BEFORE THE HEARING EXAMINER OF THE CITY OF SEATTLE, WASHINGTON

In Re The Appeal of: ADMINISTRATIVE DECISION APPROVING APP. NO. 3042320-LU JSA CIVIL, LLC; and WINCO FOODS, LLC; Applicant/Owners; LAKE WASHINGTON WORKING FAMILIES Appellant.	Hearing Examiner File: **W-25-008** Department Reference No.: **3042320-LU** **APPLICANT WINCO'S CLOSING BRIEF** Ryan Vancil City of Seattle Hearing Examiner

I. INTRODUCTION

This Appeal concerns the Master Use Permit ("MUP") and related SEPA Determination of Non-Significance ("DNS Decision") issued with conditions by the City of Seattle Department of Construction & Inspections ("SDCI") on October 20, 2025. Contrary to Appellant Lake Washington Working Families' ("LWWF" or "Appellant") November 3, 2025 Notice of Appeal (the "Appeal"), SDCI took the SEPA-required hard look when it reviewed Applicant JSA Civil, LLC and WinCo Foods, LLC's ("Applicant" or "WinCo") proposal to remodel the vacant Sam's Club site at 13550 Aurora Avenue North and repurpose it as a WinCo grocery store. Evidence presented at the hearing held on February 3, 2026 showed that Appellant has not and cannot meet its burden to show that SDCI's DNS Decision was clearly erroneous. SDCI's DNS Decision is afforded substantial weight, and this Appeal should be dismissed.

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The Hearing Examiner should dismiss this Appeal because: (1) Appellant's stormwater claims rest on an erroneous premise and poor analysis; (2) Seattle Municipal Code ("SMC" or "City code") and past practice confirms this project does not require a Traffic Impact Analysis ("TIA"); (3) the City adequately considered critical areas prior to issuing the DNS Decision; (4) Appellant did not meet its burden, and in most cases presented no facts or argument related to noise, light and glare, greenhouse gas emissions, and/or aesthetics; and (5) LWWF does not have standing to appeal the City's DNS Decision.

II. FACTUAL BACKGROUND

On March 17, 2025, Applicant submitted a MUP application for a project to remodel a former Sam's Club store into a WinCo store (the "Project"). The former Sam's Club and the new proposed WinCo store are both classified as the same use under the City code—Multipurpose Retail Sales—permitted uses within the Commercial 1 ("C-1") zoning designation. Accordingly, no change of use is proposed. The Project proposes modest exterior changes. The footprint of the building will be reduced by approximately 17,000 square feet and a new exterior wall will be created on the south side of the building along with a new entrance. A total of 11 additional parking spaces will be added, along with new sidewalks, new landscaping, and an additional stormwater treatment system.[1]

The majority of the building exterior and the remainder of the 511,981 square foot site will not be altered in any significant way. The building height will remain the same. The access points to the parking lot will remain the same. The existing stormwater system on the site will continue to manage stormwater in addition to the new enhanced treatment Filterra system that will be installed by Applicant. While the use of the property will not change and the exterior remodel is not a major change to the site, the City required SEPA review because the Project proposes more than 12,000 square feet of modifications and demolition of the existing building.[2]

[1] *See* SEPA Checklist, Exhibit 4.
[2] *See* SMC 25.05.800.B.6 and 7, Table B.

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SDCI issued the DNS Decision on October 20, 2025. Appellant LWWF filed an appeal of SDCI's DNS Decision on November 2, 2025. Appellant's Appeal claimed significant adverse impacts related to stormwater, traffic, critical areas, light and glare, greenhouse gas emissions, noise, and aesthetics. A hearing was held before the Hearing Examiner on February 3, 2026 with representatives from Applicant, Appellant, and SDCI present.

III. SEPA REVIEW STANDARD

The City's DNS Decision, including requirements, or "the absence of a requirement," as well as the "adequacy of a 'detailed statement'" is entitled to substantial weight.[3] An agency's decision to issue an DNS and not to require an EIS is reviewed under the "clearly erroneous" standard.[4] This strict standard mandates that the Hearing Examiner may only overturn the decision of the responsible official if he is left with the definite and firm conviction that a mistake has been made.[5] Community displeasure and the preference for an EIS are not bases for overturning a SEPA decision.[6] General desires for different regulations, more stringent regulatory restrictions, or more extensive review are not appropriate bases for this Appeal, but instead constitute collateral attack against legislative decisions made regarding development regulations under the GMA.[7] Conjecture or desire for a different regulatory regime do not demonstrate a "definite and firm conviction that a mistake has been committed."[8]

IV. LEGAL ANALYSIS

A. Appellant's Stormwater Expert Misrepresents Bioretention and Permeable Pavement as Only Solutions to 6PPD-q.

1. Appellant's Claims in Notice of Appeal.

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[3] RCW 43.21C.090.
[4] RCW 43.21C.090; *Anderson v. Pierce County*, 86 Wn. App. 290, 302, 936 P.2d 432 (1997) (citing *Indian Trail Property Owner's Assoc. v. City of Spokane*, 76 Wn. App. 430, 442, 886 P.2d 209 (1994)).
[5] *Leavitt v. Jefferson County*, 74 Wn. App. 668, 680, 875 P.2d 681 (1994); *Anderson v. Pierce County*, 86 Wn. App. 290, 302, 936 P.2d 432 (1997).
[6] *See,* e.g., *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 804, 801 P.2d 985 (1990); *Anderson*, 86 Wn. App. at 302.
[7] RCW 36.70A.290(2); *Woods v. Kittitas Cnty.*, 162 Wn.2d 597, 609, 174 P.3d 25 (2007); *Wenatchee Sportsmen Ass'n v. Chelan Cnty*., 141 Wn.2d 169, 179, 4 P.3d 123 (2000).
[8] *Norway Hill Pres. & Prot. Ass'n v. King Cnty. Council*, 87 Wn.2d 267, 274, 552 P.2d 674 (1976).

