BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeals of: 621 APARTMENTS LLC, ROY STREET COMMONS LLC, ERIC AND AMY FRIEDLAND, RAISSA RENEE LYLES, SEATTLE SHORT TERM RENTAL ALLIANCE, SEA TO SKY RENTALS, AND MICHELLE ACQUAVELLA of the adequacy of the Determination of Non-Significance (DNS) for Land Use Code and Licensing Code text amendments relating to short term rentals issued by the Director, Seattle Department of Construction & Inspections.	Hearing Examiner Files: W-17-002 W-17-003 APPELLANTS' RESPONSE TO MOTION TO DISMISS

I. INTRODUCTION

In its motion to dismiss, the City of Seattle ("City") claims that Appellants 621 Apartments LLC, Roy Street Commons LLC, Eric and Amy Friedland, Raissa Renee Lyles, Seattle Short Term Rental Alliance, Sea to Sky Rentals and Michelle Acquavella ("Appellants") all lack standing because the impacts of its proposal ("Proposal") to restrict short term rental are merely economic and are speculative. Nothing could be farther from the truth. The Proposal will impact Appellants by: (1) eliminating housing that they own or use; (2) creating adverse

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aesthetic impacts; (3) increasing traffic; and (4) impacting historic resources. These are all environmental impacts. Further, the elimination of housing is not speculative – to the contrary, it is the very purpose of the Proposal. In addition, the impacts to aesthetic, traffic and historic resources are direct, rather than speculative, consequences of eliminating short term housing. In short, Appellants' interests are within the zone of interests protected by the State Environmental Policy Act ("SEPA") and Appellants have alleged an injury in fact. Appellants have standing. The Hearing Examiner must reject the City's motion to dismiss.

II. STATEMENT OF FACTS

Contrary to the City's unsupported and inaccurate claims, the Proposal will result in direct and concrete environmental impacts. These include impacts to housing, aesthetics, traffic, and historic resources.

A. The Proposal will result in housing impacts.

1. The Proposal will result in direct impacts to short term housing.

The Proposal prohibits short term (less than 30 day) rental of residential properties except that a person may rent their own primary residence plus one additional property on a short term basis. All short term rentals must come into compliance within one year. There is a limited exception for existing short term rentals located in three of the City's Urban Centers. Declaration of Courtney A. Kaylor ("Kaylor Declaration"), Ex. A, Ex B, p. 7 (except for limited grandfathering in three Urban Centers, "a short-term rental operator may be issued a license to provide a maximum of one dwelling unit, or portion thereof, for short term rental use, or a maximum of two dwelling units, if one of the units is the operator's primary residence.")

The most obvious impact is the intended, direct impact of the Proposal. The Proposal will eliminate some short term rental housing units and reduce their overall numbers throughout

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the City. Short term housing is a unique housing type that serves a market need, providing housing for temporary or relocating workers, people seeking medical treatment and their families, and those visiting the City for personal reasons. The purpose and effect of the Proposal is to reduce this housing. Declaration of William Reid ("Reid Declaration"), ¶3.[1]

Appellants in this case rent short term housing to people working here in a wide range of professions, including health care, technology and construction, either on a temporary basis or relocating here; patients of Seattle's world class medical institutions and their families; people visiting family who want to stay near their family members; and many others. The Proposal would prohibit Appellants from using their properties for short term rental because Appellants' properties all consist of more short term rental units than the Proposal allows. Appellants also rent housing for their own use that would be eliminated by the Proposal. Specifically:

- Appellant Eric Friedland, a doctor, noticed a high demand for housing for traveling nurses. To meet this need, he developed a multifamily building on Capitol Hill, the Roy Street Commons.[2] The building was designed as a "microhousing" project, with eight private living spaces and a common kitchen on each floor, with short term rental in mind. He designed this Built Green building to look classic, appealing and to fit into the neighborhood. He now rents to traveling nurses (the building is within walking distance of seven different hospitals), many different business people who are in Seattle for less than 30 days, and patients

[1] The City attempts to portray short term rental as merely lodging for vacationers. City of Seattle's Motion to Dismiss ("Motion"), p. 2. As a matter of law, this is incorrect. Currently, short term housing qualifies as a residential use under the City's Land Use Code (Seattle Municipal Code ("SMC") Title 23). Motion, p. 2 (short term rentals "have historically been treated as a residential use"); SMC 23.84A.032 (definition of residential); SMC 23.84A.008 (definition of dwelling unit); Kaylor Declaration, Ex. C (superior court decision holding that Appellant Michelle Acquavella's short term rental is a residential use).

