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BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

In the Matter of the Appeals of:  
  
SEATTLE FOR GROWTH and SEATTLE  
MOBILITY COALITION  
  
From a DNS issued by the Seattle City  
Council.

Hearing Examiner Files:  
  
W-18-012 and W-18-013  
  
SEATTLE MOBILITY COALITION'S  
RESPONSE TO MOTION TO DISMISS

**I. INTRODUCTION**

In its motion to dismiss, the City of Seattle (“City”) claims that Appellant Seattle  
Mobility Coalition (“Coalition”) lacks standing because the Coalition alleges only “citizen”  
standing and the impacts of the City’s proposed Comprehensive Plan amendment  
 (“Amendment”) requiring the adoption of a transportation impact fee are merely economic and  
speculative. Nothing could be farther from the truth. The Coalition does not allege standing due  
to its members’ status as citizens but rather due to the significant adverse environmental impacts  
they will suffer as a result of the Amendment. The Amendment requires the adoption of  
development regulations imposing a transportation impact fee and expenditure of the revenue  
gained from the fee on a particular list of projects. If the Amendment is adopted, it will impact  
the Coalition’s members because it will fund the construction of these projects resulting in

1 significant construction impacts (such as noise, dust, traffic and parking) to members’ projects  
2 and properties. The Amendment will also impact Coalition members by limiting their ability to  
3 develop new housing in the City, compelling them to increase the cost of housing they produce,  
4 and causing them to alter the physical characteristics of their development projects, resulting in  
5 significant adverse impacts to the built environment (including land use, housing and aesthetics).  
6  
7 Contrary to the City’s claim, these are all environmental impacts rather than economic impacts.  
8 Further, these impacts are not speculative – to the contrary, they are direct probable impacts of  
9 the Amendment. In short, the Coalition’s interests are within the zone of interests protected by  
10 the State Environmental Policy Act (“SEPA”) and the Coalition has alleged an injury in fact.  
11 The Coalition has standing. The Hearing Examiner must reject the City’s motion to dismiss.  
12

## 13 **II. STATEMENT OF FACTS**

### 14 **A. The City Council’s proposal is to adopt transportation impact fees.**

15 The Seattle City Council proposes to adopt a transportation impact fee for the first time in  
16 Seattle (“Proposal”). The first component of the City’s Proposal is the adoption of the  
17 Amendment to the Comprehensive Plan, which requires the adoption of the fee and specifies the  
18 methodology by which it will be calculated. The second component of the Proposal is the  
19 adoption of development regulations imposing the fee. The City improperly segmented the  
20 Proposal by dividing it into two stages. The City plans to move forward with the Amendment  
21 upon the resolution of this appeal and then to adopt development regulations imposing the fee  
22 immediately thereafter (the City states it is working on the development regulations now and  
23 projects the Council will consider this legislation in March – April 2019). Declaration of  
24 Courtney A. Kaylor (“Kaylor Dec.”), Ex. A. In its SEPA review for the Amendment, the City  
25 repeatedly asserts that no impacts will occur because the Amendment, by itself, does not impose  
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1 a fee. Declaration of Ketil Freeman in Support of the City’s Motion to Dismiss (“Freeman  
2 Dec.”), Exs. B, C. Yet the City’s transparent attempt to insulate its actions from meaningful  
3 SEPA review fails. The Amendment mandates the adoption of the fees and the City is required  
4 by the Growth Management Act (“GMA”) to adopt development regulations consistent with its  
5 Comprehensive Plan. The adoption of the fees is a probable result of the adoption of the  
6 Amendment. The City must evaluate the environmental impacts of the entire fee Proposal now,  
7 before it commits to a course of action.  
8

9 **B. The Amendment requires the use of transportation impact fees and identifies**  
10 **specific projects that will be funded.**

11 The Amendment includes changes to the Comprehensive Plan Transportation Element  
12 and Transportation Appendix. The amendments to the Transportation Element include the  
13 following:

- 14 • An amendment to the Transportation Element’s discussion of measuring level of  
15 service that states: “For the purposes of establishing a transportation impact fee  
16 program, the City will identify the demands placed on the system by new  
17 development by establishing the future cost per person trip of capacity-related  
18 improvements to the transportation system relative to the value of the existing system.  
19 This existing-system value methodology complements the level of service by  
20 focusing on person trips, regardless of mode.” The amendment also states that a more  
21 detailed description of the “existing system-value methodology” is in the  
22 Transportation Appendix. Freeman Dec., Ex. A, Att. 1, p. 1.  
23 • The addition of Transportation Goal 10 (“TG 10”), stating: “Base transportation  
24 impact fees on the difference between the value of the existing transportation system  
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1 and the cost of identified capacity-related improvements needed to address the  
2 impacts of growth.” *Id.*, p. 2.

- 3 • The amendment of Transportation Policy 10.7 (“T 10.7”), which now reads “Consider  
4 use of transportation-impact fees to help fund transportation system improvements  
5 needed to serve growth,” so that it will read “Use transportation-impact fees to help  
6 fund transportation system improvements needed to serve growth.” *Id.* (emphasis  
7 added).  
8

9 In its motion, the City asserts the Amendment has no impacts because it does not “in and  
10 of itself, create a Transportation Impact Fee Program.” City’s Motion to Dismiss (“Motion”), p.  
11 2. This does not capture the true effect of the Amendment. While the Comprehensive Plan  
12 previously required the City Council only to “consider” the use of transportation impact fees, the  
13 Amendment mandates that the City Council actually “use” transportation impact fees to fund  
14 system improvements. Freeman Dec., Ex. A, Att. 1, p. 2. Thus, the Amendment is not merely  
15 procedural but has a substantive effect. The Amendment mandates the use of transportation  
16 impact fees. The Amendment also specifies the methodology that must be used to determine the  
17 fees.  
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19

20 The amendments to the Transportation Appendix include the following:

- 21 • Adoption of a new heading, “Transportation Impact Fees,” under which there is a  
22 description reading, “A transportation impact fee program partially addresses service  
23 needs by helping to fund capacity improvements to existing facilities and new capital  
24 projects. The program identifies projects needed to address demands on the  
25 transportation network associated with growth and new development. In determining  
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1 existing deficiencies the City utilizes a methodology based on a quantification of the  
2 value of the existing transportation system” *Id.*, Att. 2, p. 1.