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In its Notice of Appeal, Appellant claims multiple errors related to water quality, which appear to show a basic misunderstanding of how stormwater is conveyed and regulated in the City of Seattle. First, Appellant claims that the DNS Decision does not address water quality and only refers to "drainage." However, "drainage" is the term of art used in City code when evaluating water quality as it relates to stormwater. Second, Appellant claims there are no safeguards or mechanisms for maintaining water quality within the City code, apparently without awareness of the City of Seattle Stormwater Manual ("City Manual"), which is incorporated in City code by reference throughout SMC 22.800-808 and Director's Rule 10-2021. The City Manual extensively regulates water quality. Finally, Appellant claims that the Project's stormwater drains into Bitter and Haller Lakes and that Applicant's materials, which state that the stormwater from the Project would lead to the municipal stormwater system, which eventually leads to Green Lake, are erroneous "given the local terrain."[9] This claim was refuted not just by Applicant's expert but by Appellant's own stormwater expert, Mr. Jayakaran.[10]

2. Appellant's Stormwater Case Study and Testimony on Stormwater Management.

Within a case study presented as Exhibit 15 and testimony by Appellant's stormwater expert, Appellant also makes specific claims about the potential adverse impacts of 6PPD-q and the treatment system proposed by Applicant. Mr. Jayakaran claims that the treatment system selected by Applicant is less effective than readily available alternatives—bioretention and permeable pavement.[11]

However, Applicant's stormwater expert, Brandon Johnson, who reviewed Applicant's geotechnical report and used those findings to prepare Exhibit 2, the JSA Civil preliminary stormwater report, found that the soils at the Project site are not suitable for infiltration due to the large amount of compacted fill material from preexisting improvements. Accordingly, permeable

[9] Exhibit 8, at 4.
[10] Exhibit 15, at 7; SEPA Hearing Recording, 1:03:55.
[11] Exhibit 15, at 9-10.

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pavement and bioretention are not readily available alternatives, but rather, alternatives that have been ruled out through appropriate consideration by Applicant's stormwater engineer. Moreover, the existing site contains an extensive underground stormwater treatment apparatus, including existing vaults. Applicant chose to provide a similar type of treatment and conveyance for the Project, adding an additional vault and a Filterra enhanced treatment system. This is an appropriate choice for an existing developed site, such as a parking lot.

Mr. Jayakaran stated in his testimony that the only treatments that have been identified to effectively treat 6PPD-q are bioretention and permeable pavements and that the Filterra system proposed by Applicant is not rated for treatment of 6PPD-q by the Department of Ecology.[12] However, he also acknowledged that the study of 6PPD-q is an evolving science,[13] that different BMPs are appropriate for different environments,[14] and that Ecology and the City of Seattle have not yet identified any specific BMPs for the treatment of 6PPD-q.[15] In fact, Mr. Jayakaran specifically acknowledged that certain infiltration BMPs may not be appropriate for sites in which the soils are not appropriate for infiltration.[16]

Contrary to Mr. Jayakaran's assertion, Exhibit 28, a 2022 study by the Department of Ecology, *6PPD in Road Runoff: Assessment and Mitigation Strategies* ("2022 Ecology Report") which was produced in collaboration with the Washington State Department of Transportation ("WSDOT"), University of Washington Tacoma ("UW Tacoma") and Washington State University – Puyallup Extension ("WSU Puyallup"), discusses the strategies and recommendations for mitigating 6PPD-q utilizing existing Best Management Practices ("BMPs"). Appendix C of that study, *Stormwater Treatment of Tire Contaminants Best Management Practices (BMP) Effectiveness* ("2022 Consultant Report") for which Mr. Jayakaran served as a Project Advisory

[12] SEPA Hearing Recording, 1:14:00-:05.
[13] SEPA Hearing Recording, 1:27:28-:35.
[14] SEPA Hearing Recording, 1:28:27-1:29:20.
[15] SEPA Hearing Recording, 1:27:18-:28.
[16] SEPA Hearing Recording, 1:29:10-:20.

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Committee Member, has been added to the Ecology Manual as supplementary guidance.[17] The 2022 Consultant Report evaluated BMPs in terms of the treatment processes provided by the BMP and the BMP's likeliness to reduce 6PPD and 6PPD-q, based on literature on physicochemical properties and lab or field testing of a BMP or as defined in stormwater manuals from a selection of states.[18] Ecology commonly uses "pollutant surrogates" for modelling and treatment, based on the rationale "that any BMP will reduce concentrations of other pollutants that have common behaviors and pathways similar to the pollutant for which the BMP is designed."[19] The 2022 Consultant Report ranks biofiltration BMPs using bioretention soil media or compost as "high" in the category of Treatment or Prevention Potential.[20] Out of the 93 flow and treatment BMPs the study reviewed, only 28 ranked high, 51 ranked medium, and 14 ranked low.[21] The Filterra system—which is proposed for this Project—was ranked as a "high" effectiveness BMP in Appendix C's Appendix 4-1 of the Study.