[2] The building is owned by Appellant 621 Apartments LLC and managed by Appellant Roy Street Commons LLC. Dr. Friedland is the Governor of these companies. Appellant Amy Friedland is Dr. Friedland's spouse. Declaration of Eric Friedland ("Friedland Declaration"), ¶1.

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and their families here for medical treatment, among others. Since his building has multiple units, the Proposal would prohibit it from being used for short term rental. Friedland Declaration, ¶¶2, 3, 5.

- One of Dr. Friedland's tenants is Appellant Raissa Renee Lyles. Ms. Lyles lives in Portland. She has a small business that brings her to the Capitol Hill area frequently. She takes the train or bus to Seattle and stays in the Roy Street Commons. From there, she can walk to many clients' houses to do business. The Proposal will eliminate the housing she relies on for convenient access to her clients. Friedland Declaration, ¶7.

- Appellant Michelle Acquavella owns Appellant Sea to Sky Rentals LLC ("Sea to Sky"), which manages many short term rentals in Seattle, and is a member of Appellant Seattle Short Term Rental Alliance ("SSTRA"). She also uses short term rentals herself. She rents a short term rental duplex within walking distance of her home for her parents when they come to visit. The duplex is not the owner's primary residence and so exceeds the number of units allowed to be rented short term under the Proposal. Ms. Acquavella would be unable to continue to use this short term rental under the Proposal. Declaration of Michelle Acquavella ("Acquavella Declaration"), ¶¶2, 4, 5.

- Patrice Smith, a member of SSTRA, lived in Seattle for many years until she married her Dutch husband and moved to the Netherlands. She still owns her duplex on Phinney Ridge and rents it short term to people here for temporary work, medical patients and their families, and people relocating to Seattle, among others. The duplex is managed by Sea to Sky. Short term rental enables her to stay in the duplex when she visits Seattle and to use it for friends who come with her. Since neither of the duplex units is her primary residence, she could not

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continue to rent both units short term under the Proposal, which would impact her use. Declaration of Patrice C. Smith ("Smith Declaration"), ¶¶2-4, 6, 7.

- Andrew Morris, a member of SSTRA, owns and manages a number of houses in the Madison Valley area for short term rental. He provides short term housing to patients here for medical treatment and their families and to people here to visit family members, including many neighbors who live close by his short term rentals, among others. Since none of the houses are his primary residence, and he owns more than one property, the Proposal would prohibit him from renting them short term. Declaration of Andrew Morris ("Morris Declaration"), ¶¶2-4.

- Chris McDaniel, a member of SSTRA, owns a duplex in Ballard. Short term rental has allowed him to preserve this 118 year old duplex home. He rents short term to the interns of our many technology companies as well as to people here to visit family in the neighborhood. Since neither part of the duplex is his primary residence, he could not continue to rent out both units short term with the Proposal. Declaration of Chris McDaniel ("McDaniel Declaration"), ¶¶2-4.

- Charles Cunniff, also a member of SSTRA, and his wife lived in Fremont for many years. Their grandchildren live in Columbia City. They moved to Columbia City to help care for their grandchildren. They kept their Fremont duplex and rent it short term, in part so that they can use it during their frequent visits back to the north end of Seattle and have friends stay there. Since neither part of the duplex is their primary residence, they could not continue to rent out both units short term with the Proposal, which would impact their use. Declaration of Charles Cunniff ("Cunniff Declaration"), ¶¶2-8.

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In sum, the Proposal will eliminate short term housing, including short term housing owned and used by Appellants. This is an impact to housing, an element of the environment, and is direct rather than speculative. Reid Declaration, ¶¶3, 6.

2. The Proposal will result in additional housing impacts.

The reduction of short term rentals will have impacts on long term housing as well.

Growing demand for short term rentals in the face of constrained supply will have the effect of seeking other supply means within the City. This will likely take a number of forms. New development projects that are eligible to be classified as "hotel" rather than "residential" use (i.e., projects located within a zone that permits lodging) will opt to establish their use as lodging. This will provide these projects with the flexibility to rent on a short or long term basis as the market demands. Existing multifamily buildings will likely also seek to change their use to lodging to achieve this flexibility. This will reduce the supply of multifamily housing in Seattle. Reid Declaration, ¶3.

In addition, constrained supply with have the effect of greater "executive housing" or "corporate housing" extended contract reservations by companies within existing, traditional apartment projects. Supply of extended-stay homes for business usage before peer-to-peer supply such as Airbnb was almost exclusively done through businesses that would contract to long-term lease traditional apartment units that would otherwise have been rented by ordinary households seeking traditional apartment housing. With peer-to-peer rentals, demand for short stays in apartment projects has been diminished and those units have otherwise been made available to households for traditional housing rental. Reduced supply of short term rentals would threaten the return of "corporate housing" demand on traditional apartment units, taking them off of the market and reducing rental housing supply for Seattle residents. *Id*.