- 3 • Adoption of a new heading “Existing System Value Methodology” under which there  
4 is a description stating: “The existing system value methodology establishes a  
5 maximum allowable impact fee rate. This is a method of determining existing  
6 deficiencies which establishes that the City cannot charge an impact fee rate that  
7 exceeds the value of the system that exists today. First, the existing value of the  
8 transportation system is calculated using both the value of existing infrastructure and  
9 land in the right-of-way. This value is then divided by the number of current PM  
10 peak hour person trips to establish a current value per person trip. An impact fee rate  
11 cannot exceed this value. Next, the total cost of impact-fee eligible capacity  
12 improvements are calculated based on a list of projects required to serve new  
13 development. That total amount is then divided by the number of new person trips  
14 forecast over a twelve year period, the timeframe for improvements listed in the  
15 impact fee program, to establish the cost per person trip of needed capacity  
16 improvements. Impact fee rates by land use are calculated based on that cost.” *Id.*
- 17 • Adoption of a new heading “Facility Improvements to Serve New Development,”  
18 under which there is a description stating: “The City has identified multiple projects  
19 serving all modes that are needed to address demands on the transportation network.  
20 The projects are drawn from multiple sources including the City’s modal plans and  
21 are intended collectively to improve the performance and efficiency of the  
22 transportation network. Projects are listed in Transportation Appendix A-18 and most  
23 project locations are shown on Transportation Appendix A-19. Projects included in  
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1 the list are eligible for expenditures using revenue from the transportation impact fee  
2 program.” *Id.*

- 3 • Adoption of new Transportation Appendix Figures A-18 and A-19, which are a list  
4 and map, respectively, of the projects referenced in the preceding amendments that  
5 are eligible for expenditures using revenue from the transportation impact fee  
6 program (“Eligible Projects”). *Id.*, pp. 2-3.

8 Again, the City attempts to discount the effect of the Amendment, claiming that the  
9 Amendment only identifies projects that “would be eligible to receive some TIF Program funds  
10 in the future when a TIF Program is adopted.” Motion, p. 2. The City does not tell the whole  
11 story. The Eligible Projects are not just projects that might or might not receive funding one day.  
12 Instead, they are fundamental to the Amendment. The Amendment describes them as “identified  
13 capacity-related improvements needed to address the impacts of growth”. Freeman Dec., Ex. A,  
14 Att. 1, p. 2. The Amendment then mandates that the City “use transportation-impact fees to help  
15 fund transportation system improvements needed to serve growth.” *Id.* The Amendment  
16 requires that the amount of the impact fee be based on the cost of these needed improvements.  
17 Specifically, the “total cost of impact-fee eligible capacity improvements are calculated based on  
18 a list of projects required to serve new development. That total amount is then divided by the  
19 number of new person trips forecast over a twelve year period . . . to establish the cost per person  
20 trip of needed capacity improvements. Impact fee rates by land use are calculated based on that  
21 cost.” *Id.*, Att. 2, p. 1. Thus, the funding of the Eligible Projects is not only a probable result of  
22 the Amendment – it is mandated by the Amendment.

26 **C. The City’s environmental checklist and determination of nonsignificance ignore**  
27 **direct impacts of the Amendment.**

28 The City Council purported to review the environmental impacts of the Amendment in an

1 environmental checklist (“Checklist”). The Checklist is bare bones. Section B of the Checklist,  
2 which asks for information on impacts to each element of the environment under SEPA, is left  
3 entirely blank. The discussion of potential environmental impacts is limited to cursory responses  
4 to the questions posed in the Supplemental Sheet for Nonproject Actions. In these responses, the  
5 City asserts several times that “the current action is not sufficient to implement a program, in and  
6 of itself” and therefore does not affect the environment. Freeman Dec., Ex. C, pp. 14-17.

7 Among other things, the City inaccurately states, “[b]ecause the current action is not sufficient to  
8 implement a program, in and of itself, it makes no changes to land . . . use.” *Id.*, p. 16.

9  
10 The Checklist admits that construction of the Eligible Projects is a potential impact of the  
11 Amendment, stating: “Future implementation, should it occur, would facilitate improvements to  
12 transportation facilities in existing rights-of-way.” *Id.* Yet, the Checklist fails to provide a full  
13 analysis of the impacts of these transportation projects. For example, the Checklist dismisses  
14 construction impacts of these projects in one sentence, stating, “Any construction-related impacts  
15 associated with potential future development of identified projects would be mitigated by  
16 existing environmental protection regulations and, for those projects that are not categorically  
17 exempt from SEPA, additional environmental review.” *Id.*, p. 15.

18  
19 Ultimately, based on this scant and inadequate review, the City Council issued a  
20 Determination of Nonsignificance (“DNS”). Freeman Dec., Ex. B. The DNS repeats the  
21 fundamental error of the Checklist, stating the Amendment is “necessary, but not sufficient” to  
22 establish an impact fee program and inaccurately characterizing it as “primarily procedural.” *Id.*,  
23 p. 1.

24  
25 **D. The Amendment will have significant adverse environmental impacts.**

26  
27 Contrary to the City’s cursory conclusions, the Amendment will result in significant

1 adverse environmental impacts. In particular, the members of the Coalition, who own, develop  
2 and manage property in the City, will be adversely affected by the Amendment.

3 **1. Impacts Resulting from Eligible Projects.**

4 The Amendment requires the adoption of fees that will fund construction of the Eligible  
5 Projects. These Eligible Projects will have significant adverse impacts to Coalition members’  
6 properties and projects.<sup>1</sup>

8 AMLI Mark24

9 One Coalition-member owned property and project that will be impacted is AMLI  
10 Mark24, a 304-unit apartment building with ground-floor retail located at 2428 NW Market  
11 Street in Ballard. AMLI Mark24 occupies nearly two thirds of its block and overlooks the  
12 intersection of NW Market Street and 24th Avenue NW. The planned “Market/45th Transit  
13 Improvement Project” and the “Northgate-Ballard-Downtown Transit Improvements,” both  
14 Eligible Projects, would have significant effects on AMLI Mark24. Declaration of Scott A.  
15 Koppelman (“Koppelman Dec.”), ¶4.  
16

17 The Market/45th project and the Northgate-Ballard project are described in the Seattle  
18 Department of Transportation’s (“SDOT’s”) 2018-2023 Proposed Capital Improvement Program  
19 (“CIP”), 2016 Transit Master Plan (“Transit Master Plan”), and November 2018 Levy to MOVE  
20 Seattle Workplan Report (“MOVE Seattle Report”). *Id.*, Ex. B, C and D. Each of these  
21 indicates an intent to transform the stretch of NW Market Street on which the AMLI Mark24  
22 fronts, and to make major changes to 24th Avenue NW north of NW Market Street and Leary  
23 Avenue NW southeast of NW Market Street, which carry a substantial amount of traffic to and  
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27 <sup>1</sup> These are representative examples provided for the purpose of demonstrating standing. The Coalition has several  
28 additional members, who collectively have many additional properties and projects, that will also be impacted.

