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6 **BEFORE THE HEARING EXAMINER OF**  
7 **THE CITY OF SEATTLE, WASHINGTON**

8 In Re The Appeal of:

9 ADMINISTRATIVE DECISION  
10 APPROVING APP. NO. 3042320-LU

11 JSA CIVIL, LLC; and WINCO FOODS,  
12 LLC;

13 Applicant/Owners;

14 LAKE WASHINGTON WORKING  
15 FAMILIES

16 Appellant.

Hearing Examiner File:  
**W-25-008**

Department Reference No.:  
**3042320-LU**

**APPLICANT WINCO'S RESPONSE TO  
APPELLANT LWWF'S CLOSING BRIEF**

Ryan Vancil  
City of Seattle Hearing Examiner

17 **I. RESPONSE**

18 Appellant Lake Washington Working Families' ("LWWF" or "Appellant") calls for a  
19 Determination of Significance ("DS") and the preparation of an Environmental Impact Statement  
20 ("EIS") for the modest remodel of an existing retail grocery store within an urban village in the City  
21 of Seattle. The triggering action in this case being the *removal* of 17,000 square feet of the store  
22 to allow the interior to function more efficiently as a WinCo grocery store and the inclusion of an  
23 enhanced treatment stormwater vault and filtration system that will improve stormwater treatment  
above the baseline condition at the project site.

24 Put plainly, Appellant requests that the Hearing Examiner come to the absurd conclusion  
25 that an EIS or significantly conditioned Mitigated Determination of Non-Significance ("MDNS") is  
26 required for this project, which is contrary to the City of Seattle's established code, policies, and

27 APPLICANT WINCO'S RESPONSE - 1

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practices—as well as state law. The Hearing Examiner should dismiss this appeal.

**A. Appellant’s “Existing/Baseline Condition” Argument Fails.**

Appellant’s claims rely on the assertion that the City incorrectly assessed the Property’s existing/baseline condition. Appellant claims that the Seattle Department of Construction & Inspection’s (“SDCI”) decision “lacks documentation of a consideration by the City of the current condition of the environment,”<sup>1</sup> but the entirety of the record shows that the City evaluated this Project based on the existing developed condition of the site. Appellant is essentially asking the City to evaluate the Project based on a baseline of a “no action” or “no operations” scenario. This is similar to the argument raised by the appellant in *Wild Fish Conservancy*.<sup>2</sup> However, *Wild Fish Conservancy*, which Appellant cites to support its position, actually holds that the appropriate baseline to compare the proposal’s environmental impacts is the *condition* of the existing environment, not its current *use* (or lack of use as the case may be).<sup>3</sup> Accordingly, SDCI’s assessment of the potential impact of the proposed WinCo store on the quality of the environment within an already-developed site located in a densified area of the City known as an urban village, is appropriate. Moreover, its discretionary decision to review the Project based on the previous use of the site is entitled to substantial weight, unless found to be clearly erroneous.<sup>4</sup> Appellant’s preference for a different baseline condition does not meet the clearly erroneous standard.

Appellant attempts to persuade the Hearing Examiner to adopt an unworkable “baseline condition” standard in contradiction to the City’s adopted practices. In considering Appellant’s

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<sup>1</sup> Appellant’s Closing Brief, at 6.

<sup>2</sup> *Wild Fish Conservancy v. Washington Dep’t of Fish & Wildlife*, 198 Wn.2d 846, 869, 502 P.3d 359, 371 (2022).

<sup>3</sup> *Id.* at 871–72, 502 P.3d at 372 (“[N]othing in SEPA’s statute, regulations, or cases requires a “no action” baseline analysis in arriving at a threshold determination. Rather than establishing the baseline on the current *uses* of the land (as the WFC suggests), the appropriate baseline to compare the proposal’s environmental impacts is the *condition* of the existing environment. To the extent that WDFW compared the impacts of Atlantic salmon farming to steelhead farming, WDFW’s assessment of the potential impact of the steelhead permit on the quality of the Puget Sound environment, as it exists now after decades of finfish farming, was appropriate.).

<sup>4</sup> 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)).

1 contentions, one must ask at what point does the “baseline condition” of a site become *no use at*  
2 *all*? Development projects that do not have active commercial uses remain part of the changed  
3 *condition* of the environment. As confirmed in the testimony from Carly Guillory, the City does not  
4 factor in current non-use of a structure in the application of the Code standards concerning when  
5 traffic impact analysis are required.<sup>5</sup> Imagining that a vacant commercial space reverts back to  
6 some kind of pre-development idyllic baseline after a certain number of years is simply not the  
7 reality for this Property in a highly populated urban village and it would be an impossible  
8 benchmark for City planning staff to apply.

