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15 JUN 16 PM 1:33

KING COUNTY
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CASE NUMBER: 15-2-14356-5 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

NAUTICAL LANDING LLC, a Washington
limited liability company

Petitioner/Plaintiff,

v.

THE CITY OF SEATTLE, a first class charter
city incorporated under the authority of RCW
§ 35.01.010,

Respondent/Defendant,

Case No.

LAND USE PETITION,
COMPLAINT FOR
DECLARATORY RELIEF, OR
ALTERNATIVELY, PETITION FOR
WRIT OF REVIEW

Petitioner/plaintiff Nautical Landing LLC, through the undersigned attorneys of
record, Houlihan Law, 3401 Evanston Ave. N., Suite C, Seattle, Washington 98103,
allege as follows:

I. PARTIES

1.1 Petitioner/plaintiff Nautical Landing LLC is a Washington limited liability
company.

1. 1.3 Respondent/defendant, the City of Seattle (sometimes referred to herein as
2. the "City"), is a first class charter city incorporated under the authority of RCW §
3. 35.01.010, acting in this case through its Department of Transportation, whose address is
4. 700 Fifth Ave., Suite 2000, P.O. Box 34019 Seattle, Washington 98124-4019.
5.

6. **II. JURISDICTION AND VENUE**

7. 2.1 This Court has subject matter jurisdiction over this matter pursuant to
8. RCW §§ 36.70C.040; RCW 43.21C.075; RCW 43.21C.080 and 2.08.010.

9. 2.2 Venue is proper in this Court pursuant to RCW §§ 4.12.010, 4.12.020, and
10. 4.12.025.

11. **III. LAND USE PETITION REQUIREMENTS (RCW § 36.70C.070)**

12. 3.1 The name and mailing address of the petitioner/plaintiff is as follows:

13. Nautical Landing LLC
14. 2500 Westlake Ave. N
15. Seattle, WA 98109

16. 3.2 The name and mailing address of petitioners' attorneys are as follows:

17. Houlihan Law
18. 3401 Evanston Ave N. Suite C.
19. Seattle, WA 98103

20. 3.3 The name and mailing address of the local jurisdiction whose land use
21. decision is at issue are:

22. City of Seattle
23. 600 Fourth Avenue
24. Seattle, Washington 98104

25. 3.4 The relevant decision-making body is:

26. City of Seattle
Department of Transportation

1. 700 Fifth Ave., Suite 3900
2. P.O. Box 34996
3. Seattle, Washington 98124-4996

4. The land use decision under review is that certain Notice of Action for the Westlake
5. Cycle Track dated May 4, 2015 attached as **Exhibit A** ("Notice of Action" or "NOA")
6. issued pursuant to RCW 43.21C.080 of the State Environmental Policy Act ("SEPA").

7. 3.6 The facts demonstrating that the petitioners have standing to seek judicial
8. review under RCW 36.70C.060 are as follows: as discussed in additional detail in
9. Section IV of this Petition/Complaint, below, plaintiffs Nautical Landing owns and
10. operates a marina directly adjacent to the proposed Westlake Cycle Track and is directly
11. impacted by the agency action described in the NOA attached as **Exhibit A**. Specifically,
12. (a) the NOA has prejudiced the petitioner/plaintiff by avoiding any SEPA review for the
13. 1.2 mile long Cycle Track; (b) the asserted interests of petitioner/plaintiff are the primary
14. basis of the land use decision and therefore are among those that the City was required to
15. consider when it issued the NOA; (c) a judgment in favor of the petitioners/plaintiffs will
16. eliminate the prejudice to petitioner/plaintiff caused or likely to be caused by the NOA;
17. and (d) petitioner/plaintiff has exhausted all administrative remedies to the extent
18. required by law.

19. 3.7 Separate and concise statements of each error alleged to have been
20. committed are set forth in sections V through IX of this Petition/Complaint, below.

21. 3.8 A concise statement of the facts upon which petitioners/plaintiffs rely to
22. sustain the statement error is set forth in section IV of this Petition/Complaint, below.

23. 3.9 The relief requested by petitioners/plaintiffs, specifying the type and
24. extent of relief requested, is set forth in paragraph 9.1 of this Petition/Complaint, below.
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IV. STATEMENT OF FACTS

19.

A. Westlake Cycle Track

20. 4.1 The proposed Westlake Cycle Track (“WCT”) creates a protected bicycle
21. lane through an existing parking lot located on the east side of Westlake Avenue North.
22. The WCT will extend approximately 1.2 miles starting in Lake Union Park and extending
23. north to the start of the Ship Canal Trail.