1 from the property. *Id.*, ¶5.

2 Most significantly, two planned RapidRide corridors will intersect at NW Market Street  
3 and 24th Avenue, and a new station is planned for that corner, which already sees more than 200  
4 inbound and 200 outbound passengers board every day. A nearly 30-block section of NW  
5 Market Street, including the AMLI Mark24’s block, will be remade with a dedicated bus lane.  
6  
7 The Seattle Transit Master Plan details the many alterations to the physical environment and  
8 traffic patterns that will come with RapidRide, including stations with “raised platforms” and  
9 “larger shelters,” new signage and fare collection infrastructure, and transit signal changes. *Id.*,  
10 ¶6, Ex. C, pp. 3-14.

11  
12 AMLI Mark24’s residents, retailers, and AMLI’s eight on-site employees will be  
13 significantly affected during the construction phase of these projects by construction noise, dust,  
14 and emissions and by disruptions to vehicular and pedestrian access to our building and to on-  
15 street parking. After the RapidRide improvements are added, AMLI Mark24 will be  
16 significantly affected by the altered traffic patterns and parking availability created by the larger  
17 station, raised platform, and bus-only lane on NW Market Street and by increased glare from the  
18 glass or glass-like shelter. *Id.*, ¶7.

19  
20 AMLI 535 and AMLI South Lake Union

21 Other Coalition member-owned properties and projects that will be adversely affected by  
22 the Eligible Projects are the AMLI 535 and the AMLI South Lake Union, both apartment  
23 buildings with ground-floor retail in South Lake Union. AMLI 535 has 199 units and is located  
24 at 535 Pontius Avenue North; AMLI South Lake Union has 293 units and is located at 1260  
25 Republican Street. The planned “Roosevelt to Downtown Complete Street” project, included on  
26 the list of Eligible Projects, would significantly impact these properties. *Id.*, ¶8.  
27

1 As discussed in the CIP, Transit Master Plan, MOVE Seattle Report, and an SDOT  
2 project webpage, the Roosevelt project would include RapidRide alterations to Fairview Avenue  
3 North, which is just two blocks to the west of both properties and is a major access street for  
4 their residents, staff, retailers, and customers. *Id.*, Ex. B, pp. 94-95; Ex. C, pp. 3-50 to 3-53; Ex.  
5 D, pp. 35-36; Ex. E. These alterations would include a transit lane on Fairview as well as new  
6 stations one block to the south at the intersection of Fairview and Harrison Street. *Id.*, ¶9.

8 People living in and visiting the AMLI 535 and the AMLI South Lake Union properties,  
9 and AMLI’s 15 on-site employees (seven at AMLI 535 and eight at AMLI South Lake Union),  
10 will be significantly impacted during the construction phase of these projects by construction  
11 noise, dust, and emissions from alterations to Fairview Avenue North and the construction of a  
12 station, as well as by the traffic effects, barriers to vehicular and pedestrian access to the  
13 buildings, and disruption of on-street parking that this construction would cause. After the  
14 RapidRide improvements were added, the buildings will be significantly affected by the altered  
15 traffic patterns and parking availability created by the changes to Fairview Avenue North. *Id.*,  
16 ¶10.

18  
19 1120 Denny Way and 1120 John Street

20 Other Coalition-member owned properties and projects that will be impacted are the 1120  
21 Denny Way and 1120 John Street projects. Respectively, these projects are a 1,097 unit  
22 apartment building with ground-floor retail and an office building with ground-floor retail, both  
23 located in the South Lake Union area. As with the AMLI 535 and AMLI South Lake Union, the  
24 planned “Roosevelt to Downtown Complete Street” project would significantly impact these  
25 projects. Declaration of David Evans (“Evans Dec.”), ¶¶4-5.

27 The impacts would be similar to the impacts on the AMLI 535 and AMLI South Lake  
28

1 Union, including noise, emissions, and traffic effects while street improvements are completed  
2 and traffic and parking effects thereafter. *Id.*, ¶¶5-7.

3 2301 7<sup>th</sup> Avenue

4 A final Coalition-member owned property and project that will be impacted is the 2301  
5 7th Avenue project, a planned 625 unit apartment building that will also include approximately  
6 330,000 s.f. office space and 10,000 s.f. ground-floor retail. The project will be impacted by the  
7 planned “Northgate-Ballard-Downtown Transit Improvements” project. *Id.*, ¶¶10-12. The  
8 impacts on this project will be similar to those on other projects, including noise, emissions, and  
9 traffic effects while street improvements are completed and traffic and parking effects thereafter.  
10 *Id.*, ¶¶11-13.