The 2022 Ecology Report states, "Stormwater treatment infrastructures that use infiltration, sorption, filtration, and/or effectively capture tire wear particles are expected to reduce the toxicity from 6PPD-q."[22] Indeed, the study continues, "Currently, the most effective BMPs to reduce 6PPD-q concentrations in stormwater include (1) stormwater source controls[23] and (2) treatment approaches that use infiltration, sorption, filtration, and settling. Both 'gray' and 'green' stormwater infrastructure BMPs found in Ecology's Manuals provide these treatment approaches.[24]

The existing on-site stormwater system at the Project site contains large underground vaults and the proposed improvements include another large underground vault to slow and settle

[17] Exhibit 28,at 33.
[18] Exhibit 28, at 107.
[19] Exhibit 28, at 35.
[20] Exhibit 28, at 107.
[21] Exhibit 28, at 107, Table 1.1.
[22] Exhibit 28, at 12 (emphasis added).
[23] Exhibit 28, at 36 ("Examples of stormwater source control BMPs for tire chemicals include . . . Routine schedules for maintenance of stormwater infrastructure such as sweeping streets and parking surfaces as well as cleaning out catch basins and stormwater conveyance pipes.").
[24] Exhibit 28, at 33.

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the stormwater runoff. As testified by Mr. Johnson, the stormwater from the new or modified pollution generating surfaces in this Project will also be filtered through the enhanced treatment Filterra system.[25] The 2022 Ecology Report explains, "Flow control BMPs such as detention and retention ponds, tanks, or vaults are designed for (1) controlling stormwater flow rates and volumes and (2) capturing suspended solids transported by stormwater."[26] Based on the aforementioned best available science, Ecology (and its government and university partners) have recommended Filterra systems as a highly effective BMP for 6PPD-q.

Finally, Appellant's expert attempted to extrapolate data from a 2021 study to calculate potential impacts from this Project. Simple math—and Appellant's expert's own admission under oath that he questioned the reliability of the calculations in his report[27]—show that impacts from 6PPD-q are not yet known or easily quantified. The broad range suggested in Mr. Jayakaran's report (Exhibit 15) of 1.4 to 500+g per day for a passenger car, and 30g to 10,000+g per day for a larger truck[28] provide little to no useful or reliable information about how much 6PPD-q could actually be expected at this site—or any site for that matter. For example, Mr. Jayakaran's testimony was that 6 tons (or more) of 6PPD-q could be dropped on a single parking lot every day.[29] While Mr. Jayakaran claimed that this disproportionately large figure just goes to show how impactful parking lots are, the numbers Mr. Jayakaran provided are based on a 2021 study of multi-lane road runoff in Seattle, Los Angeles, and San Francisco—not from parking lots.[30] Mr. Jayakaran simply pulls the figure of "predicted" grams of 6PPD-q and multiplies it by the estimated average daily trips ("ADT") to arrive at the figure he claims represents how much 6PPD-q would be dropped on the parking lot each day.[31] There are no additional parking lot-specific variables

[25] SEPA Hearing Recording, 5:26:23-:45.
[26] Exhibit 28, at 38 (emphasis added).
[27] SEPA Hearing Recording, 1:48:30-:44.
[28] Exhibit 15, at 5, Figure 1.
[29] SEPA Hearing Recording, 1:36:30-1:37:30.
[30] Exhibit 15, at 5, Figure 1B.
[31] Exhibit 15, at 5.

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accounted for when considering the amount of 6PPD-q estimated to be dropped on the parking lot. The base premise of the amount of 6PPD-q dropped on the parking lot is flawed from the beginning. As Mr. Jayakaran acknowledges, his estimate leads to an inordinately high figure.[32] To provide context, Mr. Jayakaran's estimated figure related to the concentration of 6PPD-q that would be produced at this site is orders of magnitude larger, nearly 43,000 times the observed amount of 6PPD-q seen in stormwater runoff in multiple observed multi-lane roadway sites in Seattle, San Francisco, and Los Angeles.[33] This outcome seems particularly unlikely given the high trip count that these multilane roads have, and the speed at which the traffic is moving. The inconsistency in Mr. Jayakaran's numbers and his own admission questioning of the math of his own report throws its accuracy into question.

Stormwater treatment BMPs are required to meet the All Known and Reasonable Treatment ("AKART") standard.[34] Given that research on 6PPD-q is ongoing, the City of Seattle and Department of Ecology have not yet set a *reasonable* standard for addressing 6PPD-q and its impacts. Guidelines providing information on existing BMPs that are appropriate for site conditions and expected to treat 6PPD-q, such as Ecology's study in Exhibit 28, constitutes the best available science as the study of 6PPD-q continues to evolve. The proposed Filterra system meets that standard.

B. Appellant's Traffic Argument Is Contrary to City Code and Constitutes Improper Collateral Attack on City's Development Regulations.

Appellant claims that the SDCI did not adequately consider impacts to traffic when it made its DNS Decision. However, SDCI relied on the City's robust development regulations to

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[32] SEPA Hearing Recording, 1:37:20-:30.

[33] Exhibit 15, at 5, Figure 1B; Tian, Z., Zhao, H., Peter, K.T., Gonzalez, M., Wetzel, J., Wu, C. et al. (2021) 'A ubiquitous tire rubber–derived chemical induces acute mortality in coho salmon', Science, 371(6525), pp. 185–189. doi: 10.1126/science.abd6951.

[34] WAC 173-201A-020 (""AKART" is an acronym for "all known, available, and reasonable methods of prevention, control, and treatment." AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. The term "best management practices," typically applied to nonpoint source pollution controls is considered a subset of the AKART requirement.).

