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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 MOTION FOR**
13 **SUMMARY JUDGMENT**

14 **I. INTRODUCTION AND RELIEF REQUESTED**

15 This appeal is primarily about an expansion that has a footprint of about 3,500 square
16 feet—less than many single family homes in Seattle. The expansion is necessary in part to make
17 up for space lost in the overall project, whose purpose is to undertake much-needed seismic and
18 mechanical upgrades that will keep the Seattle Asian Art Museum safe, and to create spaces the
19 Museum needs to support its functions and meet its mission. In light of the limited scope of this
20 project, the Seattle Department of Construction and Inspections (“SDCI”) properly issued a
21 Mitigated Determination of Non-significance (“MDNS”) for the project. Among other things,
22 SDCI determined in the MDNS that the review and approval process required by the Landmarks
23 Preservation Ordinance, ch. 25.12 SMC (“LPO”) will provide adequate review and mitigation for
24 potential impacts to historic landmark resources. With respect to other elements of the
25 environment, the MDNS concludes that with appropriate mitigation there are no significant
26 adverse impacts.

1 Protect Volunteer Park, the appellant, has challenged the MDNS in two respects. First, the
2 appellant contends that the State Environmental Policy Act, ch. 43.21C RCW (“SEPA”) does not
3 allow SDCI to determine that the LPO’s review process provides adequate mitigation of impacts
4 to historic landmark resources. Second, the appellant alleges that this project has probable
5 significant adverse impacts on other elements of the environment and must therefore undergo
6 more intensive environmental review.

7 Neither contention has merit. As allowed by state law, the City of Seattle’s SEPA rules
8 specifically allow exactly what SDCI did in this case. Indeed, the City’s environmental review
9 process relies on existing regulations to address impacts in a variety of areas, including housing,
10 building code issues, surface grading, energy consumption, and, of course, landmarks. The
11 appellant would have the Hearing Examiner upend the City’s entire SEPA review framework
12 because it thinks the LPO’s review process does not adequately mitigate impacts to historic
13 landmark resources. The City followed its SEPA rules in making its decision, and the City’s
14 decision must be given substantial weight. As to the second issue in this appeal, the appellant has
15 no supporting witnesses or evidence. These are exactly the kinds of shortcomings that merit
16 dismissal as a matter of law.

17 There is a third reason to dismiss this appeal. The appellant does not have standing. The
18 law requires an appellant to demonstrate an immediate and specific injury, but the appellant has
19 neither alleged nor proven one.

20 Accordingly, Seattle Art Museum (“SAM”) moves for summary judgment and dismissal.

21 II. EVIDENCE RELIED UPON

22 This motion is based on information contained in Appellant’s Notice of Appeal, on the
23 Declaration of Abigail P. DeWeese in Support of the Motion to Dismiss (“DeWeese Decl.”), on
24 the Declaration of Sam Miller in Support of the Motion to Dismiss (“Miller Decl.”), and on the
25 pleadings and documents that are a part of the Hearing Examiner file in this matter.
26

1 **III. STATEMENT OF FACTS**

2 **A. Historic Context**

3 Volunteer Park was designed by the Olmsted brothers as part of the larger boulevard and
4 park plan for Seattle. DeWeese Decl., Ex. B at 35-36. Their vision for Volunteer Park was
5 primarily implemented between 1908 and 1910, and it originally included a pergola and music
6 pavilion where the Seattle Asian Art Museum now sits. *Id.* at 18. The museum building was
7 constructed in 1933, using funds donated by Dr. Richard E. Fuller. *Id.*, Ex. C at 7. Under the
8 terms of the donation, the building must be used for museum purposes, and SAM has been the
9 building’s tenant since it opened. *Id.* at 8; Ord. 61998. John C. Olmsted reportedly opposed the
10 decision to locate the museum building in the Park, but the project went forward anyway. *Id.* at
11 38. Moreover, the museum has been expanded four times since its original construction—in 1947,
12 1953, 1955, and 1968. *Id.* at 40. Indeed, the building’s original plans outlined a future expansion
13 with a footprint approximately twice the size of the original building. Miller Decl. ¶ 4.

