

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of
PROTECT VOLUNTEER PARK
from a decision by the Director,
Department of Construction and
Inspections, on a Master Use Permit

Hearing Examiner File:
MUP-17-015(W)
Department Reference:
3024753
DISCOVERY ORDER

The Applicant, Seattle Art Museum, sent a discovery request to the Appellants, Protect Volunteer Park, on April 10, 2017. The request seeks the Appellant's articles of incorporation; bylaws; governing documents that identify the Appellant's purpose, mission, governing structure and rules; list of all current members and their residential addresses; and documents authorizing the Appellant to file this appeal on behalf of its members. The Appellant responded on April 18, 2017 objecting to all parts of the request other than that seeking documents that identify the Appellant's purpose and mission. The Applicant filed a reply to the Appellant's response on April 21, 2017.

The Hearing Examiner Rules of Practice and Procedure ("HERs") define discovery as "the disclosure by one party to another party of documents and information that are relevant to the subject matter of an appeal, or are reasonably calculated to lead to documents and information that are relevant to the subject matter of an appeal." HER 3.11 allows appropriate discovery that is not "unduly burdensome, harassing, or unnecessary under the circumstances of the appeal."

The Applicant seeks the information requested of the Appellant in order to assess the Appellant's standing to bring this appeal. The Appellant points to SMC 23.76.022.C.2 as a very liberal standing requirement that requires only that a person be "significantly affected by or interested in" a permit. However, SEPA is a state law that is administered at the local level by local jurisdictions. *See* SMC 25.05.680. The applicable state statute, RCW 43.21C.075(4), authorizes appeals by persons "aggrieved by agency action" and is controlling.

SEPA grants an aggrieved person the right to judicial review of an agency's compliance with its terms. *Harris v. Pierce County* 84 Wn. App. 222, 232, 928 P.2d 1111 (1996) ... "A party wishing to challenge actions under SEPA must meet a two-part standing test: (1) the alleged endangered interest must fall within the zone of interests SEPA protects, and (2) the party must allege an injury in fact."

Lands Council v. Washington State Parks and Recreation Com'n., 176 Wn. App. 787, 799, 309 P.3d 734 (2013) quoting *Kucera v. State Dep't of Transp.*, 140 Wn. 2d 200, 212, 995

P.2d 63 (2000). As noted by the Appellant, *Save a Valuable Environment (SAVE) v. City of Bothell*, 889 Wn.2d 862 (1978) governs associational standing in SEPA cases and requires that a specific and perceptible injury to a member of the organization be alleged. An organization whose interest is only speculative or indirect may not maintain an action. *Id.* at 867.

Thus, the Applicant has the right to obtain the documents necessary to determine whether the Appellant has standing to bring this appeal. The documents requested by the Applicant are relevant to the subject matter of the appeal or reasonably calculated to lead to relevant documents, and the Appellant has not shown that providing them would be unduly burdensome or harassing. Most of them should be readily at hand. The Appellant objects to disclosing a list of the Appellant's current members but has not shown that doing so would harm the members' First Amendment rights. However, because this appeal concerns a museum and park frequented by people outside the immediate neighborhood and, in fact, outside the City, the residential addresses of the Appellant's members would not be relevant to the issue of the Appellant's standing.

The Applicant's motion is **GRANTED**. No later than 5:00 p.m. on April 25, 2017, the Appellant shall provide to the Applicant the documents requested in the Applicant's letter of April 10, 2017, with the exception of a list of the Appellant's members' residential addresses, which need not be provided.

Entered this 24th day of April, 2017.



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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Discovery Order** to each person listed below, or on the attached mailing list, in the matter of **Protect Volunteer Park**. Hearing Examiner File: **MUP-17-015 (W)** in the manner indicated.

Party	Method of Service
Protect Volunteer Park c/o Dave Bricklin Bricklin & Newman, LLP dave@bnd-law.com Peggy Cahill cahill@bnd-law.com Anne Bricklin miller@bnd-law.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
SDCI c/o Daniel Mitchell Assistant City Attorney Daniel.Mitchell@seattle.gov Bob Tobin Bob.Tobin@seattle.gov Debra Hernandez Debra.Hernandez@seattle.gov Ianne Santos Ianne.Santos@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

<p>Applicant c/o T. Ryan Durkan, Abigail DeWeese, Amit Ranade Hillis Clark Martin & Peterson, P.S. ryan.durkan@hcmp.com abigail.deweese@hcmp.com amit.ranade@hcmp.com</p> <p>Debbie Chewning debbie.chewning@hcmp.com</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger</p>
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Dated: April 24, 2017



Tiffany Ku
Legal Assistant