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determine that a TIA was not required in this case and exercised its discretion not to require a TIA because of the modest nature of the Project. The requirement to meet transportation level of service standards does not apply to the Project pursuant to SMC 23.52.004.A, because it does not propose development in excess of 30 dwelling units, 30 sleeping rooms, or 4,000 square feet of gross floor area in *new* nonresidential uses (and is not located in IG1 or IG2 zones).[35] Pursuant to SMC 23.52.008.A, a traffic impact analysis is not required for this project because SMC 23.52.008.A applies only to "proposed new development."[36] Testimony from the SDCI SEPA Responsible Official for this Project, Carly Guillory, confirmed that the City does not consider a demolition and remodel of an existing building as "new development."[37]

Even if the Project is considered "new development"—which it is not— this Project would still be exempt from traffic analysis under City code because the Project is located within an urban village and is subject to SEPA review.[38] Still, Appellant's expert, Mr. Nys, made numerous assertions that a TIA was required based on the ITE Manual, which is not incorporated in City code and is therefore not law.[39] He also made assertions based on a misreading of City code, claiming that the City must, for all intents and purposes, conduct a traffic impact analysis in order to justify not requiring a TIA.[40] This is not consistent with the law. What Mr. Nys classifies as "triggering criteria"[41] for a TIA are the required contents of a TIA itself, which, as explained above, is not required for this Project.

Mr. Nys also asserts that SDCI must treat a building that is not currently in use as a new baseline condition with no impacts, rather than following the City's established practice of considering a site's previous use to remain its existing use.[42] SDCI has a record of applying this

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[35] Emphasis added.
[36] Emphasis added.
[37] SEPA Hearing Recording, 3:36:15-3:37:25.
[38] SMC 23.52.008.A.
[39] *See* Exhibit 13.
[40] Exhibit 13, at 8.
[41] Exhibit 13, at 9.
[42] SEPA Hearing Recording, 3:37:30-3:38:40.

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policy, as it has done in the recent past, according to Ms. Guillory's testimony providing an example where the City did not require traffic impact analysis for a hotel in downtown Seattle that sat vacant for 40 years before a new hotel opened in its place.[43] SDCI did not require SEPA review for that project and did not consider the project a change of use requiring a TIA.[44] The City's policy and its DNS Decision are consistent with that policy and should be afforded substantial weight.[45]

Ultimately, Appellant's challenge of this Project as it relates to traffic is a collateral challenge to the City's development regulations related to TIAs, not a SEPA challenge. Appellant attempts to challenge the City's legislative decision to not incorporate the ITE Manual in its City code and not require TIAs for remodel projects such as the one proposed. A project-specific SEPA appeal is not the venue for challenges to the code.[46]

C. The City Adequately Considered Critical Areas Prior to Issuing the DNS.

LWWF claims that SDCI's SEPA review was inadequate because of the "factual discrepancy" between Applicant's materials—i.e., Applicant's geotechnical report and preliminary stormwater report, which incorporates the geotechnical report—and SDCI's DNS Decision. Namely, that SDCI's DNS Decision did not identify the small environmental critical area ("ECA") on the eastern border of the site, which was identified in Applicant's geotechnical report submitted to the City. However, the testimony before the Hearing Examiner shows that this small ECA was thoroughly considered prior to the issuance of the DNS Decision. Ms. Guillory testified that the presence of a mapped ECA was the reason that the Project was sent to a geotechnical specific reviewer.[47] The testimony of SDCI's geotechnical reviewing staff, Carsen Cheung, who conducted an extensive review of the site and the Project, was that SDCI was not only aware of

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[43] SEPA Hearing Recording, 3:37:30-3:38:40.
[44] SEPA Hearing Recording, 3:37:30-3:38:40.
[45] WAC 197-11-680(3)(viii).
[46] RCW 36.70A.290(2); *Woods v. Kittitas Cnty.*, 162 Wn.2d 597, 609, 174 P.3d 25 (2007); *Wenatchee Sportsmen Ass'n v. Chelan Cnty.*, 141 Wn.2d 169, 179, 4 P.3d 123 (2000).
[47] SEPA Hearing Recording, 3:34:05-:23.

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the "steep slope" ECA on the eastern border of the site, but had no concerns related to the area because no work was proposed near it, nor within the ECA buffer.[48]

Appellant claims, "the fact that this discrepancy exists calls into question the accuracy of the SEPA Determination, the SEPA Checklist, and the Geotechnical Report."[49] For this reason, Appellant claims that SDCI's SEPA review was inadequate and an EIS is required for this modest remodel project. However, that outcome is not supported by Washington law. "Even when there are procedural errors in the decision-making process, a land use decision may not be reversed . . . if the court determines the errors were harmless."[50] Errors are considered harmless based on the "rule of reason," which explains, "Where the preparation of an EIS would serve 'no purpose' . . . no rule of reason worthy of that title would require an agency to prepare an EIS."[51] Even though Ms. Guillory admitted that she mistakenly wrote, "*Environmentally Critical Areas:* no mapped ECAs" in the DNS Decision, the testimony of Ms. Guillory and Mr. Cheung establish the SDCI conducted an appropriate review to support the DNS Decision. No substantive change to the DNS Decision would result from reissuing the DNS to correct Ms. Guillory's clerical error. Accordingly, SDCI's failure to identify the small ECA in the DNS Decision constitutes harmless error and does not require mitigating conditions or an EIS.