14 Both the building and Volunteer Park are listed on the National Register of Historic Places
15 and both are designated City landmarks under the LPO. DeWeese Decl., Exs. C, D, and E;
16 Ord. 125215. The building was designated in 1988 in a designation listing the features to be
17 preserved as:

18 The entire exterior of the building, including the roof, and the portion of the
19 landscape / site that is in accordance with the Hoggson Plan of 1933, and the
20 following interior features: the entire main floor, and the public areas of the
ground floor, including the corridors, the auditorium, the classic gallery, the
former Board of Trustees Room, and the Library.

21 *Id.*, Ex. C at 8. Volunteer Park was designated in 2011, and its designation includes the following
22 features to be preserved: “1. The Site, excluding the children’s play equipment. 2. The exteriors of
23 the buildings and structures,....” *See* Ord. 125215.

24 **B. Summary of Project**

25 The project is the result of planning and study that started more than a decade ago. *Id.*,
26 Ex. F at 5. The project involves three primary components—interior seismic and mechanical

1 upgrades, a modest expansion, and restoration of paths in the surrounding park. *Id.*, Ex. G at 5-9,
2 10-11. The original building has no modern climate control technology. *Id.* at 5-6. Hollow clay
3 tiles, which would crumble in a significant earthquake, comprise its interior gallery walls. *Id.* The
4 proposed seismic and mechanical upgrades are necessary to ensure the building is safe for people
5 and art. *Id.* The expansion is in part necessary to replace space lost to the new mechanical
6 equipment. *Id.* at 6. The expansion will also accommodate adequate art storage space, dedicated
7 education and conservation spaces, and a new gallery. *Id.* In total, the expansion has a footprint of
8 about 3,500 square feet. *Id.*, Exs. G at 13, A at 8. The proposed park-path restoration will enhance
9 about 16,000 square feet of paths in the surrounding park, making it more accessible to the
10 general public. *Id.*, Ex. G at 13.

11 **C. Entitlements Process**

12 The project's entitlement process involves a number of components. The project requires a
13 Type II Master Use Permit ("MUP") for SEPA review because the building is in a single-family
14 zone and the expansion contains more than 4,000 square feet of non-residential floor area. *Id.*,
15 Ex. A at 3; *see also* SDCI DR 29-2015.¹ The project requires a land use code amendment to
16 clarify that the expansion is allowed in the zone. DeWeese Decl. Ex. A at 2; SMC 23.44.022.A;
17 *but see* SMC 23.42.118 (allowing expansion of non-conforming landmark structures). On
18 October 10, 2016, the City accepted SAM's MUP application and SEPA checklist. DeWeese
19 Decl., Exs. H, A at 3. The SEPA checklist includes analysis of the environmental impacts of the
20 project including the non-project code amendment. *Id.*, Ex. I. On November 3, 2016, the City
21 gave notice of the application in the Land Use Information Bulletin. *Id.*, Ex. J. On December 15,
22 2016, the City held a public meeting to collect public comments on the MUP application. *Id.*, Ex.
23 A at 3.

24 Public interest and comment on the project has been considerable. *Id.* During the MUP
25

26 ¹ Note that a single family residential structure of the size proposed for the expansion would be considered SEPA
exempt under the City's applicable Director's Rule.

