BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of MAGNOLIA COMMUNITY COUNCIL AND OTHERS; and FRIENDS OF THE LAST 6,000 From a decision issued by the Director, Seattle Department of Construction and Inspections	Hearing Examiner File: MUP 21-016 (CU) and MUP 21-017 (ECA) Department Reference: 3028072-LU APPLICANT'S MOTION TO DISMISS

I. INTRODUCTION AND RELIEF REQUESTED

This is a consolidated appeal of a Master Use Permit ("MUP") granted for Respondent Oceanstar, LLC's ("Applicant") application to construct two single-family residences ("Project") in the Magnolia neighborhood of the City of Seattle ("City"). The City determined (1) that the Project is exempt from the requirements of the State Environmental Policy Act ("SEPA"), and (2) that the Project is consistent with the environmentally critical areas ("ECA") administrative conditional use provisions of the Seattle Municipal Code ("SMC" or "Code") and issued the Analysis and Decision of the Director of the Seattle Department of

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Construction and Inspections ("Decision"). The Magnolia Community Council ("MCC") and Friends of the Last 6,000 ("Friends") (collectively, "Appellants") appealed.

For the reasons provided in this Motion, the appeals must be dismissed for lack of subject matter jurisdiction and for failure to state a claim on which relief may be granted. Both appellants challenge the SEPA exemption. The Examiner lacks jurisdiction to review SEPA exemption decisions. MCC claims the Decision should be reversed because it is allegedly inconsistent with a private covenant. The Examiner lacks jurisdiction over private covenants. The additional claims made by both appellants are either outside the Examiner's jurisdiction or fail to state a legal claim for which the Examiner may grant relief. For these reasons, the Applicant requests dismissal of this matter in its entirety.

II. STATEMENT OF FACTS

The Project consists of two, three-story single-family residences proposed for a site (the "Project Site") located at 2500 W Marina Place. Decision, p. 1.[1] The Project Site is part of a 3.89 acre, 169,442 square foot lot (the "Property") that is located at the southeast end of the Magnolia neighborhood. *Id.* The Property contains areas with three different zoning designations: Single Family 5000 ("SF 5000"), Single Family 7200 ("SF 7200"), and Industrial General U/45 ("IG U/45"). *Id.* The Project Site is located entirely within the portions of the Property zoned SF 5000 and SF 7200. Decision, pp. 1-3.

On the southern portion of the Property, to the southeast of the Project Site, is a designated City of Seattle Landmark known as the Admiral's House. Decision, p. 1. Directly to the northwest of the Property, uphill from the Project Site, is a City park known as the

[1] This Statement of Facts is based entirely on the notices of appeal and the Decision, which is attached to them.

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Ursula Judkins Viewpoint ("Judkins Viewpoint"). MCC Notice of Appeal, p. 2; *see id.*, Exhibit A.

Because portions of the Property are encumbered with steep slopes, which are designated by the Code as Environmentally Critical Areas ("ECAs"), the City reviewed the Project for compliance with the ECA administrative conditional use provisions of SMC 25.09.260.B and considered the need for additional mitigation under SMC 23.42.042. Decision, pp. 1-6. Based on the Applicant's submissions and City review, the City concluded that a recorded ECA covenant, along with additional mitigation proposed by the applicant, would ensure the Project's consistency with these requirements. *Id.*

SMC 25.05.800, Table A, provides that a project consisting of up to four dwelling units is categorically exempt from SEPA threshold determination and environmental impact statement requirements in all City zones. Accordingly, the Decision notes at page 1 that the Project, which will consist of two dwelling units, is exempt from SEPA. Applicant submitted an environmental checklist ("Checklist") prior to the City's determination that the Project was categorically exempt. MCC Notice of Appeal, p. 4.

The City issued the MUP Decision on April 22, 2021. MCC and Friends each filed a Notice of Appeal. As authorized by the City of Seattle Hearing Examiner Rules of Practice and Procedure ("HER") and by the Hearing Examiner during the May 18, 2021 prehearing conference in this matter, Respondents now seek partial dismissal of this appeal.