D. Appellant Failed to Meet Its Burden Related to Noise, Light and Glare, Greenhouse Gas Emissions, and Aesthetics.

SEPA does not demand a particular substantive result decision making; rather, it ensures that environmental values are given appropriate consideration.[52] RCW 43.21C.240, which is implemented by WAC 197-11-158 streamlines the threshold determination process for cities and counties that plan under the GMA by directing/authorizing SEPA officials "to rely on existing plans,

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[48] SEPA Hearing Recording, 4:09:50-4:10:30; 4:13:45-4:14:03; 4:14:40-4:15:32.
[49] Exhibit 8, at 3.
[50] *Thornton Creek Legal Def. Fund v. City of Seattle*, 113 Wn. App. 34, 53, 52 P.3d 522 (2002), *as amended on denial of reconsideration* (Sept. 25, 2002).
[51] *Department of Transportation v. Public Citizen*, 541 U.S. 752, 767 (2004).
[52] *Moss v. City of Bellingham*, 109 Wn. App. 6, 14, 31 P.3d 703, 708 (2001).

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laws, and regulations in meeting SEPA requirements."[53]

Appellant failed to make any colorable arguments or provide any evidence of SDCI's failure to review and consider potential significant adverse impacts related to noise, light and glare, greenhouse gas emissions, and aesthetics. Appellant further failed to provide any evidence that there would be any significant adverse impacts related to any of those categories. By comparison, the City and Applicant provided evidence that the City requested and considered conceptual photometric plans related to light and glare, building elevations related to aesthetics, and the completion of a greenhouse gas emissions worksheet related to air quality.[54] Each of these were requested by SDCI throughout its review cycles, provided by Applicant, and ultimately found satisfactory by SDCI upon their review of the submissions. Accordingly, SDCI actually reviewed these issues and determined that there were no probable significant adverse impacts requiring additional mitigation outside of City development regulations. In addressing Appellant's claims that the Project is not properly mitigated for noise based on the conditions placed on the former Sam's Club store related to street sweeping, Ms. Guillory testified that changes to the City code from 2003 to present resulted in no need to condition the Project related to noise.[55]

The evidence on the record shows that SDCI reviewed each of these items and determined that there were adequate regulations established within City code to address any potential impacts. Indeed, as indicated in the DNS Decision and well established in the SEPA Rules, the City code and development regulations address every aspect of Appellant's alleged errors. SMC 25.05.660 and .665, WAC 197-11-158, and RCW 43.21C.240 all make it abundantly clear that when City code and development regulations adequately address a project's probable

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[53] *Id.*

[54] Exhibit 17, at 324-353 (City Cycle #1 Comments); Exhibit 17 at 369-375 (Applicant Response to Comments; Exhibit 17, at 542-576 (City Cycle #2 Comments); Exhibit 17, at 602-626 (Applicant Response to Comments); Exhibit 5 (Greenhouse Gas Emissions), Exhibit 24 (City review request cycle 1), Exhibit 25 (City review request cycle 2), Exhibit 1, at 20 (Building Elevations); Exhibit 1, at 22 (Photometric Conceptual Plan); Exhibit 1, at 2-6 (Zoning Analysis); *See* Testimony of Carly Guillory.

[55] SEPA Hearing Recording, 3:39:20-3:40:31.

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specific adverse environmental impacts, the City *shall not* require additional mitigation under SEPA. SMC 25.05.675.K.1.b. specifically states that the City's code "specifically addresses the issue of light and glare control associated with commercial and industrial projects." SMC 25.05.675.L.1.c specifically states that City code "addresses noise generators and noise impacts associated with commercial and industrial uses." This is consistent with SDCI's findings and ultimate DNS Decision, in which the City determined that no probable significant adverse impacts would result as long as the Project complies with City code and development regulations.

Appellant failed to allege or provide any facts related to any specific significant adverse impacts that were not adequately addressed by City code. SEPA is often looked at as a gap filler when the code or regulations are insufficient to address the probable significant adverse impacts of a project. Here, simply put—there is no place for SEPA mitigation when the regulations are so comprehensive that there is no gap to fill.

E. LWWF Lacks Standing to Bring this Appeal.

In addition to the substantive issues in this appeal, there is also a threshold question at issue: Does Appellant Lake Washington Working Families ("LWWF")—an unincorporated fictitious entity—have standing? The answer is no.

Even if LWWF were found to have the legal capacity to bring this Appeal—which it does not—it lacks the standing required to do so. An organization has two pathways to standing: (1) it can invoke organizational standing to sue on its own behalf; or (2) it can invoke associational standing to sue on behalf of its members.[56] Both of these avenues of establishing standing fail in this case and, therefore, require dismissal of this Appeal.

[56] *Am. Legal Found. v. F.C.C.*, 808 F.2d 84, 89 (D.C. Cir. 1987) ("When an organization seeks standing to litigate, it may do so in two capacities. First, and most obviously, it may sue on its own behalf. In this institutional capacity, the organization's pleadings must survive the same standing analysis as that applied to individuals. . . . Second, even if an organization itself has suffered no "injury in fact," the organization may nonetheless sue in certain circumstances on behalf of its members." (citations omitted)).

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1. LWWF Lacks Organizational Standing and Failed to Allege a Redressable Injury-in-Fact.