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13 **2. Impacts Resulting from Fees**

14 Housing affordability is of extreme public importance. There is an increasing body of  
15 literature implicating rising housing costs to a range of harms that fall disproportionately on low-  
16 income, minority, and other vulnerable populations. In the United States, housing production  
17 has not kept pace with population growth, incomes, and household formation. The demand for  
18 increasingly scarce housing has caused prices to rapidly escalate in certain areas of the country.  
19 Land-use policies that make it difficult to build and reduce the productivity of urban land also  
20 create hidden costs on the existing supply while increasing overall prices. This, in turn, restricts  
21 the accessibility and affordability of land and housing in high-demand markets; creates barriers  
22 to economic opportunities; and contributes to economic displacement. Research in this area  
23 suggests that maintaining a healthy supply of new and moderate cost market-rate housing is  
24 critical for maintaining a future stock of affordable housing. Declaration of Morgan Shook  
25 (“Shook Dec.”), ¶6.  
26  
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1           Impact fees are a tool employed by public institutions to generate revenue to support  
2 infrastructure investments. Impact fees should secure the nexus between fee levels and the actual  
3 costs associated with the new land development and infrastructure needs. In Washington, impact  
4 fees can only be used to fund facilities associated with new development. The primary strength of  
5 such fees lies in the nexus established between fees applied to new land development and the  
6 infrastructure needs, and costs, associated with the same new development. The logic of impact  
7 fees is that new development pays an upfront fee that can defray some of the cost burden of  
8 upgrading infrastructure systems to meet the demand imposed by growth. Following from this  
9 logic, the ideal price rule for impact fees is one that is based on the short-run marginal costs of the  
10 new increment of growth. In practice, it is sometimes difficult to accurately determine the true  
11 short-run marginal cost, or when identified, it can be administratively difficult to levy this fee.  
12 Such is the case in Washington, where most impact fees are based on average costs (typically in  
13 some form of per-capita or per trip basis) instead of the marginal costs that are actually imposed.  
14 The implication of this arrangement is where land developments will be “overcharged,”  
15 potentially influencing their viability. *Id.*, ¶7.

16           Impact fees are one-time fees and are a cost added to a developer's budget for  
17 construction. The primary effect of an impact fee on an individual development project is as the  
18 added cost to construct the project and its impact on the viability of the project, meaning if a  
19 particular return on investment is necessary to secure financing to build the project, revenue must  
20 increase to offset development fees or other costs must be trimmed. Developers build homes  
21 until the market becomes saturated and falling prices (or rents) no longer generate an adequate  
22 return on investment. However, if a regulation or fee reduces costs, developers' returns can  
23 improve. Consequently, more homebuilding projects move forward and/or more homebuilders

1 enter the market. Conversely, an increase in construction costs as a result of fees can result in  
2 fewer homebuilders in the market, and fewer units constructed. *Id.*, ¶8.

3         Housing fees, impact fees, and other policies have an impact on a developer's ability to  
4 pay for land. The differential impact of these policies on commercial or housing development is  
5 then a reflection on who may be able to pay the most for available development sites. However,  
6 just as competition for land development with a commercial enterprise can be the determinant of  
7 land value for a housing development, the current land use also may dictate the value of land. If  
8 fees and policies drive down a housing developers' ability to pay for that land relative to the  
9 existing use, that site goes from being a housing development opportunity to maintaining the  
10 status quo of the existing use or structure. For any given jurisdiction, the overall amount of  
11 housing production is related to the number of sites where housing development is the most  
12 feasible development option. Housing production will be limited when policies drive down  
13 housing developers' ability to pay for land without impacting other development options or the  
14 value of current land uses. Limited development sites and the corresponding limits to housing  
15 supply additions lead to housing price increases as supply cannot keep up with rising demand.  
16  
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18  
19 *Id.*, ¶9.

20         The City of Seattle has previously identified these effects on housing in their June 2015  
21 City of Seattle Impact Fee Policy Assessment and Work Plan Development Summary Report  
22 where they state: “To the degree to which impact fees were assessed on residential development,  
23 even with affordable housing exemptions from the Growth Management Act (GMA) impact  
24 fees, the housing market as a whole would still likely be affected by changes in purchase prices  
25 and rents.” *Id.*, ¶10.

26  
27         Expert study examining the effect that development and impact fees have on the  
28

1 production of higher-density housing in Puget Sound cities shows that there is a correlation  
2 between the price of the fees and the historical production of higher-density housing. While the  
3 factors that drive housing production are complex, this result is consistent with actual experience  
4 in real estate development and as economic theory would suggest. *Id.*, ¶11.

5  
6 The City of Seattle’s proposed adoption of transportation impact fees will result in  
7 significant adverse impacts to housing production and housing affordability in Seattle. While the  
8 exact amount of the fee has not yet been established, the proposed Amendment does not specify  
9 an approach for calculating a fee that requires accurate pricing of the marginal costs that future  
10 developments exert on planned infrastructure. Based on this approach, the fee will result in a  
11 probable impact to housing. At the margin, it is likely that the fee will render some development  
12 projects infeasible. For other projects that are not rendered infeasible, the fee will increase the  
13 cost of housing construction. The result of higher construction prices from fees will be a  
14 reduction in housing production. The relative shortage of housing will ultimately result in higher  
15 relative housing purchase prices or rents. Accordingly, the fees will impact property owners and  
16 developers, including Coalition members, who will be unable to develop projects as planned.

17  
18 *Id.*, ¶12.

19  
20 Among other properties and projects, the fees will impact Coalition members with  
21 projects in the permitting pipeline. Under the City’s anticipated schedule, the fees will be  
22 considered by the Council in March or April 2019. Kaylor Dec., Ex. A. Projects do not vest  
23 against impact fees, which are typically imposed at the time of building permit issuance. *New*  
24 *Castle Investments v. City of LaCenter*, 98 Wn. App. 224, 989 P.2d 569 (1999). Coalition  
25 members have projects that are currently in the permit pipeline whose financial viability was  
26 determined in the absence of these fees. The imposition of the fees at the building permit stage  
27

1 of these projects will result in significant adverse environmental impacts. These fees will render  
2 some projects infeasible, in which case the projects would not be constructed and the properties  
3 would remain vacant or underutilized. If projects do still move forward, over time these fees will  
4 be passed along to tenants, in the case of residential projects, decreasing housing affordability.  
5 Imposition of the fees will also cause changes to the physical design of projects, resulting in  
6 impacts to the built environment such as aesthetic and parking impacts. Shook Dec., ¶13.

8 1101 Western

9 Coalition-member AMLI is planning to build a mixed-use project at 1101 Western  
10 Avenue in Downtown Seattle that will be impacted by the fees. The project is currently  
11 preparing for the Early Design Guidance (“EDG”) process, and AMLI estimates applying for a  
12 building permit in mid-2020. AMLI may still make significant changes in its plans for the  
13 project as dictated by the permitting process and by its assessments of likely construction costs.  
14 Koppelman Dec., ¶ 11.