24. 4.2 Construction of the WTC is expected to cost approximately \$4 million
25. dollars. According to the NOA, construction of the WCT will: (1) remove and replace
26. asphalt along the 1.2 mile length of the proposed WCT; (2) construct new stormwater
27. drainage facilities; (3) add lighting; and (4) remove and replace existing landscaping.

28. 4.3 Additionally, the WCT will reconfigure parking and traffic patterns within
29. the existing parking lot on the east side of Westlake Avenue North and eliminate 15 to 20
30. percent of existing parking spaces. The WCT will create unsafe conflicts between
31. pedestrians, cyclists, and commercial business traffic.

32. 4.4 Construction activities will occur within feet of Lake Union—which is
33. listed as an impaired water body under Section 303 of the Federal Clean Water Act—and
34. with designated critical areas including, but not limited to, shoreline habitat.

35.

B. City of Seattle’s Notice of Action for the Westlake Cycle Track

36. 4.5 The WCT is a component of the Seattle Bicycle Master Plan (“BMP”)
37. adopted in 2014. The City reviewed the Seattle Bicycle Master Plan under SEPA as non-
38. project action and issued a threshold determination of non-significance. The City justified
39. its threshold determination of nonsignificance on, among other things, that individual
40. bicycle projects contemplated in the BMP would undergo separate environmental review
41. under SEPA.

1. 4.6 On May 4, 2015 the City of Seattle, through its Department of
2. Transportation, issued a Notice of Action for the WTC pursuant to the State
3. Environmental Policy Act (“SEPA”).

4. 4.7 The NOA states that SDOT plans to proceed with construction of the
5. WTC as evidenced by approval of 100% design of the WTC.

6. 4.8 The NOA further states that the WCT is exempt from any SEPA review
7. under Seattle Municipal Code 25.05.800.B.3 (“Other Minor New Construction”).

8. **V. FIRST CAUSE OF ACTION: PETITION FOR REVIEW**
9. **PURSUANT TO RCW §§ 36.70C.130(1)(A) through 36.70C.130(1)(D)**

10. 5.1 Petitioners/plaintiffs reallege the preceding paragraphs as though fully set
11. forth herein.

12. 5.2 The City NOA declares its intent to proceed with construction of the
13. WTC without having to evaluate the project’s impacts under SEPA on the basis that the
14. WTC is categorically exempt from SEPA.

15. 5.3 Construction of the WCT is not categorically exempt under SEPA because
16. it requires a license to discharge to water, requires non-exempt land use decisions, occurs
17. within designated critical areas and is not minor construction within the meaning of
18. SEPA and its implementing regulations.

19. 5.6 Under RCW § 36.70C.130(1)(a) the City and SDOT failed to follow a
20. prescribed process because it failed to prepare an environmental checklist and issue a
21. threshold determination for the WTC as required by SEPA.

22. 5.7 Under RCW § 36.70C.130(1)(b) the City and SDOT’s interpretation of the
23. SEAP categorical exemption is erroneous.

1. 5.8 Under § 36.70C.130(1)(c) the City and SDOT's decision to proceed with
2. construction of the WCT without preparing an environmental checklist and threshold
3. determination is not supported by evidence that is substantial.

4. 5.9 Under § 36.70C.130(1)(d) the City's decision to proceed with construction
5. of the WCT is a clearly erroneous application of the law to the facts.

6. **VI. SECOND CAUSE OF ACTION: APPEAL UNDER RCW 43.21C.075**
7. **AND -.080**

8. 6.1 Petitioner/plaintiff realleges the preceding paragraphs as though fully set
9. forth herein.

10. 6.2 Construction of the WCT will require a license to discharge stormwater
11. generated from construction activities to surface waters, requires a nonexempt land use
12. decision, will occur within designated critical areas and is not minor construction within
13. the meaning of the categorical exemptions.

14. 6.3 Accordingly, the WCT is not categorically exempt from environmental
15. review under SEPA or its implementing regulations.

16. **VII. THIRD CAUSE OF ACTION: PETITION FOR DECLARATORY**
17. **RELIEF UNDER RCW § 7.24.010, ET SEQ.**

18. 7.1 Petitioner/plaintiff realleges the preceding paragraphs as though fully set
19. forth herein.

20. 7.2 Petitioner/plaintiff is entitled to declaratory judgment under Chapter 7.24
21. RCW.

22. 7.4 The City's interpretation of the categorical SEPA exemption for minor
23. new construction is overbroad and inconsistent with SEPA and its implementing
24. regulations.

1. 7.5 The City's interpretation of SMC § 25.05.800.B.3, as set forth in the NOA
2. is therefore erroneous.

3. 7.6 Accordingly, petitioner/plaintiff is entitled to declaratory relief confirming
4. the WCT is not categorically exempt under SMC § 25.05.800.B.3, and rejecting the City
5. interpretation and application of that term.

