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BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

In the Matter of the Appeals of: ) Hearing Examiner File:  
)  
**SEATTLE FOR GROWTH AND SEATTLE** ) **W-18-012 & W-18-013**  
**MOBILITY COALITION,** )  
)  
Appellants. ) CITY'S RESPONSE EXAMINER'S  
) INQUIRY AT PRE-HEARING  
From a Determination of Non-Significance issued ) CONFERENCE  
by the Seattle City Council. )

At the February 27, 2019 pre-hearing conference, the Examiner inquired whether the scope of an appellant's SEPA appeal is tied to the appellant's alleged injuries. Washington cases do not appear to have considered this issue. Under the Examiner's rules, an appellant is limited to the matters contained in his or her notice of appeal.

It is worth noting that some courts have taken the position that economic plaintiffs never qualify under the zone of interest test in a NEPA suit. In the *Toiyabe LRMP* case,<sup>1</sup> for example, the Ninth Circuit held that a citizens' organization comprised of ranchers who had permits to use the forest for livestock grazing lacked standing to challenge a land and resource management plan on the basis of failure to comply with NEPA. The court concluded that the plaintiffs were outside

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<sup>1</sup> *Nevada Land Action Ass'n. v. United States Forest Serv.*, 8 F.3d 713 (9th Cir. 1993) (Toiyabe LRMP).

1 the statutory zone of interests because "the purpose of NEPA is to protect the environment, not the  
2 economic interests of those adversely affected by agency decisions."<sup>2</sup>

3 As noted in Rathkopf's *The Law of Zoning and Planning*, "The generally liberal orientation  
4 to standing in NEPA cases" is not the same as the states' approaches to standing under SEPA-  
5 noting that "among the more liberal is Connecticut, whereas Washington assumes a restrictive  
6 posture."<sup>3</sup> Rathkopf goes on to state:<sup>4</sup>

7 In some states standing imposes a considerable obstacle, as some courts have even  
8 rejected tests which are used for cases brought under less citizen-oriented legislation.  
Washington is among these.<sup>5</sup>

9 Both appellants have failed to meet Washington's two prong test to establish SEPA  
10 standing here. Seattle For Growth has failed to establish how Mr. Valdez, the only identified  
11 member of the Seattle For Growth, will sustain a specific, identifiable harm based on proposed  
12 Comprehensive Plan amendments. Mr. Valdez admitted at the pre-hearing conference that it is  
13 the "uncertainty" associated with impending creation of an impact fee program combined with the  
14 Mandatory Housing affordability legislation that are causing his "harm". Such claims are  
15 insufficient to establish SEPA standing here.

16 Likewise, Seattle Mobility Coalition relies on claims by Koppelman and Evans that they  
17 will be harmed based on loss of onsite parking. However, as noted by the Examiner, Koppelman  
18 and Evans (representatives for the developers SLMI and Onni, respectively) cannot assume

19 \_\_\_\_\_  
20 <sup>2</sup> *Nevada Land Action Ass'n. v. United States Forest Serv.*, 8 F.3d 713, 716 (9th Cir. 1993) (Toiyabe LRMP).

<sup>3</sup> § 9:34.Standing and threshold issues, 1 Rathkopf's *The Law of Zoning and Planning* § 9:34 (4th ed.)

<sup>4</sup> *Id.*

21 <sup>5</sup> *See, e.g., Concerned Olympia Residents for Environment v. City of Olympia*, 33 Wash. App. 677, 657 P.2d 790  
22 (Div. 2 1983) (rejecting claims of economic injury in case involving sale of property where plaintiff owned acreage  
near competing hospital). In general *see Rodgers*, *The Washington Environmental Policy Act*, 60 Wash. L. Rev. 33,  
47 (1984), questioning the philosophy of restrictive application in light of SEPA's aims. And *see Trepanier v. City*  
23 *of Everett*, 64 Wash. App. 380, 824 P.2d 524 (Div. 1 1992) (when person alleges threatened injury, as opposed to  
existing injury, he or she must show an immediate, concrete, and specific injury to him or herself).

1 standing on behalf of a third party including for renters or tenants. Further, while Ms. Kaylor  
2 argued that the coalition does contain some renters or tenants, Seattle Mobility Coalition did not  
3 demonstrate this through its Notice of Appeal or its Response to the City's motion to dismiss. For  
4 this reason, Seattle Mobility Coalition has failed to establish any of its members have met the two  
5 prong standing test under SEPA including that appellants interests fall within SEPA's zone of  
6 interest and that an appellant member has concrete and particularized injury, not speculative injury.

7 DATED this 5<sup>th</sup> day of March 2019.

8 PETER S. HOLMES  
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1  
2 **CERTIFICATE OF SERVICE**

3 I certify that on this date, I electronically filed a copy of Respondent City's Response to  
4 Examiner's Inquiry at Pre-Hearing Conference with the Seattle Hearing Examiner using its e-  
5 filing system.

6 I also certify that on this date, a copy of the same documents were sent to the following  
7 parties listed below in the manner indicated:

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17 DATED this 5th day of March 2019.

18 *s/Alicia Reise*  
19 Alicia Reise