1 review process, SDCI requested additional information from SAM on traffic, historic, tree, view,
2 and construction impacts in light of public comments. *Id.*, Ex. K. SAM provided responsive
3 information as well as additional information on light and glare impacts in updated SEPA
4 checklists (dated January 13, 2017 and January 31, 2017) and associated consultant studies. *Id.*,
5 Ex. A at 3. After evaluating the scope of the project, the information in the final checklist,
6 consultant studies, public comments, and applicable land use code provisions, SDCI issued its
7 MDNS decision on March 16, 2017. *Id.*

8 With regard to impacts on historic landmark resources, the MDNS notes that “potential
9 significant adverse impacts have been identified with regard to the proposed alternations to the
10 designated features of the landmark.” *Id.*, Ex. A at 8. The decision goes on to recognize that the
11 Landmarks Preservation Board (the “Landmarks Board”) must review and approve a Certificate
12 of Approval for alterations to the building and park consistent with the requirements of the LPO.
13 The MDNS also explains that the Landmarks Board’s review and approval process under the LPO
14 (which could include the imposition of conditions) constitutes compliance with the City’s SEPA
15 policies on historic preservation and mitigation of significant impacts. *Id.*

16 **D. Status of Landmarks Process**

17 SAM engaged the Landmarks Board on this project starting in May 2016, before SAM
18 submitted the MUP application at issue here. Miller Decl. ¶ 2. SAM formally applied for a
19 Certificate of Approval on September 29, 2016. *Id.* ¶ 3. To date, SAM has briefed the full
20 Landmarks Board or its Architectural Review Committee on the project’s design development on
21 seven occasions, and it has made substantial changes in the design in response to feedback. *Id.*;
22 *see also*, DeWeese Decl., Ex. G at 11. The Landmarks Board’s review process is ongoing; it last
23 considered this project at its meeting on April 19, 2017. *Id.* Miller Decl. ¶ 2.

24 **IV. STATEMENT OF ISSUES**

25 1. SEPA allows cities to determine that the review and mitigation process imposed by
26 specific local laws is adequate review and mitigation for SEPA purposes so long as the local

1 jurisdiction conditions approval on any mitigation imposed by such process. The LPO review
2 process ensures compliance with the City's SEPA policy regarding impacts to historic landmark
3 resources, and the MDNS is conditioned on compliance with the LPO. Should the Hearing
4 Examiner dismiss this appeal because SDCI's determination that the LPO review process is
5 adequate is consistent with SEPA and the City's code?

6 2. Summary judgment and dismissal are appropriate when the party with the burden
7 of proof has no evidence to support their allegations. The appellant has no evidence to support its
8 generalized allegations of significant adverse impacts to other elements of the environment.
9 Should the Hearing Examiner dismiss those allegations on summary judgment?

10 3. An appellant has no standing unless it can demonstrate an immediate and concrete
11 injury to itself or to its members. The appellant in this case has not demonstrated an immediate
12 and concrete injury to itself or to any of its alleged members. Should the Hearing Examiner
13 dismiss this appeal for a lack of standing?

14 15 **V. STANDARD OF REVIEW**

16 The Hearing Examiner Rules require the Hearing Examiner to accord "deference or other
17 presumption to the decision being appealed as directed by applicable law." HER 3.17(a). Because
18 this is an appeal of a SEPA threshold determination, SEPA is the applicable law. In accordance
19 with SEPA, the City requires the Hearing Examiner to accord substantial weight to its SEPA
20 decisions. SMC 23.76.022.C.7; *see also* WAC 197-11-680(3)(a)(viii).

21 To overcome this substantial weight, an appellant must prove that the City's decision is
22 "clearly erroneous." *Brown v. City of Tacoma*, 30 Wn. App. 762, 637 P.2d 1005 (1981); *see also*
23 HER 3.17(b) ("the appellant must show by the applicable standard of proof that the Department's
24 decision or action does not comply with the law authorizing the decision or action."). A decision
25 is clearly erroneous only if the Hearing Examiner is left with a definite and firm conviction that a
26 mistake has been made. *Moss v. City of Bellingham*, 109 Wn. App. 6, 13, 31 P.3d 703 (2001)

1 (citations omitted).

2 In this appeal, the City issued an MDNS after careful review of SAM's project application
3 and environmental checklist. The MDNS decision is entitled to substantial weight, and the
4 appellant has the burden of showing that it was a clearly erroneous decision. This requires proof
5 sufficient to leave the Hearing Examiner with a definite and firm conviction that a mistake has
6 been made. For the reasons discussed below, the appellant will not be able to meet its burden.