9 As concerns Appellant’s claims of traffic impacts, given that the conversion into a WinCo is  
10 both a removal of square footage and a similar retail commercial use, the City determined that a  
11 Transportation Impact Analysis (“TIA”) was not required, and thus that the previous TIA referenced  
12 in the Sam’s Club Determination of Non-Significance (“DNS”) with conditions provided the  
13 necessary information to consider traffic impacts.<sup>6</sup> Pursuant to the 2003 DNS with conditions, a  
14 gas station was added to the Sam’s Club at that time, accounting for significantly more trips than  
15 the Sam’s Club retail use alone. It states:

16 The addition of a gas station, new parking spaces and new store floor area is, in  
17 total, expected to generate 1,204 new daily project trips and 108 new p.m. peak  
hour trips, about equally divided between entry and exit.<sup>7</sup>

18 The DNS with conditions concluded that even with those additional 1,204 new daily trips,  
19 traffic impacts would be minimal:

20 The levels of service (“LOS”) of studied intersections are not expected to change  
21 very much with the addition project traffic. This new traffic is projected to cause  
22 increases in delay of less than three seconds at off-site signalized intersections  
23 and less than 10 seconds at off-site unsignalized intersections. It does not appear  
24 that mitigation measures aimed at improving the LOS of surrounding intersections  
is warranted.<sup>8</sup>

25 <sup>5</sup> SEPA Hearing Recording, 3:37:30-3:38:40.

26 <sup>6</sup> Exhibit 20.

<sup>7</sup> Exhibit 20, at 7.

<sup>8</sup> Exhibit 20, at 7.

1           The project at issue in this appeal removes the additional store floor area added in 2003  
2 and the gas station is no longer operational at this site, removing those additional trips. Moreover,  
3 the conditions that were required in the DNS with conditions are part of the proposed project here:  
4 (1) traffic signage will be maintained at the project site; and (2) the project will not create a  
5 driveway access at North 137<sup>th</sup> Street. In fact, all entrances and exits will remain the same. The  
6 entirety of Appellant traffic expert's testimony was based on the ITE Manual, which is not  
7 incorporated in code. A TIA was not required here by code and Appellant expert's attempted to  
8 misrepresent the applicability of the code in his report to claim that it is.<sup>9</sup> If City code required that  
9 a TIA happen whenever there is a change in the use code of the ITE Manual, which it does not,  
10 then perhaps Mr. Nys's testimony would be relevant. That is not the case here. SDCI's finding  
11 that there would be no significant adverse impacts related to traffic is entitled to substantial weight  
12 and Appellant has not met its burden to show that SDCI's finding was clearly erroneous.

13       **B.       Seattle's Noise Ordinance Has Changed Since 2003.**

14           Appellant claims that an MDNS is appropriate here because the 2003 SEPA Decision for  
15 the Sam's Club that previously existed at the site required mitigation for potential noise impacts.  
16 What Appellant fails to provide is context for this claim. As acknowledged in testimony by Ms.  
17 Guillory, the City's noise ordinance has changed substantially since 2003.<sup>10</sup> There was a major  
18 overhaul in 2009<sup>11</sup> and another revision in 2015,<sup>12</sup> which incorporated the conditions provided by  
19 the 2003 MDNS. Per Ms. Guillory's testimony, SDCI determined that additional conditions were  
20 not necessary to mitigate any potential impacts outside of the construction phase<sup>13</sup> and state law  
21 requires that if development regulations adequately address some or all of a project's probable  
22 specific adverse environmental impacts, the agency shall not require additional mitigation for  
23

24 <sup>9</sup> Exhibit 13, at 8 (and all other mentions of SMC 23.52.008 and .004, which conveniently omit their  
"applicability" sections).

25 <sup>10</sup> SEPA Hearing Recording, 3:39:20-3:40:31.

26 <sup>11</sup> Ord. 122923, § 24, 2009.

<sup>12</sup> Ord. 124843, § 80, 2015.

<sup>13</sup> SEPA Hearing Recording, 3:39:20-3:40:31.

1 those impacts.<sup>14</sup> Accordingly, Appellant's arguments related to noise must fail.