16 The City has compiled information about the range of transportation impact fees imposed  
17 by other jurisdictions and presented this information to the City Council in connection with the  
18 proposed Amendment. Kaylor Dec., Ex. B. A transportation impact fee imposed by the City  
19 that within that range would limit AMLI’s ability to develop the property as it plans. A  
20 transportation impact fee would increase AMLI’s costs for development of the project. All or a  
21 portion of this extra cost would be passed on to the building’s residential tenants, with a negative  
22 effect on housing affordability in the area. Koppelman Dec., ¶12.

25 Although no parking is required for downtown projects, AMLI has proposed  
26 approximately 160 above- and below-grade parking spaces at 1101 Western. In addition to  
27 passing along all or a portion of the transportation impact fee to its tenants, AMLI would reduce

1 the amount of parking it will provide to offset the increased project costs, impacting parking  
2 availability in the area. *Id.*, ¶13.

3 1120 John Street and 2301 7th Avenue

4 As described above, coalition member Onni Construction (Washington) (“Onni”) is  
5 planning to build mixed-use projects at 1120 John Street and 2301 7th Avenue. Onni has  
6 submitted a MUP application for the 1120 John project and a minor MUP revision request for  
7 2301 7th Avenue. Onni may still make significant changes to both projects as dictated by the  
8 permitting process and by its assessments of likely construction costs. Evans Dec. ¶¶ 4, 8, 10,  
9 14. As with the 1101 Western project, the imposition of a transportation impact fee as described  
10 by the Council would increase Onni’s costs and limit its ability to develop the properties as it  
11 plans. In particular, Onni would be likely to pass increased rents along to residential tenants of  
12 2301 7th Avenue, impacting housing affordability in the area, and to reduce the number of  
13 below-grade parking stalls offered in both properties, impacting parking availability in both  
14 neighborhoods. *Id.* ¶¶ 9, 15-16.

17 **E. The Appeals.**

18 The Coalition filed a timely appeal. Seattle for Growth also filed a timely appeal. The  
19 appeals were consolidated.

20 The City moved to dismiss both appeals based on lack of standing. The Coalition  
21 requests that the Examiner deny this motion because its injuries are within SEPA’s zone of  
22 interests and it has alleged sufficient injury in fact to support standing.  
23

24 **III. AUTHORITY**

25 The City claims that the Coalition lacks standing because (1) the Coalition alleges only  
26 “citizen” standing; (2) the impacts the Coalition alleges are economic; and (3) the impacts the  
27

1 Coalition alleges are speculative. The City is incorrect.

2 **A. The Coalition satisfies the requirements for SEPA standing.**

3 The City Code provides that “any interested person” may appeal a DNS to the Hearing  
4 Examiner. SMC 25.05.680.B.1. An “interested person” is a defined term, meaning “any  
5 individual, partnership, corporation, association or public or private organization of any  
6 character, significantly affected by or interested in proceedings before an agency.” SMC  
7 25.05.755.  
8

9 Interested persons have standing if they meet the two-part judicial SEPA standing test. *In*  
10 *the Matter of the Appeal of Laurelhurst Community Club et al.*, Hearing Examiner File No. W-  
11 11-007, Order on Motions to Dismiss/Cross Motion for Summary Judgment (April 10, 2012), at  
12 2 (“*Laurelhurst Community Club*”). An appellant has SEPA standing if they: (1) allege an  
13 interest that falls within the zone of interests protected by SEPA; and (2) allege an injury in fact.  
14 *Kucera v. State Department of Transportation*, 140 Wn.2d 200, 212, 995 P.2d 63 (2000), *citing*  
15 *Leavitt v. Jefferson County*, 74 Wn. App. 668, 875 P.2d 681 (1994). A nonprofit corporation has  
16 the standing of its members. *Save a Valuable Environment v. Bothell*, 89 Wn.2d 862, 866, 576  
17 P.2d 401 (1978).  
18  
19

20 On a motion to dismiss for lack of SEPA standing, courts construe the evidentiary facts in  
21 favor of the nonmoving party. *See Leavitt*, 74 Wn. App. at 679 (noting alleged impacts were  
22 “speculative and undocumented; they are possible, but not necessary impacts. However, the  
23 claimed impacts are within the interests protected by SEPA and Leavitt alleges that they directly  
24 impact her property and interests. We will assume Leavitt has established standing[.]”); *see also*  
25 *Kucera, supra*, 140 Wn.2d at 200.  
26

27 "Further, when a controversy is of substantial public importance, immediately affects  
28

1 significant segments of the population, and has a direct bearing on commerce, finance, labor,  
2 industry, or agriculture, this court has been willing to take a "less rigid and more liberal"  
3 approach to standing. *Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish County*, 77  
4 Wn.2d 94, 96, 459 P.2d 633 (1969); *see also Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses*  
5 *Lake*, 150 Wn.2d 791, 803, 83 P.3d 419, 424 (2004) (“[W]e have applied this liberal approach to  
6 standing only in cases where the plaintiff whose standing was challenged was the only plaintiff  
7 in the case and the liberal approach was necessary to ensure that the important public issues  
8 raised did not escape review.”) Here, the adoption of transportation impact fees for the first time  
9 in Seattle is a matter of substantial public importance; the fees will immediately affect significant  
10 segments of the population, including property owners, developers, and individuals seeking  
11 affordable housing; and the fees will have a direct impact on property development and the  
12 housing market in the City. Shook Dec. ¶13. Further, the City here challenges the standing of  
13 both appellants on the same grounds, and the dismissal of this case for lack of standing would  
14 forever insulate the City’s decision to move forward with impact fees from meaningful review  
15 under SEPA.  
16  
17  
18

19 The Coalition has SEPA standing because its members allege interests that fall within the  
20 zone of interests protected by SEPA and they allege an injury in fact.

21 **B. The Coalition does not rely on “citizen” standing.**

22 The City argues that “being a citizen and living in Seattle does not confer SEPA  
23 standing.” Motion, p. 8. This argument is a *non sequitur*: the Coalition is not pursuing this  
24 appeal on the basis that its members are citizens who live in Seattle. Rather, the Coalition’s  
25 members will be impacted directly, unlike the general population, because their specific  
26 properties will be affected by specific improvement projects identified in the Amendment. In  
27  
28

1 addition, their development projects that are currently in the permitting pipeline will be rendered  
2 infeasible or physically altered as a consequence of imposition of the fees that are mandated by  
3 the Amendment. Koppelman Dec. ¶¶7, 10, 13-14; Evans Dec. ¶¶7-9, 13-16.