III. STATEMENT OF ISSUES

The issues raised in this motion are whether the Hearing Examiner should: (1) dismiss MCC's appeal in full, including claims challenging the SEPA exemption; seeking the

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enforcement of private property rights; and requesting relief the Examiner lacks authority to grant; and (2) dismiss Friends' appeal in full, including claims challenging the SEPA exemption and asserting that environmental impacts should have been analyzed under SEPA; challenging a Type I decision interpreting the Code that is not within the scope of this appeal; and challenging the City's determinations on policy disagreements rather than Code requirements.

IV. EVIDENCE RELIED UPON

This motion relies on the papers and pleadings in this matter, including the Notices of Appeal and their attachments.

V. AUTHORITY

A. The Examiner may dismiss a claim over which the Examiner lacks jurisdiction or that is without merit on its face.

Pursuant to HER 3.02(a), "[a]n 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 . . . ." HER 3.02(b) allows any party to request dismissal of all or part of an appeal by motion.

Here, all of the claims raised should be dismissed. Although the matter has been consolidated, the Notices of Appeal filed respectively by MCC ("MCC Notice of Appeal") and by Friends ("Friends Notice of Appeal") raise a number of distinct issues and are therefore discussed separately below.

B. MCC Claims

For the reasons stated below, the Examiner lacks subject matter jurisdiction over MCC's claims that the Project is not exempt from SEPA and that the Decision was in error for failing to

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"consider specific deed restrictions, conditions, and view covenants related to the Property." Additionally, MCC's claim that certain mitigating conditions must be imposed cannot succeed.

1. MCC Claim 3 – SEPA Exemption

Claim 3.a of the MCC appeal argues that the City should not have determined that the Project was categorically exempt from SEPA because the Applicant is secretly planning to use the Project for a non-residential use rather than a residential use. MCC Notice of Appeal, pp. 3-4. This claim must be dismissed for two equally sufficient reasons.

First, as MCC itself recognizes, the Hearing Examiner lacks jurisdiction to reverse the City's decision that the Project is categorically exempt from SEPA. *See* Notice of Appeal, p. 2. As a quasi-judicial official, the Hearing Examiner "has only the authority granted it by statute and ordinance." *HJS Development, Inc. v. Pierce Count*y, 148 Wn.2d 451, 471, 61 P.3d 1141 (2003). "Under SMC 3.02.115.B, the Hearing Examiner can only hear appeals that comply with prescribed appeal ordinances." *Appeal of Fischer Studio Building Condominium Owners Association*, HE File No. MUP-21-004, Order on Motion to Dismiss at 3 (May 5, 2021). The appeal ordinances prescribed by the Code do not grant authority to the Hearing Examiner to review a categorical exemption decision.

The scope of the Hearing Examiner's review of SEPA issues concerns "determinations of nonsignificance (DNSs), adequacy of an EIS upon which the decision was made, or failure to properly approve, condition, or deny a permit based on disclosed adverse environmental impacts . . . ." SMC 23.76.022.C.6; *see also* SMC 25.05.680.A.1 (SEPA appeal procedures for proposals like the Project "shall be as provided in Chapter 23.76). These items do not include the application of a categorical exemption, which is not a determination subject to

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appeal but rather a recognition that no such determinations need to be made due to the nature of the proposal. *See* SMC 25.05.305.A.1 ("If a proposal fits within any [prescribed exemption], the proposal shall be categorically exempt from threshold determination requirements . . . ."). MCC's claim raises a matter outside of the Hearing Examiner's jurisdiction and must be dismissed on that basis. *See Seattle Chinese Chamber of Commerce*, HE File No. R-04-004, Order on Motion for Summary Judgment (Aug. 20, 2004) ("[U]nder SMC 25.05.680, the Examiner's SEPA review authority extends only to a review of a threshold determination or the adequacy of an FEIS. Thus, the Examiner cannot review the Department's decision to treat this proposal as categorically exempt under SEPA.").

Second, MCC's claim must be dismissed for the equally sufficient reason that it is not actually a challenge to the City's application of its SEPA regulations. A residence is defined by the presence of a dwelling unit, which is defined according to its physical characteristics rather than by an applicant's subjective intent. *See* SMC 23.42.048, 23.84A.032. MCC has not argued that the Project was not entitled to a SEPA exemption because it lacks the required characteristics – it has not alleged, in other words, that the Project will contain less than one or more than four dwelling units. *See* SMC 25.05.800, Table A. Rather, MCC is alleging that the Applicant obtained the Decision by lying to the City and will, at some future date, cease to comply with the conditions of its permit, which is limited to the residential uses described by the Applicant in its application. *See* SMC 23.40.002, SMC 23.90.002. But these allegations do not relate to the MUP application and approval process. *See* SMC 23.76.022.C.6.