LWWF failed to allege any sufficient basis by which it was "significantly affected by or interested in" the DNS Decision or MUP.[57] LWWF did not present any witness at the hearing that spoke on behalf of LWWF nor provide any factual testimony into the record to demonstrate that LWWF is "significantly affected by or interested in the permit." The sole witness presented by LWWF was Benjamin Brostrom who confirmed in his testimony that he only recently became a member of LWWF and he holds no leadership position or decision-making authority.[58] LWWF asserts in its Appeal that "as an organization dedicated to ensuring the continued environmental health and safety to its members, LWWF is significantly interested in the impacts to the local environment caused by an additional 11,000 cars that will traverse the streets to and from this site . . . because of the LWWF's broad mission, there is no reason that the claims asserted in this Appeal . . . would require the participation of any LWWF member."[59] This assertion does not meet the standards required by well-established laws on standing.

Washington courts interpret the injury-in-fact prong of organization standing consistent with federal case law.[60] The U.S. Supreme Court in *Lujan v. Defenders of Wildlife* held that, "When . . . a plaintiff's asserted injury arises from the government's allegedly unlawful regulation (or lack of regulation) of *someone else,* much more is needed . . . when the plaintiff is not himself the object of the government action or inaction he challenges, standing is not precluded, but it is ordinarily 'substantially more difficult" to establish.'"[61]

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[57] As required by SMC 23.76.022.C.2.
[58] SEPA Hearing Recording, 40:10-40:20.
[59] Appellant's Notice of Appeal, Exhibit 8, pages 1-2.
[60] *Snohomish County Pub. Transp. Benefit Area v. Public Emp't Rel. Comm'n*, 173 Wn. App. 504, 513, 294 P.3d 803 (2013).
[61] *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562, 112 S. Ct. 2130, 2137, 119 L. Ed. 2d 351 (1992) (emphasis added).

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To satisfy the requirement for standing under Seattle Municipal Code, Washington law, and federal case law, a petitioner must show that they exhausted administrative remedies and would suffer an "injury-in-fact" as a result of the land use decision—here, the DNS.[62] For an organization to establish "injury-in-fact" for standing, the alleged injury must be "far more than simply a setback to the organization's abstract social interests."[63] A "mere 'interest in the problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved.'"[64] For example, a housing organization whose counseling and referral services were harmed by a defendant's racial steering practices alleged an "injury-in-fact" that was cognizable.[65] On the other hand, Sierra Club's "special interest" or commitment to "the cause of protecting our Nation's natural heritage from man's depredations," even those interests specifically related to the conservation of the Sierra Nevada Mountains, were not enough to establish an "injury-in-fact" to challenge government approval of a development in those mountains.[66] Rather, an injury must be concrete. For an association to establish "injury in fact" it must assert an interest greater than seeing the law obeyed or a social goal furthered.[67] "The organization must allege that discrete programmatic concerns are being directly and adversely affected by the defendant's actions."[68]

Like *Sierra Club*, LWWF does not allege any specific programmatic activities disrupted by the DNS Decision. It asserts a mere "interest in the problem" but has not identified any specific programmatic activity whatsoever, especially not that which would be adversely affected by the

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[62] SMC 25.05.545.B.; WAC 197-11-545(2); RCW 43.21C.075(4); *Knight v. City of Yelm*, 173 Wn. 2d 325, 267 P.3d 973 (2011).
[63] *Havens Realty Corp. v. Coleman,* 455 US 363, 379 (1982).
[64] *Sierra Club v. Morton*, 405 US 727 (1972).
[65] *Havens Realty Corp.*, 455 U.S. at 379.
[66] *Sierra Club*, 405 US at 739.
[67] *Am. Legal Found. v. F.C.C.*, 808 F.2d 84, 92 (D.C. Cir. 1987).
[68] *Id.* at 92. (citing *Action Alliance of Senior Citizens v. Heckler*, 789 F.2d 931, 936–39 (D.C.Cir.1986) (standing granted to organization whose counselling and advocacy services were diminished by regulations improperly limiting flow of information concerning age discrimination.); *Scientists' Institute for Public Information, Inc. v. AEC*, 481 F.2d 1079, 1087 n. 29 (D.C.Cir.1973) (organization that informed public of significant scientific issues had standing to challenge AEC's decision not to issue environmental impact statement.).

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DNS Decision. Moreover, the alleged injuries to businesses and the community in Mr. Brostrom's declaration are not even the type of injuries or impacts considered under SEPA.[69] LWWF's interests, as presented in the Notice of Appeal and testimony at the hearing, are not by themselves sufficient to confer standing. Accordingly, LWWF's Appeal should be dismissed for lack of standing.

2. LWWF Lacks Associational Standing because Its Members did not Comment.

LWWF also lacks associational standing to bring this Appeal. An association has standing to bring suit on behalf of its members when: "(1) the members of the organization would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither claim asserted nor relief requested requires the participation of the organization's individual members."[70]

As mentioned above, the only testimony from a member of LWWF was from Mr. Brostrom. Mr. Brostrom did not provide written comments to the City during the applicable comment period or at any time prior to the issuance of the MUP. In fact, Mr. Brostrom admitted under oath that he did not learn about the project until November or December of 2025, after the public comment period had closed and likely after LWWF filed its Appeal.[71] Mr. Brostrom testified that he was approached about the Appeal by his union[72] and that he was not sure if he had ever seen the comment letter or Notice of Appeal filed by LWWF's attorney before testifying.[73] Moreover, Brostrom resides outside of the City of Seattle (in Lynnwood)[74] and works as a manager for a grocery store chain that is a direct competitor to Applicant.[75]

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[69] Exhibit 10, ¶ 10-11.
[70] *Washington State Nurses Ass'n v. Yakima HMA, LLC*, 196 Wn.2d 409, 415, 469 P.3d 300, 304 (2020), *as amended* (Nov. 9, 2020) (citing *Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports*, 146 Wn.2d 207, 213-14, 45 P.3d 186 (2002), *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1977)).
[71] SEPA Hearing Recording, 30:50-55.
[72] SEPA Hearing Recording, 31:00-31:05.
[73] SEPA Hearing Recording, 46:25-47:22.
[74] SEPA Hearing Recording, 31:30-31:35.
[75] SEPA Hearing Recording, 32:38-32:50.