4 This distinguishes this case from the case relied on by the City, *Snohomish County*  
5 *Property Rights Alliance v. Snohomish County*, 76 Wn. App. 44, 52, 882 P.2d 807, 811 (1994).  
6 In *Snohomish County*, the petitioner alleged that he was a “taxpayer of Snohomish County” with  
7 “an interest in the ‘protection of individual property rights’” and “property values.” Here, in  
8 contrast, the Coalition is not relying on its members’ status as taxpayers or interests in theoretical  
9 principles. The Coalition asserts specific adverse environmental impacts on its members’  
10 properties. These properties will be impacted by construction of the Eligible Projects and  
11 imposition of the fees required by the Amendment. Koppelman Dec. ¶¶7, 10, 13-14; Evans Dec.  
12 ¶¶7-9, 13-16.

13 The Coalition does not rely on “citizen” standing. The Examiner must reject the City’s  
14 argument.

15 **C. The Coalition alleges environmental impacts rather than economic ones.**

16 The City creates another strawman argument to knock down: “economic impacts to  
17 property owners is not an element of the environment that is required to be studied under SEPA.”  
18 Motion, p. 9. This mischaracterizes the Coalition’s alleged environmental impacts as  
19 “economic” in an attempt to place them outside SEPA’s zone of interests.  
20

21 As the City admits (Motion, p. 9), the “built environment” is an element of the  
22 environment under SEPA. RCW 43.21C.110(f); SMC 25.05.444. The SEPA Rules define the  
23 elements of the environment to include the “built environment,” which includes “land and  
24 shoreline use,” “relationship to existing land use plans and to estimated population,” “housing,”  
25

1 “light and glare,” “aesthetics,” “noise,” “transportation,” “vehicular traffic,” parking” and many  
2 other specific elements. WAC 197-11-444(2). While the City characterizes the “built  
3 environment” as “narrow,” a reading of the SEPA rules shows otherwise. The rules identify no  
4 less than 29 specific elements of the built environment.

5  
6 The cases the City relies on establish only that purely economic impacts are not  
7 environmental impacts subject to SEPA. *E.g. West 514, Inc. v. City of Spokane*, 53 Wn. App.  
8 838, 847, 779 P.2d 1065 (1989); *Indian Trails Property Assoc. v. City of Spokane*, 76 Wn. App.  
9 430, 444, 886 P.2d 209 (1994). Yet the City admits – as it must – that economic impacts are  
10 subject to review under SEPA if they that will cause probable impacts to one of the elements of  
11 the environment. Motion, p. 9. This is the case here. The Coalition does not assert standing  
12 based on purely economic injuries. Instead, it alleges that its members’ physical properties will  
13 be impacted – both by the direct effects of construction and altered traffic patterns, as well as by  
14 the economic effects of the fees on elements of the built environment such as housing. The  
15 adverse environmental impacts of likely development, “including an increase in traffic, air  
16 pollution, congestion and noise, are clearly within the zone of interests protected under SEPA.”  
17  
18 *Trepanier v. Everett*, 64 Wn. App. 380, 382, 824 P.2d 524 (1992).

19  
20 Moreover, impacts to the built environment that result from economic effects must be  
21 considered under SEPA. *West 514*, 53 Wn. App. at 847-848 (“We recognize that if the probable  
22 effect of competition is blight downtown such that the built environment is affected, then  
23 discussion of that effect in an EIS is called for.”); *Indian Trails Property Assoc. v. City of*  
24 *Spokane*, 76 Wn. App. 430, 444, 886 P.2d 209 (1994) (“We agreed that if the probable effect of  
25 [economic] competition is such that the “built environment” is affected, review is called for by  
26 WAC 197-11-444(2).”).  
27  
28

1 That an appellant may also have economic interests in the effects of the Amendment does  
2 not invalidate standing. The Washington Supreme Court recognized this critical distinction in  
3 *Kucera, supra*, where plaintiffs alleged shoreline damage from the operation of a high-speed  
4 ferry. 140 Wn.2d at 206. The plaintiffs were waterfront property owners along the ferry route.  
5 *Id.* The *Kucera* Court acknowledged that while the plaintiffs’ interests “were undoubtedly  
6 motivated by a desire to protect the economic value of their properties, their SEPA claim is based  
7 on the State’s alleged consideration the *environmental* effects of the [ferry operations], not its  
8 economic effects.” *Id.* at 213 (emphasis in original).

10 Consistent with this case law, the Seattle Hearing Examiner has recognized that  
11 appellants who allege impacts to elements of the environment have standing, even if they also  
12 have economic interests. *In the Matter of the Appeal of 621 Apartments, et al.*, Hearing  
13 Examiner File W-17-002 and E-17-003, Order on Motion to Dismiss, August 16, 2017. In *621*  
14 *Apartments*, the appellants were property and business owners who would be adversely impacted  
15 by proposed limitations on short term rental. The Examiner noted that appellants were  
16 “undoubtedly motivated by a desire to protect the economic value of their properties.”  
17 Nevertheless, they had standing because they alleged environmental impacts, including impacts  
18 to aesthetics, traffic and historic resources. *Id.* at p. 2.

21 Notably, the City does not actually contest that any of the impacts alleged by the  
22 Coalition – including noise and dust from construction, alterations to traffic patterns and parking  
23 availability, light and glare from new structures, and reduced housing affordability or availability  
24 – are environmental. Instead, it merely seeks, incorrectly, to recharacterize the Coalition’s  
25 claims as purely economic in nature. This attempt is contradicted by the record and cannot  
26 defeat the Coalition’s standing to appeal.