Instead, MCC raises a code enforcement issue. The City enforces permit conditions and other Code requirements through the suspension and revocation procedures of SMC 23.76.034

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and the enforcement procedures of SMC Chapter 23.90. MCC's claim is really an assertion that the City will fail to enforce the permit conditions limiting the Applicant to residential use of the Property. This claim of hypothetical future code violation is outside the scope of the Examiner's jurisdiction as provided by SMC 23.76.022.C.6.

MCC Claim 3.a must be dismissed in full.

2. MCC Claim 3.b – Restrictions on the Property.

MCC Claim 3.b states that the City erred because the Decision does not include conditions requiring the enforcement of "specific deed restrictions, conditions, and view covenants" that MCC believes apply to the Property. MCC Notice of Appeal, pp. 5-7. This claim must be dismissed because the Hearing Examiner does not have the authority to require compliance with matters concerning property ownership or restrictions on title; instead, the superior court "shall have original jurisdiction in all cases . . . which involve the title or possession of real property." RCW 2.08.010. The enforcement of preexisting covenants and restrictions on deeds is not part of the City's land use Code and therefore may not be enforced by the Hearing Examiner in an appeal under SMC Chapter 23.76. MCC Claim 3.b must be dismissed in full.

3. MCC Claim 3.c – Mitigating Conditions

MCC Claim 3.c is based on SMC 23.42.042.B, which provides: "In authorizing a conditional use, the Director or City Council may impose conditions to mitigate adverse impacts on the public interest and other properties in the zone or vicinity." MCC asks the Hearing Examiner to add four conditions to the Decision :(1) require the Applicant to "regrade" and improve public access to the Judkins Viewpoint in "mitigation of the Project's adverse public

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view impact"; (2) mandate compliance with a 2011 Memorandum of Agreement ("MOA") that was signed by the City, the Seattle Department of Transportation ("SDOT"), and the Property's previous owner; (3) remove proposed access from the Project to the Judkins Viewpoint because it will allegedly be used by "event vendors and guests"; and (4) require "advance approval of the Landmarks Preservation Board." MCC Notice of Appeal, p. 7. These requests are outside of the Hearing Examiner's jurisdiction, and MCC Claim 3.c must be dismissed in full.

The first request seeks to require the Applicant to make improvements to a public park in order to mitigate alleged view impacts. The Code protects views in two, limited circumstances: in the Shoreline District, *e.g.* SMC 23.60A.170, and when a project is conditioned under SEPA based on probable impacts to a *designated* public view. SMC 25.05.675.P. Notably, Judkins Viewpoint is not designated as a protected public view. *See* SMC 25.05.675, Attachment A. Under the plain language of the Code, there is no right to a view here. MCC is, therefore, asking the Hearing Examiner to effectively rewrite the Code to provide a right to a view. The Examiner should decline this invitation. This would violate the well-established canon of statutory interpretation that the plain language controls. *HomeStreet, Inc. v. Dep't of Revenue*, 166 Wn.2d 444, 452, 210 P.3d 297 (2009) ("A court 'is required to assume the Legislature meant exactly what it said and apply the statute as written.'" It would also violate the canon of "expression unius est exclusion alterius, *i.e.*, '[w]here a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature.'" *Magney v. Truc Pham,* 195 Wn.2d 795, 803, 466 P.3d 1077, 1082 (2020) (quoting *Wash. Nat. Gas. Co. v. Pub. Util. Dist. No. 1 of Snohomish County*, 77 Wn.2d 94, 98, 459 P.2d 633 (1969)). The Examiner cannot grant

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relief that is not based in the Code. *HJS Development, Inc., supra*, 148 Wn.2d at 471. The inclusion of the broad "public interest" language in SMC 23.42.042 does not provide authority to go beyond the specific bounds of view protection established by the Code.

The second request concerns the MOA. As with Claim 3.b, the question of compliance with pre-existing private property restrictions on the Property is an issue of property ownership that is not part of the land use approval process. The Code does not authorize the Hearing Examiner to enforce or require compliance with an MOA through the appeal procedures of SMC 23.76, any more than it authorizes enforcement of easements or covenants.