7 VI. AUTHORITY AND ARGUMENT

8 "An appeal may be dismissed without a hearing if the Hearing Examiner determines that it
9 fails to state a claim for which the Hearing Examiner has jurisdiction to grant relief or is without
10 merit on its face, frivolous, or brought merely to secure delay." HER 3.02. If a motion seeking
11 dismissal under this rule involves matters outside the pleadings, the Hearing Examiner uses the
12 framework established for summary judgment under the Washington Rules of Civil Procedure. *In*
13 *re York Wong, et al., Save Our Square, et al.*, MUP-15-019 (Seattle Hearing Examiner September
14 22, 2015) (Order on Motions and Cross Motions for Partial Summary Judgment/Dismissal) at 1.
15 Summary judgment is appropriate when there is no genuine issue of material fact and the moving
16 party is entitled to judgment as a matter of law. CR 56(c); *KS Tacoma Holdings, LLC v. Shoreline*
17 *Hearings Bd.*, 166 Wn. App. 117, 125, 272 P.3d 876 (2012).

18 This case should be dismissed on summary judgment for three reasons. First, both SEPA
19 and the City's code provide that the Landmarks Board's review and approval process under the
20 LPO is adequate environmental review and mitigation of the project's impact to historic
21 landmarks. Second, the appellant has no evidence to support the generalized allegations in
22 paragraph 7 of the Notice of Appeal. Third and ultimately, the appellant does not have standing.

23 A. The City's code and SEPA allow SDCI to determine that the LPO's review and 24 approval process provides adequate environmental review and mitigation.

25 Under SEPA, a lead agency must issue a determination of non-significance when it can
26 attach conditions to mitigate identified probable significant adverse impacts to non-significant

1 levels. SMC 25.05.340.C; *see also* WAC 197-11-350(3); RCW 43.21C.031. This type of
2 threshold determination is “conducive to efficient, cooperative reduction or avoidance of adverse
3 environmental impacts.” *Moss*, 109 Wn. App. at 21 (citing *Anderson v. Pierce County*, 86 Wn.
4 App. 290, 936 P.2d 432 (1997)). The appellant’s primary argument is that SDCI cannot determine
5 that the Landmarks Board’s review process under the LPO will constitute adequate review and
6 mitigation for purposes of making its threshold determination.

7 **1. The City has determined that the LPO provides adequate review and**
8 **mitigation of impacts to historic landmark resources.**

9 The appellant’s argument fails as a matter of law. SEPA specifically authorizes GMA-
10 regulated cities to “determine that the requirements for environmental analysis, protection, and
11 mitigation measures... in other applicable local, state, or federal laws or rules, provide adequate
12 analysis of and mitigation for some or all of the specific adverse environmental impacts of the
13 project.” *See* RCW 43.21C.240; WAC 197-11-158. The City has exercised this SEPA authority in
14 deciding to rely on existing specific regulations to identify impacts and require mitigation:

15 If, during project review, the City as lead agency determines that the
16 requirements for environmental analysis, protection, and mitigation measures
17 in the City’s development regulations, or in other applicable local, state or
18 federal laws or rules, provide adequate analysis of and mitigation for the
19 specific adverse environmental impacts of the project action under RCW
20 43.21C.240, the City as lead agency *shall not* impose additional mitigation
21 under this chapter.

22 SMC 25.05.660 (emphasis added). Further, where the City has adopted regulations “to address an
23 environmental impact, *it shall be presumed* that such regulations are adequate to achieve
24 sufficient mitigation subject to [exceptions and limitations].” SMC 25.05.665.D (emphasis
25 added).² In accordance with City code and SEPA, the City determined that the Landmarks
26 Board’s review under the LPO is adequate SEPA review and mitigation.