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3. The City's claims of limited impact are unsupported and inaccurate.

In its statement of facts, the City asserts the Proposal will have a limited effect on housing. Motion, pp. 2-3, *see also* p. 7. This assertion is unsupported and inaccurate.

The City argues that approximately 80% of the existing short term rentals could continue to operate with the Proposal. Motion, pp. 2-3, 7. The City has no factual analysis on which to base this statement. Indeed, the City admits (in a footnote) that the City's sole support is data provided by Airbnb for one month, January 2017. *Id*., p. 3, fn. 10. Airbnb occupies a unique place in the rental housing market. Most of its users offer rooms in their primary residence or otherwise share their primary residence with short term renters.[3] This is in contrast to all of the Appellants in this matter and other homeowners who offer short term rentals of entire properties that are not their primary residence. *See e.g.*, Kaylor Declaration, Ex. B, p. 3 (between April 2015 and April 2016, 100% of the people listing on Homeway/VRBO were renting the entire property). Accordingly, the City is relying on a small sample of skewed data from which no valid conclusions can be drawn. The City has provided no comprehensive or independent analysis of the effect of the Proposal on housing, either in its motion or in the Determination of Nonsignificance ("DNS"). This complete lack of analysis is one of the reasons that the DNS is inadequate.

The City also claims that "the proposal does not apply to any short-term rentals in Downtown Seattle, South Lake Union or the Uptown (Queen Anne) neighborhoods." Motion, pp. 2-3. This is simply false. Contrary to this statement, under the Proposal, no new short term rentals would be allowed in these areas. Instead, on its face, the Proposal provides only limited grandfathering for existing short term rentals located in the Downtown, South Lake Union and

[3] https://www.airbnbcitizen.com/about-airbnb-2/ ("4 of 5 hosts share the home in which they live").

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Uptown Urban Centers. A short term rental property in these areas is grandfathered only if it was provided as a short term rental prior to the effective date of the proposed legislation and: (1) the operator provides a business license for the short term rental use in effect on the effective date of the proposed legislation; (2) records demonstrating collection and remittance of all taxes for the 12-month period prior to the effective date of the legislation; and (3) a registry of dates the unit was used for short term rental during the same 12-month period. Kaylor Declaration, Ex. C, p. 8. This limited grandfathering will provide little relief because most properties do not remain in short term rental use over time. Instead, a professional analysis submitted to the City shows that of properties rented on Homeaway/VRBO, less than half were still used for short term rental four years later. Kaylor Declaration, Ex. D, p. 10. The City simply ignores this data in its result-oriented approach.

The Hearing Examiner must reject the City's unsupported claims.

B. Aesthetic Impacts

The Proposal would result in aesthetic impacts. The short term rental market demands well maintained visually attractive product. Maintenance is done by owners or managers with an economic incentive to keep these properties competitive. In contrast, the quality of exterior maintenance for long term rentals varies. With a reduction in short term rentals, the exterior appearance of buildings will be affected, causing localized aesthetic impacts. Reid Declaration, ¶5.

In particular, Appellants maintain their short term rental properties in excellent condition. The industry standard is to maintain short term rentals to superior aesthetic standards. For example, at the Roy Street Commons, there is a daily cleaning crew of four people that maintains the building exterior. They sweep the walkways and porch in front of the building and the

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sidewalk along the entire block. They remove leaves and any other debris. They clean the building exterior and windows as needed. They decorate the building seasonally. They water the landscaping daily. In addition, a landscape maintenance company conducts regular landscape maintenance, such as weeding, putting down beauty bark, pruning, and replacing plants as needed. This high level of maintenance is necessary because the building is used for short term rental and possible because of the income from short term rentals. If the building does not get good reviews for its clean, well maintained and inviting appearance, short term tenants will not rent here. Friedland Declaration, ¶4. Other short term rental property owners also maintain their properties – and their surroundings – to similarly high standards. Acquavella Declaration, ¶2; Morris Declaration, ¶5; Cunniff Declaration, ¶10; Smith Declaration, ¶5.

If the Proposal is adopted and Appellants are no longer able to use their properties for short term rental, they will not be able to maintain their properties or surrounding areas to the same high standard. The industry standard for maintenance of a long term rental is not as high as for short term rentals and this high level of maintenance is not supported by long term rental income. Some exterior maintenance is generally the responsibility of the long term tenant and the level of maintenance is not reliable. The reduction in maintenance would be unavoidable. The condition of the buildings, landscaping and surroundings would decline. This would result in aesthetic impacts to Appellants. Friedland Declaration, ¶7; Acquavella Declaration, ¶2; Morris Declaration, ¶5; Cunniff Declaration, ¶10; Smith Declaration, ¶8.

