing as an organization,
4 the appellant has put its membership squarely at issue. The appellant should not be allowed to
5 reap the benefit of saying it represents members while at the same refusing to provide any
6 information on those members or its authority to represent them.

7 Further, the appellant misstates the law when it cites several cases to suggest that SAM’s
8 request for a membership list is improper harassment. Washington cases do not hold associational
9 privilege creates a *per se* rule that prohibits disclosure of organizational information like
10 membership lists in the discovery context. *See Snedigar v. Hoddersen*, 114 Wn.2d 153, 786 P.2d
11 781 (1990) (recognizing discovery of organizational information may be allowed in appropriate
12 circumstances). Instead, courts may limit disclosure only where an organization *first* makes a
13 probable showing that disclosure would harm the First Amendment rights of its members. *Id.* at
14 162. If the organization makes this threshold showing, then the court must appropriately balance
15 the probability of harm against the necessity of disclosure. *Id.* at 164. Here, the appellant has not
16 made any showing or even an allegation that disclosure of its membership list is likely to cause a
17 First Amendment chilling effect or prejudice, so the Hearing Examiner need not engage in any
18 balancing. Moreover, the necessity of the requested information to evaluate standing—a
19 jurisdictional threshold—is sufficiently strong to support disclosure. If privacy is a concern
20 generally, then the Hearing Examiner has the discretion to craft an order that requires appropriate
21 confidentiality, such as a limitation on the use of disclosed information to this appeal only.
22 HER 3.11. SAM would have no objection to such a limitation. SAM’s request is appropriately
23 narrow, and the appellant should be required to provide the requested documents.

24 III. CONCLUSION

25 SAM’s discovery request is narrowly tailored and seeks relevant evidence related to the
26 appellant’s standing. If the documents exist, SAM’s request is not unduly burdensome or

1 harassing. If they do not exist, the appellant has no standing. In either case, the Hearing Examiner
2 should require the appellant to respond.

3 Further, in light of the imminent deadline for dispositive motions (May 1, 2017), SAM
4 requests that the Hearing Examiner require the appellant to produce the requested information by
5 e-mail to SAM's counsel no later than noon on April 25, 2017.

6 DATED this 21ST day of April, 2017.

7 HILLIS CLARK MARTIN & PETERSON P.S.

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