The City’s SEPA policies recognize that “[h]istoric buildings are protected by the
Landmarks Preservation Ordinance, as administered by the Landmarks Preservation Board.”

² The City’s code identifies seven exceptions and limitations. *See* SMC 25.05.665.D1 – D7. None apply here.

1 SMC 25.05.675.H.1.c. The SEPA policies explain that, for “projects involving structures or sites
2 which have been designated as historic landmarks, compliance with the Landmarks Preservation
3 Ordinance shall constitute compliance with the [City’s policy of protecting historic sites and
4 structures].” SMC 25.05.675.H.2.b. Consistent with the City’s SEPA policies, the LPO’s stated
5 purpose is to protect, enhance, and perpetuate landmark sites that reflect the City of Seattle’s
6 historic heritage. SMC 25.12.020.B. The LPO thus requires an applicant to obtain a certificate of
7 approval from the Landmarks Board before making “alterations or significant changes to specific
8 features or characteristics” that have been identified in a landmarks designation. SMC 25.12.670.
9 The LPO requires applicants to submit detailed site plans and drawings depicting exactly how a
10 proposed project will affect designated landmark features. SMC 25.12.680.2. In reviewing the
11 proposal, the Landmarks Board considers five factors including, among others, the need for the
12 project, reasonable alternatives, and the extent to which the change would adversely affect
13 features specified in the landmark designation. SMC 25.12.750.³ What follows is an iterative
14 process that culminates in one of three outcomes: issuance of a certificate of approval, denial of a
15 certificate of approval, or issuance of a certificate of approval with conditions intended to address
16 any remaining concerns the Landmarks Board has about a project’s impact on designated
17 landmark features. *See* SMC 25.12.730.

18 Further, because SDCI has relied on a more specific local law in making its threshold
19 determination, it “*shall not* impose additional mitigation.” SMC 25.05.660 (emphasis added); *see*
20 *also* WAC 197-11-158(5). The specific local law itself is presumed to be adequate mitigation. *See*
21 SMC 25.05.665.D. This is precisely the kind of efficient review framework that SEPA
22 contemplates.

23 **2. SDCI properly deferred to the Landmarks Board’s review under the LPO.**

24 The MDNS in this appeal properly relies on the Landmarks Board’s review under the LPO

25 _____
26 ³ The Landmarks Board will also consider the Secretary of the Interior’s Standards for Rehabilitation and
Guidelines for Rehabilitating Historic Buildings. *See* Landmarks Board Rules, ¶ 18 (last amended
March 4, 1987).

1 as adequate review and mitigation of potential impacts to historic landmark resources. SEPA rules
2 allow this type of determination if:

- 3 1. The city has reviewed the project's environmental checklist and other
4 information about the project;
- 5 2. The city identifies specific probable adverse impacts and determines that
6 the impacts have been adequately addressed in development regulations
7 or other local state or federal rules or laws by avoiding or mitigating them;
8 and
- 9 3. The city must condition approval of the project on compliance with the
10 other local law or with mitigation imposed by the other local law

11 *See* WAC 197-11-158(2)⁴. The MDNS satisfies all three relevant conditions. First, as stated in the
12 MDNS, SDCI evaluated SAM's environmental checklist. *See* DeWeese Decl., Ex. A at 3. Second,
13 the MDNS identified the potential for adverse impacts to landmark resources, and the City
14 determined that the LPO adequately addresses such impacts by avoiding them or requiring
15 mitigation. Third, the MDNS conditions SAM's project on complying with the LPO by
16 participating in Landmarks Board review and obtaining a certificate of approval. This is what
17 SEPA allows.