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In this case, neither Mr. Brostrom, nor any other "members" of LWWF, have standing to sue in their own right because they did not provide written comments to the City individually as required by SMC 25.05.545.B to maintain an appeal. The only comment letter was signed by LWWF's attorney, it did not identify any member's names or include any declaration from affected members. Lack of comment by LWWF "members" during the SEPA review process constitutes a failure to exhaust available administrative remedy and bars them from appealing a SEPA determination. While LWWF claims to represent King County residents, LWWF's comments and statement of appeal did not mention a single City of Seattle or King County resident by name, even after LWWF previously lost a separate appeal before a different Hearing Examiner against the same Applicant for lack of standing, and no "member" was brought forward until LWWF's attorney confirmed that Applicant would again challenge standing in this Appeal at the pre-hearing conference.

Had Mr. Brostrom commented on the MUP and identified himself as a member of LWWF, rather than LWWF solely commenting and later attempting to bring forward Mr. Brostrom, Mr. Brostrom would have standing, and LWWF may have associational standing therefrom.[76] However, that did not happen here.

Moreover, the very premise of associational standing is that an association represents the interests of its members, which can only be accomplished through member control over the association's activities.[77] An association must show that its members form a "specialized segment of the . . . community,"[78] or a "discrete, stable group of persons with a definable set of common interests."[79] The "indicia of membership" as described in *Hunt v. Washington State Apple*

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[76] *Riverview Community Group v. Spencer & Livingston*, 173 Wn. App. 568, 577, 295 P.3d 258262 (Div. 2 2013) *rev'd on other grounds*, 181 Wn.2d 888, 337 P.3d 1076 (2014).
[77] *See Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 1209 (2002) ("We take from *Hunt* that such a right [to sue on behalf of members] requires the representational relationship to be a strong one, in order to ensure the fidelity of the organization to those for whom it claims to speak.").
[78] *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 344, 97 S. Ct. 2434, 2442, 53 L. Ed. 2d 383 (1977).
[79] Am. Legal Found., 808 F.2d at 90.

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Advertising Commission, include that members exclusively have: (1) control or voting power over elections of leadership or decisions related to the association's activities; (2) ability to serve as leadership; and (3) financially contributed to activities, including the costs of an appeal/lawsuit.[80] Appellant has not established any of these factors based on the record before the Hearing Examiner.

The Court in *Friends of Tilden Park, Inc. v. District of Columbia* found that Friends of Tilden Park, Inc. ("Friends") did not have associational standing because Friends did not establish that it had "members" rather than simply "supporters."[81] The Court found that a supportive relationship is not the equivalent of a membership association, and Friends could not show that its supporters guided its actions or controlled its activities.[82] Indeed, the Court found that the "indicia of membership" were absent as the supporters had no power to elect its directors (or its officers), supporters did not make up even a majority of its governing board, and supporters did not fund its activities generally or the litigation before the court.

LWWF, as an unincorporated coalition, has failed to plead the nature of its "members" and the manner in which they have adequate control over the activities of the unincorporated association. LWWF claims a broad "membership" base, a "coalition of King County residents, working families, environmental advocates, labor unions, and local merchants united in opposition to unchecked urban sprawl and overdevelopment."[83] As in *Friends of Tilden Park*, the group of supporters articulated by LWWF is completely open-ended. There is no discrete, stable group of persons with a definable set of common interests alleged. A group that includes such broad categories as "King County residents, working families, environmental advocates, labor unions, and local merchants" could rationally cover a majority of King County. LWWF fails to state how

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[80] *See Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 344–45, 97 S. Ct. 2434, 2442, 53 L. Ed. 2d 383 (1977).
[81] *Friends of Tilden Park, Inc.*, 806 A.2d at 1209.
[82] *Id.*
[83] Exhibit 9.

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many alleged members of LWWF there are, how the "members" control the activities, decisions, or leadership of LWWF, and whether these members financially contribute to the activities of LWWF, including the Appeal at hand. Moreover, LWWF has not shown that its "members" are anything more than supporters. Accordingly, LWWF has not adequately established its associational standing, and its Appeal should be dismissed.

3. LWWF is not a Legal Entity and, Therefore, not a Proper Appellant.

"Standing" in a general sense refers to a party's right to sue or be sued.[84] The only named Appellant in this above-captioned matter is LWWF. LWWF is not a legal entity formed under the laws of the State of Washington, nor registered to do business in the State of Washington as a foreign corporation. No individual members of LWWF made any comments on this permit and none are named or mentioned in the LWWF comments or even the Appeal. All that was provided in this case is a comment letter from the LWWF attorney and an appeal filed by that same attorney. SMC 23.76.022.C.1 confers standing on "any person significantly affected by or interested in the permit."[85] City code defines "interested person" as "any individual, partnership, corporation, association, or public or private organization of any character."[86]

LWWF is not a legal entity and, thus, not an "organization" capable of commencing a land use appeal. LWWF cannot meet the definition of "public or private organization of any character," which it attempts to broaden to an unworkable degree. The principles of statutory interpretation, particularly ejusdem generis, provides that the addition of "public or private organization of any character" is to be given meaning and effect only to the extent that it suggests similarity to the other specific terms enumerated in the City code definition of "person," all of which are forms of

[84] *Friends of North Spokane County Parks v. Spokane County*, 184 Wn. App. 105, 115, 336 P.3d 632, 636 (Div. 3 2014) ("Standing is a party's right to make a legal claim or seek judicial enforcement of a duty or right.").
[85] Emphasis added.
[86] SMC 25.05.755 - Interested person ("'Interested person' means any individual, partnership, corporation, association, or public or private organization of any character, significantly affected by or interested in proceedings before an agency, and shall include any party in a contested case.").