The third request seeks the "removal of the proposed north side exterior stair access" between the Project and the Judkins Viewpoint, on the basis of allegations that the "access threatens to unreasonably burden [Judkins Viewpoint] in the form of increased vehicular and pedestrian traffic as it is used by event vendors and guests . . . ." As with the request for conditions based on view impacts, this is an effort to impose SEPA mitigation on a SEPA-exempt project, based on no criteria other than the general "public interest" language of SMC 23.42.042. The Code contains numerous, detailed requirements for traffic, parking, access, and other transportation considerations, as well as a policy authorizing additional mitigating conditions as necessary under SEPA. *See* SMC Title 11; SMC Chapter 23.53; SMC 25.05.675.R. MCC has not based its request on any Code provision or City policy, and there is no citation in its appeal of any legal authority for the Hearing Examiner to require a use to remove allowed access in order to prevent abuse by a separate, adjacent use.

Finally, MCC's fourth request asserts that the "Decision does not meaningfully address the impact of the Project's on the Admiral's House" and "should be modified to require

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advance approval of the Landmarks Preservation Board pursuant to SMC Chapter 25.12." MCC Notice of Appeal, p. 7. This claim is improper. The Code provides that when an owner of a landmarked site seeks to make "alterations or significant changes to specific features or characteristics of the site, improvement or object, which are identified in the approved nomination," the Landmarks Preservation Board ("Board") must first approve the change through the certificate of approval process. SMC 25.12.670. But this does not provide a basis for MCC's assertion. MCC has not disputed that, as noted in the Decision, the Project does not propose "any changes to the Admiral's House *or the landmark portion of the [P]roperty*." Decision, p. 2 (emphasis added). In other words, the Project is not proposing changes to the "features or characteristics of the site . . . which are identified in the approved nomination," as required by SMC 25.12.670. There is therefore no basis for the Board's involvement in this matter.

In addition, the Board's actions with regard to a certificate of approval are subject to a separate set of procedures and appeal pathway that are parallel to – rather than part of – the City's decision on a MUP application. *See* SMC 25.12.740, 750, 760. And although the Board may review projects that are adjacent to designated sites or structures as part of the City's exercise of substantive authority under SEPA, *see* SMC 25.05.675.H.2.d, that authority does not apply to this Project, which is exempt from SEPA. MCC has not identified, and cannot identify, any Code authority for the City to require the Board to review the Project – much less authority for the Hearing Examiner to require the City to do so.

Because MCC has requested relief that is outside the authority of the Hearing Examiner, MCC Claim 3.c must be dismissed in full.

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C. Friends Claims

All of the claims raised in the Friends Notice of Appeal must be dismissed for the reasons stated below. This Motion will discuss these claims according to their letter designations at pages 3-7 of the Friends Notice of appeal, with reference to additional statements in the notice as relevant.

1. Friends Claims A and C – SEPA

Like MCC Claim 3.a, Friends Claim A challenges the City's decision that the Project is categorically exempt. As explained in the summary of Friends' objections to the Decision, at page 3 of the Friends Notice of Appeal, the basis for this claim is that Friends "feel[s] that there are numerous environmental impacts/issues that require environmental review." Friends Claim A also includes a number of sub-claims asserting that particular elements of the environment under SEPA have not been sufficiently reviewed, including impacts to earth, water, plants, and animals. Friends Notice of Appeal, pp. 3-5. Another such claim is asserted by Friends Claim C, which challenges the adequacy of SEPA analysis of historic and cultural preservation issues. *Id.*, p. 6. For the reasons explained above regarding MCC Claim 3.a, the Hearing Examiner does not have jurisdiction to consider a challenge to the City's exemption determination. Friends Claims A and C must therefore be dismissed in their entirety.

Because SEPA does not provide a basis for appealing the Project, the Hearing Examiner must dismiss not only Friends' assertion that the Project should not have been exempt from SEPA's requirements but also the portions of Friends Claim A that refer to individual environmental impacts. Projects that are categorically exempt are not required to analyze environmental impacts pursuant to SEPA – indeed, the City is not even "required to

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document that a proposal is categorically exempt." SMC 25.05.305.B. Friends also asserts that the Applicant's responses to certain questions on the Checklist were inadequate. Friends Notice, pp. 3-5. But the Code provides that a categorically exempt project does not even need to prepare an environmental checklist – let alone a checklist containing a particular level of detail. SMC 25.05.305.A.1. Friends' assertions of inadequate attention to environmental impacts are requests for the Examiner to require environmental analysis under SEPA – a requirement that the Examiner lacks the jurisdiction to impose. Friends Claim A must be dismissed in its entirety.