18 **3. SEPA and the City's code allow SDCI to issue an MDNS before completion
19 of the Landmarks Board's review process.**

20 In some sense, the appellant appears to suggest that the MDNS cannot issue until SDCI
21 knows with certainty the result of the LPO's review process. This argument contradicts the
22 Hearing Examiner's precedent in prior analogous cases. In *Save Our Square*, the Hearing
23 Examiner affirmed a threshold determination involving the demolition of a historic structure in
24 Pioneer Square. *See* MUP-15-019 (February 24, 2016) (Findings and Decision). SDCI issued its
25 threshold determination in June 2015. *Id.* (Findings ¶ 22). With respect to impacts on historic
26 landmark resources, the decision stated: "Given the review by the City's designated special

⁴ The city is also required to place a specific statement in its threshold determination if *all* impacts are addressed by other applicable laws, but that requirement is not applicable here. *See* WAC 197-11-158(2)(c).

1 review Board, no further mitigation historic preservation (sic) is warranted.” *Id.* The Pioneer
2 Square Preservation Board is the special review board charged with ensuring that development in
3 Pioneer Square is compatible with the historic character of the neighborhood. *Id.* (Findings ¶ 11,
4 Ex. 9). The Pioneer Square Board completed its review process about one month after SDCI
5 issued its threshold determination. *Id.* (Findings ¶ 19). The Hearing Examiner nevertheless
6 affirmed SDCI’s reliance on the Pioneer Square Board’s review process as adequate SEPA review
7 and mitigation:

8 [T]he SEPA decision, which relied on the Board’s review and the issuance of
9 the Certificate of Approval, and made those a condition of approval, was not
10 shown to be in error for relying on the Special District Review process to
identify and address impacts to historic buildings.

11 *Id.* (Conclusions ¶ 4). There is no logical reason why SDCI’s deference to the pending Landmarks
12 Board decision under the LPO should lead to a different result than SDCI’s deference to the
13 Pioneer Square Board’s then-pending decision in *Save Our Square*.

14 The Hearing Examiner should affirm SDCI’s determination that the Landmarks Board’s
15 review under the LPO constitutes adequate environmental review and mitigation of the project’s
16 impacts to historic landmark resources because that determination is entirely consistent the City’s
17 environmental review policies, with SEPA, and with the Hearing Examiner’s own precedent in
18 analogous circumstances.

19 **B. The appellant has no evidence to support the allegations in paragraph 7 of the Notice
of Appeal.**

20 The issues presented in paragraph 7 of the Notice of Appeal should also be dismissed. In a
21 summary judgment motion, the moving party bears the initial burden of showing the absence of
22 an issue of material fact. *See LaPlante v. State*, 85 Wn.2d 154, 158, 531 P.2d 299 (1975). The
23 moving party may meet this burden by pointing out “an absence of evidence to support the
24 nonmoving party’s case.” *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225 n.1, 770 P.2d 182
25 (1989). The inquiry then shifts to the party with the burden of proof at trial. *Id.* at 225. If that
26 party ““fails to make a showing sufficient to establish the existence of an element essential to that

1 party's case, and on which that party will bear the burden of proof at trial,' then the trial court
2 should grant the motion." *Id.* at 225. The non-moving party cannot rely on the allegations in its
3 pleadings; it must produce actual evidence that would be admissible at trial. *Id.* at 225-26.

4 The Hearing Examiner should dismiss the generalized allegation in paragraph 7 because
5 the appellant has no evidence to support it. During the pre-hearing conference, the appellant
6 admitted it was "still working on" identifying witnesses and had not really contemplated calling
7 any. When pressed, the appellant admitted that the real purpose of paragraph 7 is simply to leave
8 open the option of continuing this appeal if it does not prevail on its challenge to the City's SEPA
9 framework. By the appellant's own admissions, Paragraph 7 is baseless and should be dismissed.

10 **C. This appeal should be dismissed as the appellant lacks standing.**

11 This appeal should also be dismissed because the appellant has not demonstrated standing.
12 Standing is a jurisdictional requirement. *See International Ass'n of Firefighters, Local 1789 v.*
13 *Spokane Airports*, 146 Wn.2d 207, 188 n.3, 45 P.3d 186 (2002). The appellant has appealed a
14 SEPA threshold determination, so it must do more than have a mere "interest" in the underlying
15 project as might otherwise be allowed by SMC 23.76.022.C.2. The appellant's standing must be
16 evaluated in the context of SEPA and case law construing it. *See SMC 25.05.680* (acknowledging
17 appeals are governed by the SEPA statute and administrative rules in addition to City code); *In re*
18 *Laurelhurst Community Club*, HE File W-11-007 (2011) (Order on Motions to Dismiss/Cross
19 Motion for Summary Judgement).

