BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeals of	Hearing Examiner Files: **W-18-012 & W-18-013**
SEATTLE FOR GROWTH AND SEATTLE MOBILITY COALITION	
of a Determination of Nonsignificance issued by the Seattle City Council.	**ORDER ON MOTION TO DISMISS**

The Seattle City Council ("City") moved to dismiss these appeals on January 14, 2019. Appellants Seattle Mobility Coalition ("SMC") and Seattle for Growth ("SFG") (collectively "Appellants"), filed responses to the motion on January 28, 2019. The City filed a reply on February 4, 2019. The Hearing Examiner has reviewed the file in this matter including the motion documents.

These appeals challenge a State Environmental Policy Act ("SEPA") Determination of Non-significance ("DNS") issued by the City on October 25, 2018 for amendments to the Seattle Comprehensive Plan related to transportation impact fees ("Legislation").

Hearing Examiner Rule ("HER") 3.02 provides:

> An appeal may be dismissed without a hearing if the Hearing Examiner determines that it fails to state a claim for which the Hearing Examiner has jurisdiction to grant relief or is without merit on its face, frivolous, or brought merely to secure delay.

The Department argues in the motion that the Appellants do not have standing to bring their appeals. There is a two-part test for standing to challenge actions under SEPA: (1) the interest sought to be protected must fall within the zone of interests protected by SEPA; and (2) the party must allege an injury in fact. *Lands Council v. Washington State Parks Recreation Com'n,* 176 Wn.App. 787,799, 309 P.3d 734, 740 (2013), citing *Kucera v. State,Dep't of Transportation,* 140 Wn.2d 200, 212, 995 P.2d 63 (2000).

The Department's motion asserts that the Appellants allege harms based only on economic injuries that are not within SEPA's zone of protected interests. The Department also argues that Appellants have failed to demonstrate that they will suffer an injury in fact that would satisfy the second part of the SEPA standing test. In order to show injury in fact, a petitioner must demonstrate that he or she will be adversely affected by the decision; if an injury is merely conjectural or hypothetical, there can be no standing. *Trepanier v. City of Everett,* 64 Wn.App. 380, 383, 824 P.2d 524, 526 (1992), *rev. denied,* 119 Wn.2d 1012 (1992). The Department asserts that the injuries alleged by the Appellants are not immediate, concrete and specific, but are instead speculative. Further, "It is well established that purely economic interests are not within the zone of interests protected by SEPA." *Kucera v. State Department of Transportation*, 140 Wn.2d 200, 212, 995, P.2d 63 (2000).

SMC alleges its members will be impacted by construction projects funded by the transportation impact fees that are the subject of the SEPA appeal. SMC alleges construction impacts including noise, dust, traffic and parking will occur. SMC also alleges that the cost of the transportation impact fees will limit its members' capacity to develop new housing, that the housing they develop will be more expensive, and as a result its members will be impacted by negative land use, housing availability, and aesthetic impacts.

SFG argues in response to the motion that the price and supply of housing will be adversely impacted by the impositions of the transportation impact fees.

The interests which the Appellants seek to protect through the DNS appeals are within the zone of interests protected by SEPA. SEPA encompasses construction impacts related to noise, dust, traffic and parking, and land use, housing affordability, and aesthetics impacts.

The impacts associated with construction and land use, housing affordability, and aesthetics raised by Appellants are within the zone of interests protected by SEPA. Both Appellants rely on the fact that the Legislation includes funding for the construction of certain specific "Eligible Projects," to support their argument that their members will suffer injuries in fact from the development of such projects. The City argues that the Legislation does not result in development, and that therefore the alleged impacts are speculative, remote, and do not result from the Legislation. The City's position does not comport with the standards for SEPA standing. First, standing injury in fact "is satisfied when a plaintiff alleges the challenged action will cause specific and irreparable harm . . . the allegations may be speculative and undocumented." *Kucera v. State Department of Transportation*, 140 Wn.2d 200, 213, 995, P.2d 63 (2000). Further, this is not a challenge to the Legislation itself (which is clearly not a development project directly resulting in environmental impacts when viewed in isolation), it is a challenge to the adequacy of the SEPA analysis, which under SEPA legislation is required to consider impacts reasonably related to or deriving from the Legislation. In this case, the allegation that the Eligible Projects, which are a later phase of implementing the Legislation, will have negative environmental impacts is adequate to sustain standing.