The same is true of Friends Claim C, which asserts that "[b]uilding so close to the historic Admiral's House was not fully explored by the SEPA report and relied upon by the Decision." Friends Notice of Appeal, p. 6. As explained above in the discussion of MCC Claim 3.c, because the Project is exempt from SEPA and located outside the portion of the Property that is designated as a landmark, there was no requirement for the City to conduct review of this issue. Friends Claim C does not cite any legal authority on which the Hearing Examiner could require a revision to the Decision on this basis. The claim must be dismissed.

2. Friends Claim B – Building Site Status

Friends Claim B must be dismissed because it fails to state a claim on which relief may be granted. The claim states, in full:

> We object to the interpretation of this building site status. We also question the interpretation that the Applicant could actually build even more residences on this site. By the Seattle Department of Construction and Inspections (SDCI) own words, the 2500 W. Marina Pl is "an extremely challenging site on which to pursue additional development." (July 8, 2017 memo/email from Jerry Suder to Eric Drivdahl) Fortunately for the Applicant, Mr. Suder offered numerous strategies to the Applicant on circumventing these challenges. (July 8, 2017 memo/email Suder/Drivdahl).

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> None of these challenges were adequately represented in the Decision. The Analysis sections primarily relied on text from the Applicant's own studies, experts and consultants. The Applicant's inadequate SEPA checklist (exempted by Mr. Suder's department), also referred to the SDCI's review for compliance. The SDCI relied solely on the Applicant's report.

Friends Notice of Appeal, pp. 5-6.

This claim is essentially making three assertions, none of which is a legally valid claim. First, Friends' "object[ion] to the interpretation of this building site status" refers to the City's application of SMC 25.09.260.B.1.c, which provides that the City may authorize development on a steep slope erosion hazard area or buffer if "the property is a lot in existence as a legal building site prior to October 31, 1992" and the proposal meets certain other criteria. Friends characterizes the City's determination that the Property meets this criterion as an "[u]nclear interpretation of the rule" that if "upheld . . . will nullify many of the regulations the city adopted to protect trees and ECAs." Friends Notice of Appeal, p. 3.

This fails to present a valid claim for multiple reasons. First, Friends does not appear to be challenging the City's determination that, under the plain language of SMC 25.09.260.B.1.c, the Project is a legal building site where more than two residences could be constructed. *See* Decision, pp. 2-3. Instead, Friends objects to the "interpretation of the rule allowing building on this environmentally sensitive site because it was a legal building site prior to October 31, 1992" on the basis that "[i]f upheld this will nullify many of the regulations the city adopted to protect trees and ECAs." Friends Notice of Appeal, p. 3. This is not a challenge to the City's compliance with the review procedures of SMC 23.76; instead, it is another challenge to the Code itself. The Hearing Examiner is not authorized to hear such challenges.

Second, to the extent that Friends is challenging the City's determinations that the plain

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language of SMC 25.09.260.B.1.c establishes that the Project Site is a legal building site where more than two residences could be constructed, the claims are not properly part of this appeal. The "[a]pplication of development standards for decisions not otherwise designated Type II, III, IV, or V" is a Type I decision. SMC 23.76.004, Table A. Stating the Property's history as a legal building site, and the number of residences allowed by the underlying single-family zoning, do not involve SMC 25.09.260 discretionary criteria but only the application of development standards – a Type I decision. Friends was required to challenge the City's application of these standards through requesting and appealing a Code Interpretation. *See* SMC 23.88.020.C.3. Having failed to do so, it cannot raise this claim in this appeal.

Third, Friends "question[s] the interpretation that the Applicant could actually build even more residences on this site." Friends Notice of Appeal, p. 5. This statement, which appears to be a reference to an informal communication provided by the City earlier in the application process, does not challenge a determination that was actually part of the Decision. Because the Applicant is not seeking to build more than two residences on the site and the City has not issued an appealable determination that would allow the Applicant to take such an action, there is nothing to appeal.

