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5 BEFORE THE HEARING EXAMINER
6 CITY OF SEATTLE

7 In the Matter of the Appeal of:) Hearing Examiner File: **MUP-17-015**
8)
9 PROTECT VOLUNTEER PARK,)
10) Department Reference: 3024753
11 of a Determination of Non-Significance)
12 Certificate of Approval issued by the) SDCI'S REPLY IN SUPPORT OF MOTION
13 Department of Construction and Inspections) FOR SUMMARY JUDGMENT
14 For Construction in Volunteer Park)
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I. INTRODUCTION

The hearing examiner should dismiss this appeal. The Seattle Department of Construction and Inspections ("SDCI") appropriately issued a Mitigated Determination of Non-Significance ("MDNS"). SDCI conditioned the proposal in a way that reduced the impacts of the proposal below the significance threshold as determined by SDCI, resulting in a MDNS rather than a Determination of Significance ("DS").¹

The project proposes alterations to the Seattle Asian Art Museum as well as the grounds of the Museum in Volunteer Park, both designated landmarks. SDCI identified the potential for significant adverse impacts to these historic resources and conditioned the issuance of the Master Use Permit ("MUP") on compliance with the Landmark Preservation Ordinance ("LPO"), in accordance with Seattle's longstanding environmental policy for historic preservation.² SDCI

¹ See Richard L. Settle's *Washington State Env't'l Policy*, Section 13.01[4], p. 13-36.

² SMC 25.05.675.H.2

1 correctly presumed that the historic preservation regulations adopted to address environmental
2 impacts to historic landmark resources are adequate to achieve sufficient mitigation.³ Because
3 SDCI conditioned the proposal to include mitigation measures presumed to adequately mitigate
4 the impacts to historic resources, SDCI properly issued a MDNS.⁴

5
6 Regarding the other impacts asserted in paragraph 7 of Protect Volunteer Park's
7 ("Appellant's") Notice of Appeal, SDCI incorporates by reference that portion of the Seattle Art
8 Museum's Reply that addresses those other impacts.

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10 **II. EVIDENCE RELIED UPON**

11 SDCI relies on all previously filed documents that make up the hearing examiner's file in
12 this matter.

13 **III. AUTHORITY AND ARGUMENT**

14 Seattle's State Environmental Policy Act ("SEPA") framework provides that in making a
15 threshold determination, SDCI, as lead agency, may consider mitigation measures that will be
16 implemented.⁵ When SDCI specifies mitigation measures that would allow it to issue a
17 Determination of Non-Significance ("DNS"), and conditions the proposal to include those
18 measures, as was done here, SDCI shall issue a MDNS.⁶

19
20 The Seattle Municipal Code ("Code") also provides that a public or private proposal may
21 be conditioned with mitigation measures on rules or regulations designated in SMC 25.05.675 to
22 mitigate the environmental impact.⁷ Importantly, when city regulations have been adopted to
23 address an environmental impact, it shall be presumed that such regulations are adequate to achieve

³ SMC 25.05.665.D
⁴ SMC 25.05.350.C
⁵ SMC 25.05.350.A
⁶ SMC 25.05.350.C
⁷ SMC 25.05.660.A.1

1 sufficient mitigation.⁸ Since 1988, Seattle has had in place specific regulations that mitigate
2 environmental impacts to Seattle's historic landmark resources. SMC 25.05.675.H.2 provides that
3 for projects involving structures or sites which have been designated as historical landmarks,
4 compliance with the LPO shall constitute compliance with the City's policy to maintain and
5 preserve significant historic sites and structures.
6

7 The LPO regulates the alteration of landmark sites and structures by requiring a project
8 applicant to first apply for a Certificate of Approval ("certificate") with the Landmark Preservation
9 Board ("Board"), who then must review the application and either grant, grant with conditions, or
10 deny the application for a Certificate.⁹
11

12 The Board is to consider factors set forth in SMC 25.12.750 utilizing the Secretary of the
13 Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings in
14 making its decisions on Certificates ("Interior's Standards").¹⁰ If the Board determines that the
15 proposed alterations to a designated landmark adhere to the factors set forth in SMC 25.12.750 as
16 well as the Interior Standards, then it will issue a Certificate, or condition a Certificate in a way
17 that brings the project into conformance with those standards. The Board may deny an application
18 for a Certificate if the proposal does not conform with those standards.
19

20 Conditioning the proposal to comply with the LPO ensures that the Board will perform its
21 thorough review of proposed alterations to landmarks. The Code provides that doing so constitutes
22 compliance with the City's policy to maintain and preserve significant historic sites and structures,
23 and the code creates a presumption that such a mitigating measure adequately mitigates the

⁸ SMC 25.05.665.D

⁹ SMC 25.12.730

¹⁰ See Landmark Preservation Board Rules and Regulations, para. 18

1 mitigates the environmental impacts – bringing down the level of significance and allowing for an
2 MDNS rather than a DS.

3 The Appellant bears the burden to rebut this presumption, and the Appellant has failed to
4 assert the claim, or submit any evidence, that one of the seven enumerated limitations to the
5 presumption applies here.¹¹
6

7 The Appellant attempts to distinguish between the use of mitigation measures during the
8 City’s substantive SEPA process and the City’s procedural MDNS process. The Appellant seems
9 to ignore or overlook that the process for issuing an MDNS allows for substantive environmental
10 policies (mitigation measures) to be conditioned to a proposal, affecting the outcome of the SEPA
11 procedural threshold determination. The Code establishes a presumption that a development
12 regulation adopted to address an environmental impact adequately mitigates the impact.¹² The
13 Code also allows the lead agency to specify substantive mitigation measures that would reduce the
14 level of significance to a DNS, and condition the proposal to include those substantive mitigation
15 measures resulting in a procedural threshold determination of a MDNS.¹³ The presumption
16 established in SMC 25.05.665.D that the mitigating measure adequately mitigates the impact
17 continues to apply to the mitigating measure when it is used in procedural SEPA decision-making,
18 i.e., conditioned on a proposal during the MDNS determination process. The development
19 regulation (mitigation measure) is presumed adequate. When that mitigating measure is used as a
20 condition allowing for an MDNS, the presumption of adequacy stays with that mitigation measure
21 unless the presumption is rebutted. Nothing in the text of SMC 25.05.665.D limits the presumption
22 (except for the seven enumerated limitations); the presumption therefore applies to the mitigation
23

¹¹ SMC 25.05.665.D.1 - 7

¹² SMC 25.05.665.D

¹³ SMC 25.05.350.C

1 measure when it is used to condition a proposal pursuant to SMC 25.05.250.C. This is consistent
2 with SEPA's purpose to integrate the SEPA process with other laws and decisions.¹⁴
3


4 **IV. CONCLUSION**

5 SDCI complied with SMC 25.05.350 when it is issued an MDNS in this case. The proposal
6 was conditioned on compliance with the LPO, in accordance with Seattle's longstanding
7 environmental policy adopted to preserve historic landmark resources. This mitigating measure is
8 presumed to adequately mitigate the environmental impacts and the Appellant presented no evidence
9 to rebut this presumption. Pursuant to SMC 25.05.350.C, SDCI properly issued the MDNS.
10

11
12 DATED this 19th day of May, 2017.
13

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15 Seattle City Attorney

16
17 By:


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¹⁴ SMC 25.05.650.B

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on this date, I caused to be served a true and correct copy of the foregoing document, **SDCI's REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**, on the parties listed below and in the manner indicated:

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the foregoing being the last known address of the above-named party.

DATED this 19th day of May, 2017, at Seattle, Washington


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