6. **VIII. FOURTH CAUSE OF ACTION: PETITION FOR WRIT OF**
7. **CERTIORARI (RCW § 7.16.040 AND ARTICLE IV, SECTION 6 OF THE**
8. **WASHINGTON CONSTITUTION)**

9. 8.1 For the reasons stated in sections V through VII of this Complaint, above,
10. and in the event the court holds that the Land Use Petition Act, RCW § 36.70C005, *et*
11. *seq.*, does not afford a timely remedy in respect of the NOA under the facts of this case,
12. petitioner/plaintiff is entitled to a Writ of Certiorari under RCW § 7.16.040, on the
13. grounds that the City of Seattle, exercising judicial functions via its Department of
14. Transportation, has exceeded the jurisdiction of such tribunal, board or officer, acted
15. illegally, and relief is required to correct the erroneous and unlawful proceeding.

16. 8.2 Without relief through the Land Use Petition Act, RCW § 36.70C.005, *et*
17. *seq.*, or in its absence, RCW 7.16.030 *et seq.*, there is no other statutory route of appeal
18. available to plaintiffs to receive a timely decision with respect to the NOA, nor any plain,
19. speedy and adequate remedy at law.

20. 8.3 If for any reason the court determines that relief is not available under
21. RCW § 36.70C.005, *et seq.*, or RCW § 7.16.030, *et seq.*, it should find that the conduct of
22. the City of Seattle, as described in sections V through VII of this Petition/Complaint,
23. above, is illegal, and/or arbitrary and capricious and warrant review under the inherent
24. authority of the courts to review unlawful proceedings as guaranteed by Constitutional
25. Writ provisions of Article IV, section 6 of the Washington Constitution.

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IX. PRAYER FOR RELIEF

WHEREFORE, petitioner/plaintiff prays for judgment against the City as follows:

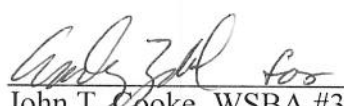
9.1 That the NOA be reversed and the agency action set aside until SDOT complies with SEPA by preparing an environmental checklist and issuing a threshold determination.

9.2 For an award of reasonable attorneys' fees and costs incurred in this action; and

9.3 For such other and further relief as the court deems appropriate.

DATED this 16th day of June, 2015.

HOULIHAN LAW



John T. Cooke, WSBA #35699
Attorneys for Plaintiff



City of Seattle

Edward B. Murray, Mayor

Department of Transportation

Scott Kubly, Director

EXHIBIT A

NOTICE OF ACTION SEATTLE DEPARTMENT OF TRANSPORTATION WESTLAKE CYCLE TRACK

Notice is given under the State Environmental Policy Act (SEPA) Revised Code of Washington (RCW) 43.21C.080, that the Seattle Department of Transportation (SDOT) took the action described in (2) below on

4/29/15

1. Any action to set aside, enjoin, review, or otherwise challenge such action on the grounds of noncompliance with the provisions of chapter 43.21C RCW (SEPA) shall be commenced on or before 5/16/15.
2. Description of agency action: Proceed with construction of the Westlake Cycle Track as evidenced by approval of 100% design.
3. Description of proposal: SDOT proposes to build the Westlake Cycle Track. Work involves repair and replacement of portions of the existing sidewalk and asphalt parking lot. Currently the sidewalk serves both bicyclists and pedestrians and this project would allow for a separated bicycle path. The asphalt cycle track will be approximately 1.2 miles in length and will be located along the eastern alignment of the parking lot.

Construction of the cycle track and curb and gutter will be performed by removal and replacement of only the asphalt pavement. Asphalt pavement will be poured on top of the existing surface in some parts of the project. Drainage patterns will not be modified in the project area. New inlets, catch basins, and manholes will be constructed to replace any drainage facilities impacted by the cycle track. Pedestrian level lighting will be added to enhance safety along the corridor. New landscaping areas will be created as part of the project to replace areas being impacted by the cycle track alignment.

4. Location of proposal: The project is located within the City of Seattle in the Westlake neighborhood, along Westlake Avenue N. From the south, the trail starts at Lake Union Park and extends north to the start of the Ship Canal Trail, 1,000 feet north of Halladay Street.
5. Type of environmental review under SEPA: Categorical Exemption under Seattle Municipal Code (SMC) 25.05.800 (B.3), determined by SDOT February 04, 2015.
6. For further information please contact Peter Drakos at (206) 684-5695 or peter.drakos@seattle.gov.
7. Name of agency, proponent, or applicant giving notice: SDOT
8. This notice is filed by: Scott Kubly, Director, SDOT and SEPA Responsible Official.

Signature: 

Date: 5/4/15