1 **D. The Coalition alleges an injury in fact.**

2 The City’s third argument is that the Coalition’s alleged injuries are too speculative to  
3 provide a basis for standing. It argues that impacts are speculative both because “[i]t is not even  
4 known what the rates will be[,] what types of development will be subject to” the fees, or which  
5 transportation projects will eventually be authorized and permitted, and because the Amendment  
6 is a “non-project action” that “simply makes it possible to create a Transportation Impact Fee  
7 program [but] would require legislation” to actually do so. Motion, pp. 10-11. Neither of these  
8 contentions can defeat standing.  
9

10 The City argues first that because the specific amount of the fee to be charged and which  
11 listed projects will be funded remain to be determined, any claimed injury is inappropriately  
12 speculative. This misstates the applicable legal standard. An appellant need not prove its  
13 ultimate case in order to establish standing. Instead, the SEPA standing injury in fact element “is  
14 satisfied when a plaintiff *alleges* the challenged action will cause specific and irreparable harm.”  
15 *Kucera, supra*, 140 Wn.2d at 213 (emphasis added; internal quotations omitted). “A sufficient  
16 injury in fact is properly pleaded when a property owner alleges immediate, concrete and  
17 specific damage to property, *even though the allegations may be speculative and*  
18 *undocumented.*” *Id.* (internal quotations omitted; emphasis added). In *Kucera, supra*, the Court  
19 found that property owners “clearly had standing” to challenge the State’s compliance with  
20 SEPA in connection with its operation of a high-speed ferry simply because they alleged damage  
21 to both private and public shorelines. *Id.* The property owners had not demonstrated that this  
22 damage would actually result from the ferry operation, nor were they required to do so in order  
23 to have SEPA standing. *Id.* at 213, 217-221.  
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27 Similarly, in *Leavitt, supra*, the Court of Appeals found that a property owner had  
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1 standing to challenge a county’s SEPA compliance in adopting a new zoning code. The plaintiff  
2 alleged that she owned property adjacent to undeveloped land zoned for increased residential  
3 development. The plaintiff also alleged that she would be injured by stormwater runoff and  
4 increased traffic if the property were developed under the new zoning. The Court noted that the  
5 impacts were “speculative and undocumented; they are possible, but not necessary, impacts of  
6 the Board’s adoption of the Code.” *Id.* at 679. Nonetheless, because the claimed impacts were  
7 “within the interests protected by SEPA” and the plaintiff had alleged “that they directly impact  
8 her property and interests,” the Court assumed that she had established standing. *Id.*

9  
10 The Seattle Hearing Examiner has previously recognized the legal principles stated in  
11 these cases. In *621 Apartments*, the City made the same claim it does in this case. Specifically,  
12 the City claimed that the alleged environmental harms caused by proposed short term rental  
13 legislation were “conjectural.” The Examiner properly rejected this claim, stating “[a]t this early  
14 point in the appeals, this is an issue of fact that must be addressed at the hearing.” *621*  
15 *Apartments, supra*, Order on Motion to Dismiss, p. 2.

16  
17 Like these plaintiffs, the Coalition’s members have alleged immediate, concrete and  
18 specific injuries based on how specific projects *identified in the Amendment* would affect both  
19 their environmental surroundings and their physical properties. Coalition members AMLI and  
20 Onni. have alleged that their specific properties will be affected by construction, traffic, parking,  
21 noise, light, and glare impacts from nearby transportation improvement projects listed in the  
22 Amendment. Koppelman Dec. ¶¶7, 10; Evans Dec. ¶¶ 7, 13.

23  
24 While the City asserts that the projects to be funded have not yet been determined, this  
25 claim cannot be squared with the plain language of the Amendment. The Eligible Projects list is  
26 fundamental. The Amendment describes these projects as “identified capacity-related  
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28

1 improvements needed to address the impacts of growth.” Freeman Dec., Ex. A, Att. 1, p. 2. The  
2 Amendment requires that the amount of the impact fee be based on the cost of these needed  
3 improvements. *Id.*, Att. 1, p. 2, Att. 2, p. 1. The Amendment also mandates that the City “use  
4 transportation-impact fees to help fund transportation system improvements needed to serve  
5 growth.” *Id.*, Att. 1, p. 2. These improvements unequivocally “are” – not may be – eligible to  
6 receive funding from the fees. *Id.*, Att. 2, p. 1. The City is bound by the language in the  
7 Amendment. Under GMA, the City is required to adopt development regulations that are  
8 consistent with, and implement, its Comprehensive Plan. RCW 36.70A.040. Thus, the funding  
9 of the Eligible Projects is not only a probable result of the Amendment – it is required. The  
10 construction of transportation projects both listed on the City’s CIP and funded is probable, not  
11 speculative.  
12

13  
14 AMLI and Onni have also alleged that, for three of their projects currently in  
15 development, they would likely need to mitigate the costs of paying the fees by passing them  
16 along to residential tenants (impacting housing affordability) and reducing available parking  
17 (impacting nearby traffic and parking availability). Koppelman Dec. ¶¶13-14; Evans Dec. ¶¶8-9,  
18 15-16. The Coalition has submitted the declaration of an expert in the effects of impact fees on  
19 urban land use. He confirmed that the impacts identified by the Coalition are impacts of the  
20 Amendment and explained that the effects of impact fees on housing production and  
21 affordability are not speculative but are consistent with his research and the experiences of other  
22 jurisdictions. Shook Dec ¶¶13-14.  
23

24  
25 These allegations of direct impacts to individual properties more than meet the  
26 Coalition’s obligation to allege an injury-in-fact and render the cases cited by the City  
27 inapposite. In *Trepanier, supra*, 64 Wn. App. 380, the plaintiff challenged Everett’s adoption of  
28

1 a new zoning code. The Court found that the petitioner lacked standing because his claim that  
2 reduced densities in Everett would cause increased development with attendant impacts in  
3 unincorporated Snohomish County had “absolutely no factual support in the record” and, in fact,  
4 was contradicted by the record. In contrast, here, the Coalition has submitted declarations  
5 explaining specifically how its members will be directly affected by the Amendment given their  
6 particular circumstances. Koppelman Dec. ¶¶7, 10, 13-14; Evans Dec. ¶¶7-9, 13-16.