20 Washington courts have developed a two-part test for evaluating standing in the SEPA
21 context. *See Trepainer v. City of Everett*, 64 Wn. App. 380, 382, 824 P.2d 524 (1992). First, the
22 interest the appellant seeks to protect must be arguably within the zone of interests to be protected
23 or regulated by the statute. *Id.* Second, the appellant must allege an "injury in fact," *i.e.*, that he or
24 she will be 'specifically and perceptibly harmed' by the proposed action." *Id.*

25 With regard to the second prong, if an appellant alleges only a "threatened injury, as
26 opposed to an existing injury", it must show "an immediate, concrete and specific injury." *Id.* at

1 382. If the injury is merely “conjectural or hypothetical, there can be no standing.” *Id.* Further,
2 general public policy opinions and the “abstract interests of the general public” are not sufficient
3 to confer standing. *Chelan County v. Nykreim*, 146 Wn.2d 904, 935, 52 P.3d 1 (2002); *see also*
4 *Thompson v. City of Mercer Island*, 193 Wn. App. 653, 663-64, 375 P.3d 681 (2016). In *Kucera*
5 *v. State Dept. of Transp.*, the Supreme Court held that there was standing because the appellants
6 complained of property impacts to bulkheads, landscaping, and other structures on their
7 properties. 140 Wn.2d 200, 995 P.2d 63 (2000); *see also Magnolia Neighborhood Planning*
8 *Council v. City of Seattle*, 155 Wn. App. 305, 312, 230 P.3d 190 (2010) (appellant neighbors to
9 proposal alleged property impacts); *Anderson*, 86 Wn. App. 290, 300, 936 P.2d 432 (1992)
10 (appellant included adjacent property owner who alleged property impacts from insufficient storm
11 water runoff control). In contrast, subjective statements of concern like an interest in impacts to
12 aesthetics and the built environment are insufficient to confer standing. *See KS Tacoma Holdings*,
13 166 Wn. App. at 133.

14 Further, where an organization is the appellant, Washington courts have recognized three
15 additional requirements: (1) the organization has members who have standing in their own right;
16 (2) the interests the organization seeks to protect are germane to its purpose; and (3) neither the
17 claim nor the relief require the participation of the organization’s individual members. *Wash.*
18 *Trucking Ass’ns v. Emp’t Sec. Dept.*, 192 Wn. App. 621, 639, 369 P.3d 170 (2016). The first two
19 elements are constitutional, and the third prong is jurisprudential. *Id.*

20 The appellant fails to meet the standing test because it has offered no substantive facts
21 showing that it has members who will suffer a cognizable injury as a result of the MDNS at issue.
22 The appellant only alleges “[t]he decision significantly and adversely affects the appellant and its
23 members’ interests in maintaining the landmark character of Volunteer Park.” That bald assertion
24 is not sufficient. The appellant must present affirmative evidence that its members will be
25 specifically injured by the MDNS. *Anderson*, 86 Wn. App. at 299. The appellant has not done so,
26 and, as a result, the Hearing Examiner should dismiss for lack of standing.

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VII. CONCLUSION

The appellant's primary complaint—that the City cannot determine that the Landmarks Board's review under the LPO is adequate review and mitigation under SEPA—is contrary to the City's code and state law. The appellant also has no evidence to support the generalized allegations it has made in paragraph 7 of its Notice of Appeal, and, ultimately, it has no standing to pursue this appeal.

Accordingly, the Hearing Examiner should dismiss this appeal on summary judgment.

DATED this 1st day of May, 2017.

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By 

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