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legal entities.

While citizen groups often file administrative and superior court appeals, they most often do so as either a public or private organization lawfully established as a non-profit corporation.[87] Washington courts have recognized that a citizen group that commences a lawsuit as a non-profit entity is an organization capable of establishing standing, in part, because a duly formed non-profit corporation has the statutory power to sue, to be sued, to complain, and to defend in its name.[88]

Unincorporated associations generally are not considered legal entities.[89] Some states—but notably, not Washington State—addressed this circumstance by adopting the Uniform Unincorporated Nonprofit Association Act ("UUNAA" or the "Act") to provide legal status to unincorporated nonprofit associations.[90] The UUNAA provides that an unincorporated association is a legal entity separate from its members, having the same powers as an individual to do all things necessary or convenient to carry on its purposes.[91] Under the Act, nonprofit unincorporated associations take on a similar nature to corporations, limited partnerships, and limited liability companies.[92] However, the State of Washington has not adopted or recognized the UUNAA. Accordingly, it follows that to bring legal action, including a SEPA appeal, the unincorporated association must first incorporate.

Furthermore, there are significant consequences if the Hearing Examiner permits LWWF to proceed in this action despite its lack of legal existence. For example, should this Appeal

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[87] *See Habitat Watch v. Skagit County*, 155 Wn.2d 397, 120 P.3d 56 (2005) (A citizen group comprised of property owners neighboring a proposed golf course filed a Petition opposing the project approval.); and *See Pacific Rock Environmental Enhancement Group v. Clark County*, 92 Wn. App. 777, 964 P.2d 1211 (Div. 2 1998) (A non-profit environmental group challenged filed LUPA petition to review County Hearing Examiner order.).

[88] *See Riverview Community Group v. Spencer & Livingston*, 173 Wn. App. 568, 577, 295 P.3d 258262 (Div. 2 2013) rev'd on other grounds, 181 Wn.2d 888, 337 P.3d 1076 (2014) (Court found that a citizen group that incorporated a nonprofit organization for the purpose of challenging a developer's closing of a golf course had the power and ability to sue and be sued and had established organizational standing to proceed against the developer.).

[89] *Halme v. Walsh*, 192 Wn. App. 893, 904, 370 P.3d 42, 47 (2016) (citing *Newport Yacht Basin Ass'n of Condo. Owners v. Supreme Nw., Inc.*, 168 Wn. App. 56, 74, 277 P.3d 18 (2012)).

[90] Unif. Unincorporated Nonprofit Association Act (2011) § 5(a).

[91] *Id.*

[92] *Mohr v. Kelley*, 8 P.3d 543 (Colo. App. 2000).

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ultimately end up in superior court, LWWF has no registered agent or person capable of receiving service of process, which would frustrate any attempt by Applicant to obtain personal jurisdiction.[93] This is not a hypothetical scenario. SMC 25.05.680.C.1 states that SEPA authorizes judicial appeals of both procedural and substantive compliance with SEPA. These appeals are commenced in superior court through the Land Use Petition Act ("LUPA"). The legislature has recognized the requirement that a land use appellant must be an individual, a governmental entity or agency, or a recognized corporate form when it adopted LUPA under Chapter 36.70C RCW. LUPA, like Seattle Municipal Code, identifies "organization" and includes public or private organizations, among other recognized legal forms including individual, partnership, corporation, association, and government agency.[94] LWWF is none of these things and must be removed from this Appeal. Given that LWWF is the only named appellant, the Hearing Examiner must dismiss this Appeal.

V. CONCLUSION

Appellant has not, and cannot, meet their burden in this case. This is a *modest remodel project* that only triggered SEPA review because Applicant decided to reduce the footprint of the building and make improvements to the site that will result in the disturbance of more than 12,000 square feet. It cannot be disputed that Applicant could avoid SEPA review altogether and still open its new WinCo store at this location if it elected not to make the improvements to the exterior of the building but instead occupy the existing building without exterior modifications.

However, the improvements it proposes, including a reduction of the building footprint, installing additional landscaping, and the installation of enhanced stormwater treatment, do not create probable significant adverse environmental impacts. If anything, these improvements reduce the impacts of the existing building and property. It defies logic that Appellant demands an

[93] *Morris v. Palouse River and Coulee City R.R., Inc.*, 149 Wn. App. 366, 370, 203 P.3d 1069, 1072, review denied, 166 Wn.2d 1033 (2009) ("Proper service of the summons and complaint is essential to invoke personal jurisdiction.").
[94] *See* RCW 36.70C.060 and .020(4).

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EIS for this Project when the fact of the matter is that WinCo could open its store at this location without SEPA review by merely not making what are clearly improvements to the existing conditions. This Appeal should be denied.

DATED this 11th day of February, 2026.

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DECLARATION OF SERVICE

The undersigned certifies that under penalty of perjury under the laws of the State of Washington, that on the date stated below, I caused the delivery of a true and correct copy of the ***Applicant Winco's Closing Brief*** to the parties listed below:

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