Fourth, Friends asserts that the City acted improperly by allegedly suggesting Code-established procedures through which the Applicant could obtain a permit for development of the Property; by not discussing site constraints at sufficient length in the Decision; and by conducting its review based on technical materials submitted by the Applicant. Again, this fails to state a basis for relief. No provision of the Code prevents City staff from working with project applicants to achieve Code compliance or requires a Decision document to describe site-related

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issues that are not relevant to Code criteria. And the Code states that "[a]n application [for an ECA administrative conditional use] shall provide information sufficient to demonstrate that the proposal meets the [applicable] criteria." SMC 25.09.260.B (emphasis added). It does not require the City to obtain technical information from other sources.

Friends' criticisms are not valid legal objections; instead, they are entirely "based in a subjective opinion about how the Department should conduct its review, and fail[] to demonstrate any error in the review procedure identified by the Code." *Sensible 1732 Development*, HE File No. MUP-20-015, Findings, Conclusion, and Decision at 5 (Dec. 18, 2020).

For these reasons, Friends Claim B must be dismissed in full.

3. Friends Claim D – Arborist Report

Friends Claim D asserts an objection "to the tenor and specifics of the Arborist's Report" and to the timing of the release of the report and a subsequent revision. Friends Notice of Appeal, p. 6. This claim must be dismissed because it fails to allege a violation of any Code provision or to cite any legal authority authorizing the Hearing Examiner to grant relief.

The first portion of Friends Claim D is based on statements such as the assertion that it was improper for the Project arborist to rely on Code provisions authorizing tree removal because of Friends' belief that the trees to be removed "should be especially valued." Friends Notice of Appeal, p. 7. None of these assertions is linked to a substantive or procedural requirement within the Hearing Examiner's authority to enforce. They largely challenge the tone of the arborist's report, but they do not challenge any of the conclusions in the Decision

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or refer to any of the conditional use permit requirements. They allege neither "[non]compliance with the procedures for Type II decisions" nor "[non]compliance with substantive criteria" and are therefore beyond the authorized scope of review. SMC 23.76.022.C.6.

The same is true of the remaining assertions in Friends Claim D: that the arborist report was "released just days before the end of the public comment period" and that a revised version of the report was "not available during the public review period." Friends Notice of Appeal, p. 7. Even assuming for purposes of this motion that these statements are true, they do not provide a basis for relief. SMC 23.76.012.D requires the City to provide a 14-day public comment period prior to publishing a decision on a Type II project application and states that this period "shall begin on the date notice [of the application] is published in the Land Use Information Bulletin." Neither SMC 23.76.012.D nor any other provision of the Code states that all technical documents considered as part of a Type II decision must be publicly available during this time.

Friends Claim D must be dismissed in full.

4. Friends Claim E – Climate Change Policy

Friends Claim E asserts that the Decision is inconsistent with a City policy document establishing goals and guidelines concerning climate change. This claim must be dismissed in full because, like Friends' other claims, it is based on Friends' subjective disagreement with both the City's Decision and with the requirements of the Code itself. Friends Claim E suggests that trees should not be removed for the construction of single-family residences and that garage sizes should be limited based on the carbon emissions from cars. Tree removal standards for single-

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family home projects are provided by SMC Chapter 25.11 and SMC 23.44.020, and use and development standards for single-family zones are provided by SMC Chapter 23.44. Friends does not identify any Code provision stating that the City policy document it refers to takes precedence over the uses and development standards provided by these ordinances – nor any provision authorizing the Hearing Examiner to alter the City's decision on that basis. There are no such provisions. "The Hearing Examiner does not have jurisdiction over challenges to the Code." *Escala Owners Association*, HE File No. MUP-19-031, Order on Motion to Dismiss at 6 (January 10, 2020); *see also, e.g.*, *Ballard Business Appellants*, HE File No. W-08-007, Findings and Decision (June 9, 2009) ("Although the Appellants strongly disagree with the City's decision . . . , the wisdom of the proposal is not before the Examiner.").

Friends' disagreement with the City's legislatively adopted zoning ordinances does not provide a basis for relief in this appeal.

VI. CONCLUSION

The Respondents respectfully request that the Hearing Examiner (1) grant the Motion; (2) dismiss the MCC appeal in full; and (3) dismiss the Friends appeal in full.

DATED this 3rd day of June 2021.

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