8 Similarly, the plaintiff in *Harris v. Pierce County*, 84 Wn. App. 222, 231-32, 928 P.2d  
9 1111, 1116 (1996), sought to establish standing based on the fact that her property might  
10 someday be subject to condemnation if one of several potential trail locations was chosen under  
11 a yet-to-be-adopted final plan, but the court found this “completely conjectural and speculative.”  
12 By contrast, the Coalition has pointed to transportation projects specifically listed in the  
13 Amendment that have already been the subject of years of planning. The physical impacts these  
14 projects will have on Coalition members’ properties are far from speculative. Likewise, the  
15 plaintiffs in *Snohomish County* challenged a countywide planning policy with general allegations  
16 regarding its likely effects on “matters such as property values [and] property taxes.” 76 Wn.  
17 App. at 52. The court ruled that the plaintiffs had “failed to present facts that show that *it or its*  
18 *property would be injured* by the County’s SEPA action.” *Id.* at 53 (emphasis added). Notably,  
19 the court did not hold that a legislative action affecting more than one property could not cause  
20 an injury-in-fact: it noted that “residents and owners of property affected by . . . a detailed  
21 regulation have standing to challenge such an ordinance.” *Id.* at 54. This Amendment, which  
22 describes specific transportation projects adjacent to Coalition members’ property, is just such an  
23 ordinance.  
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26

27 Second, the City argues that “factual links are missing” because the Amendment is a non-  
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1 project action that requires further legislative action to fully adopt. In other words, because the  
2 Amendment does not include every step that will be necessary to impose a transportation impact  
3 fee, the City claims its DNS is insulated from review under SEPA.

4 Washington courts have long since rejected this argument. “[T]he fact that a proposed  
5 action will not cause an immediate land use change or that there is no specific proposal for  
6 development does not vitiate the need for an EIS.” *King Cty. v. Wash. State Boundary Review*  
7 *Bd.*, 122 Wn.2d 648, 663, 860 P.2d 1024, 1032 (1993). “Instead, an EIS is required if, based on  
8 the totality of the circumstances, future development is probable following the action and if that  
9 development will have a significant adverse effect upon the environment.” *Id.* As courts have  
10 noted, this accords with SEPA regulations establishing that “[t]he fact that proposals may  
11 require future agency approvals or environmental review shall not preclude current  
12 consideration, as long as proposed future activities are specific enough to allow some evaluation  
13 of their probable environmental impacts.” *Lands Council v. Wash. State Parks & Recreation*  
14 *Comm’n*, 176 Wn. App. 787, 804, 309 P.3d 734, 743 (2013) (quoting WAC 197-11-055(2)(a)(i)).  
15 In addition, for a nonproject action, SEPA requires environmental consequences to be analyzed  
16 in terms of the maximum potential allowed under the regulations. (“[A]n EIS is adequate  
17 [under SEPA] in a nonproject zoning action where the environmental consequences are  
18 discussed in terms of the maximum potential development of the property under the various  
19 zoning classifications allowed.” *Heritage Baptist Church v. Cent. Puget Sound Growth Mgmt.*  
20 *Hr’gs Bd.*, 2 Wn. App. 2d 737, 752, 413 P.3d 590, 598 (2018) (quoting *Ullock v. City of*  
21 *Bremerton*, 17 Wn. App. 573, 581, 565 P.2d 1179 (1977)).

22 Here, the Amendment mandates the adoption of a transportation impact fee, specifies the  
23 methodology by which the fee must be calculated, and provides for the use of the fee to fund the  
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1 Eligible Projects. Freeman Dec., Ex. A. In addition, GMA requires that the City adopt  
2 development regulations that are consistent with and implement the Comprehensive Plan. RCW  
3 36.60A.040. Under these circumstances, the imposition of a transportation impact fee is  
4 “probable following the action.” In addition, the list of Eligible Projects included with the  
5 Amendment is clearly “specific enough” to allow for evaluation of their impacts on neighboring  
6 properties. Similarly, while the exact amount of the fee is not yet set, the methodology mandated  
7 by the Amendment is “specific enough to allow some evaluation” of the fee’s “probable  
8 environmental impacts.” This analysis must reflect the maximum potential fee amount and  
9 scope, subject only to any limitations expressly included in the Amendment. Imposition of a fee  
10 calculated according to the methodology discussed, and development of the Eligible Projects  
11 included with the Amendment are not just a matter of “potential”: these actions the only reason  
12 the Amendment has been proposed. Thus, discussion of their consequences under SEPA is not  
13 just appropriate, it is necessary.

14  
15  
16 The City also cites two Growth Management Hearings Board cases. The first of those  
17 cases actually supports the Coalition: in *Davidson Serles, et al. v. City of Kirkland*, Central Puget  
18 Sound Growth Management Hearings Board Case No. 09-3-0007c (Order on Motions, June 11,  
19 2009), the Board considered and rejected arguments that petitioners “are not injured until the  
20 City approves a specific development pursuant to the Ordinances” and that “until the City’s  
21 process is complete, there is no indication as to whether [a developer’s] proposal will be  
22 approved, or in what form.” *Id.* at 14-15. The Board found that a property owner had SEPA  
23 standing to challenge the city’s amendment of its comprehensive plan and development  
24 regulations applicable to a property, despite the fact that no project approval had been issued,  
25 because it alleged environmental impacts including traffic, parking and aesthetic impacts to its  
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1 property. *Id.* at 30-33. Here, similarly, the Coalition has alleged the Amendment will result in  
2 environmental impacts to several specific properties owned by Coalition members. The  
3 Coalition has alleged sufficient injury in fact for standing.

4 In the second case, petitioners unsuccessfully sought to establish SEPA standing based on  
5 a tribe's "interests of protecting fish and wildlife habitat" and an individual's "difficulty  
6 sleeping" based on her "state of concern" about the "threat of development and destruction of the  
7 remaining wildlife and natural places in the shoreline areas." *Everett Shorelines Coalition, et al.*  
8 *v. City of Everett*, Central Puget Sound Growth Management hearings Board Case No. 02-3-  
9 0009c (Order on Motions, October 1, 2002), at 24. Unlike these petitioners, the Coalition  
10 members do not rely on generalized impacts but rather have alleged concrete, physical impacts to  
11 their specific properties.  
12

13  
14 In sum, the Coalition's allegations of specific injuries resulting from the Amendment are  
15 sufficient to satisfy the injury in fact requirement for SEPA standing.

#### 16 IV. CONCLUSION

17 For these reasons, the Hearing Examiner should find that the Coalition has standing and  
18 should deny the City's motion to dismiss.  
19

20 Dated this 28<sup>th</sup> day of January, 2019.

21 MCCULLOUGH HILL LEARY, PS

22  
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25 Attorneys for Appellant  
26  
27  
28