2 **C. City of Seattle Has Not Identified Permeable Pavement or Bioretention as Standards**  
3 **for Treatment of 6PPD-q.**

4 As the witnesses agreed, the study of 6PPD-q—and the identification of Best Management  
5 Practices ("BMPs") to implement for its treatment—is an evolving science.<sup>15</sup> Neither the City of  
6 Seattle nor the Washington Department of Ecology ("Ecology") have identified specific BMPs for  
7 6PPD-q, not even permeable pavement or bioretention, despite Appellant's witness being involved  
8 in some studies finding those methods effective against 6PPD-q. Rather, Ecology has provided  
9 the guidance document submitted as Exhibit 28, which Ecology has added as supplementary  
10 guidance to its 2024 Manual. As previously noted, the Filterra treatment system is marked as  
11 "high" in the category for potential treatment.<sup>16</sup>

12 Appellant makes much of the absence of 6PPD-q from the City's stormwater regulations,  
13 lamenting, "[S]omehow, 6PPDQ, a commonly occurring pollutant that is dispersed specifically by  
14 cars, was not accounted for by the City's own analysis, or in any of the SEPA analysis. Instead,  
15 every witness agreed that the City Code does not regulate this compound."<sup>17</sup> As far as we know,  
16 there is no municipality in the state, and no agency (including Ecology), that regulates 6PPD-q.  
17 Pursuant to the testimony of Ms. Guillory, the City of Seattle has never conditioned or denied a  
18 project based on 6PPD-q.<sup>18</sup> While Mr. Jayakaran studies 6PPD-q, he testified that he has never  
19 drafted a preliminary stormwater plan.<sup>19</sup> He has also not acted as a regulator—Mr. Jayakaran  
20 admitted to being only vaguely familiar with the City of Seattle's stormwater manual.<sup>20</sup> Mr.  
21 Jayakaran may point to studies, but those preliminary studies have not yet set a standard adopted  
22

23 <sup>14</sup> WAC 197-11-158(5).

24 <sup>15</sup> SEPA Hearing Recording, 1:27:28-:35.

25 <sup>16</sup> Exhibit 28, Appendix C, Appendix 4-1.

26 <sup>17</sup> Appellant Closing Brief, at 13 (No citation in Appellant's brief).

27 <sup>18</sup> SEPA Hearing Recording, 3:35:35-:50.

<sup>19</sup> SEPA Hearing Recording, 1:21:40-:50.

<sup>20</sup> SEPA Hearing Recording, 1:23:25-1:24:40.

1 by any governing body. There is no “known, available, and reasonable method of prevention,  
2 control and treatment” (“AKART”) standard set. This project aligns with Ecology’s guidance on  
3 6PPD-q and Appellant has failed to show that SDCI’s finding that no significant adverse impacts  
4 will result is clearly erroneous.

5 Appellant alleges it has associational standing based on its affiliation with Benjamin  
6 Brostrom, however, neither Mr. Brostrom, nor any other “members” of LWWF, have standing in  
7 their own right to bring this appeal. No member of LWWF, including Mr. Brostrom, provided  
8 written comments to the City as required by SMC 25.05.545.B to maintain an appeal. Had Mr.  
9 Brostrom commented on the MUP and identified himself as a member of LWWF, rather than  
10 LWWF solely commenting and later attempting to bring forward Mr. Brostrom, Mr. Brostrom would  
11 have standing, and LWWF may have associational standing therefrom.<sup>21</sup> However, that did not  
12 happen here and it is clear from the facts that Mr. Brostrom was brought into the appeal after the  
13 comment period passed and likely after the appeal was filed. Accordingly, LWWF cannot gain  
14 associational standing through Mr. Brostrom.

15 An attorney submitting comments solely for LWWF does not provide associational  
16 standing, it is only an attempt at organizational standing, and an unsuccessful one at that because  
17 LWWF failed to provide any testimony to show it meets the legal requirements for establishing  
18 organization standing—namely that LWWF failed to allege any facts to show it was “significantly  
19 affected by or interested in the DNS Decision or MUP.”<sup>22</sup>

## 20 V. CONCLUSION

21 SDCI’s DNS decision with conditions is entitled to substantial weight and Appellant has  
22 failed to meet its burden to prove that SDCI’s decision was clearly erroneous. This appeal must be  
23 dismissed.

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25 <sup>21</sup> *Riverview Community Group v. Spencer & Livingston*, 173 Wn. App. 568, 577, 295 P.3d 258262 (Div. 2  
26 2013) *rev’d on other grounds*, 181 Wn.2d 888, 337 P.3d 1076 (2014).

<sup>22</sup> SMC 23.76.022.C.2.

1       **DATED** this 18<sup>th</sup> day of February, 2026.

2  
3                               CSD ATTORNEYS AT LAW P.S.

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8                               Attorneys for Applicant

1 **DECLARATION OF SERVICE**

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

5 **HEARING EXAMINER OF THE CITY OF SEATTLE**

6 **Hearing Examiner**

7 **Clerk of the Hearing Examiner**

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10 *Hearing.Examiner@seattle.gov*

11 **[X] Via Electronic Filing, by Email and Portal**

12 **CITY OF SEATTLE**

13 **Seattle Department of Construction & Inspections**

14 Carly Guillory

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16 **[X] Via Electronic Mail**

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27 **DATED** this 18<sup>th</sup> day of February, 2026 at Bellingham, Washington.

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