SMC's notice of appeal, motion response briefing and collective declarations allege concrete injuries in fact that would flow from the proposed Legislation with regard to construction impacts. SMC also argues that its members will be impacted, because the cost of the transportation impact fees will limit its members' capacity to develop new housing, and that the housing they develop will be more expensive. SMC's argument in this regard is not convincing that the impact to its members will be anything but economic. Instead the alleged impacts appear to be impacts on others. For example, if - as SMC argues - SMC's members have to charge more for development, and as a result less affordable housing is available, SMC has not demonstrated how its members will be impacted by this result. Individuals who need more affordable housing may be impacted, but SMC's members are not demonstrated to be looking for affordable housing. Thus, SMC has not demonstrated standing based on these issues. However, where SMC has demonstrated standing to challenge the adequacy of the DNS based on its allegations of injury relative to

construction impacts, SMC has made a sufficient showing of injury to have standing to challenge the decision.[1]

SFG has raised some elements necessary to demonstrate injury in fact, but either through lack of skill in legal briefing or information, SFG's response brief to the motion did not demonstrate how the organization or its members will suffer an injury in fact. Missing from SFG's briefing is an adequate discussion of the organization's mission and how the organization's pursuit of the mission, or its members, will be negatively impacted by the harms it alleges. Even considering the hearsay evidence included in its declaration (which is commonly allowed in the hearing setting, and was considered here), the information necessary to demonstrate an injury in fact to the organization or its members is simply lacking to satisfy the requirements necessary to establish standing. While the facts may be there to support standing for SFG, it was SFG's responsibility, even as a non-attorney represented organization, to present those facts, and it has failed to do so. The Hearing Examiner is required to hold *pro se* litigants to the same procedural standards, as represented parties. See e.g. *Edwards v. Le Duc*, 157 Wash.App. 455, 464, 238 P.3d 1187 (2010); *State v. Bebb*, 108 Wash.2d 515, 524, 740 P.2d 829 (1987).

The motion is **DENIED** as to Seattle Mobility Coalition, and **GRANTED** as to Seattle for Growth.

Entered this 9th day of April, 2019.

Ryan Vancil, Hearing Examiner
Office of Hearing Examiner
P.O. Box 94729
Seattle, Washington 98124-4729
Phone: (206) 684-0521
FAX: (206) 684-0536

[1] The Hearing Examiner requested briefing on the issue of whether in the case of a SEPA challenge, a party that could not demonstrate standing for each issue alleged, could be precluded from raising issues as to impacts that did not injure that party. In response briefing no party demonstrated that issue preclusion was supported by case law for SEPA, instead if a party has standing to raise a single issue as to the adequacy of a SEPA analysis it may also raise other issues with regard to SEPA analysis adequacy.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Order on Motion to Dismiss** to each person listed below, or on the attached mailing list, in the matters of **Seattle For Growth et al.**, Hearing Examiner Files: **W-18-012 & W-18-013**, in the manner indicated.

Party	Method of Service
Appellant for W-18-012 Roger Valdez roger@seattleforgrowth.org **Appellant Legal Counsel for W-18-013** Courtney Kaylor courtney@mhseattle.com Lauren Verbanik lverbanik@mhseattle.com	☐ U.S. First Class Mail, postage prepaid ☐ Inter-office Mail ☒ E-mail ☐ Fax ☐ Hand Delivery ☐ Legal Messenger
Department Legal Counsel Liza Anderson Liza.anderson@seattle.gov Alicia Reise Alicia.reise@seattle.gov	☐ U.S. First Class Mail, postage prepaid ☐ Inter-office Mail ☒ E-mail ☐ Fax ☐ Hand Delivery ☐ Legal Messenger

Dated: April 10, 2019

Alayna Johnson
Legal Assistant