C. Traffic Impacts

The proposal will result in increased traffic. Unabated demand for short term housing will seek supply where it is available, in this case outside of Seattle within jurisdictions with more flexible regulations. This is of particularly strong likelihood for business-related short term

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housing demand. This includes extended-stay housing need related to temporary assignment employment, predominantly in health care, higher education, major construction and infrastructure projects, and any other short-duration employment opportunity within Seattle. This will necessarily mean short term housing rentals of further distance from Seattle job sites, necessarily increasing commute distance and adding to traffic and demand for related public services. This increased traffic will affect Seattle residents, but particularly those who live in areas that are currently well-served by short term rental, but which will have less short term rental availability due to the proposed regulations, including some of the Appellants in this case. Reid Declaration, ¶4.

These traffic impacts will affect Appellants. For example, Ms. Lyles currently takes the train or bus from Portland, stays at the Roy Street Commons, and walks to see her local business clients. If the Proposal is adopted and short term rental can no longer occur at the Roy Street Commons, she will no longer be able to do this. She will not use a hotel, as there are no conveniently located ones, and they do not provide a residential environment. She will need to find replacement short term housing outside of Seattle and drive to her appointments. Most likely, she will stay with relatives in Everett, and drive into Seattle. This will add even more traffic to I-5 and the congested Seattle streets. Friedland Declaration, ¶7.

Ms. Acquavella rents a short term rental within walking distance of her home for her parents when they visit. If the Proposal is adopted, it will affect this short term rental. When this short term rental is no longer available due to the Proposal, Ms. Acquavella's parents will have to find alternate housing. Since the Proposal severely restricts short term rental, they will likely need to stay in a hotel downtown. They would be located far from her house. Rather than walking, they would need to drive to her house, or she would need to drive to their downtown

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location. This would increase Ms. Acquavella's time driving a car in Seattle traffic and would increase traffic in her neighborhood. The loss of short term rental housing and increase in traffic will directly affect her. Acquavella Declaration, ¶4.

Dr. Friedland and Mr. Morris live in the immediate neighborhoods of the properties they rent short term. Many of their short term tenants rent at these properties because they are close by their destinations in Seattle. However, the Proposal would prevent the short term rental of these properties. There is not sufficient alternative short term housing in the local area to accommodate their short term rental tenants. They would need to find housing elsewhere (most likely in outlying cities where short term rental is allowed) and drive in to their destinations. This would cause increased traffic congestion in the area. This would affect Dr. Friedland and Mr. Morris since they live in the neighborhoods in which their rental properties are located and drive the streets there every day. Friedland Declaration, ¶6; Morris Declaration, ¶6; *see also* McDaniel Declaration, ¶¶2, 3; Cunniff Declaration, ¶11.

D. Impacts to Historic Resources

The Proposal would result in impacts to historic resources. As in other cities, Seattle's supply of short term rental includes historical properties with significant maintenance cost. The income from short term rental allows these properties to be preserved, improved and maintained, when in the absence of short term rental use they would deteriorate or be demolished and redeveloped to a higher economic use. Reid Declaration, ¶5.

For example, Mr. McDaniel's duplex is an older home, built 118 years ago. He is able to preserve and maintain it in good condition because of its use for short term rental. He will not be able to do this if he is unable to use it for short term rental. If the restrictions on short term rental pass as they are currently proposed, he will tear down the duplex and develop the property, as so

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many other owners are doing in Ballard. This will just be one more older home in the landfill with multiple new townhomes taking its place. With the land value alone being close to $1,000,000, Mr. McDaniel would not use as a long term rental. That would be economically irrational. McDaniel Declaration, ¶4.

III. AUTHORITY

The City claims that Appellants lack standing under SEPA because their alleged injuries are outside of SEPA zone of interests and they do not allege an injury in fact. The City is incorrect. Indeed, contrary to the City's claims, Appellants have alleged impacts to elements of the environment, including housing, aesthetics, transportation and historic resources. These impacts are the direct result of the proposal and are not speculative. Reid Declaration; Friedland Declaration; Acquavella Declaration; Smith Declaration; Cunniff Declaration; Morris Declaration; McDaniel Declaration. Accordingly, Appellants have established SEPA standing. The Hearing Examiner must deny the City's motion.

A. Appellants satisfy the requirements for SEPA standing.

The City Code provides that "any interested person" may appeal a DNS to the Hearing Examiner. SMC 25.05.680.B.1. An "interested person" is a defined term, meaning "any individual, partnership, corporation**,** association or public or private organization of any character, significantly affected by or interested in proceedings before an agency." SMC 25.05.755.

Interested persons must also meet the two-part judicial SEPA standing test. *In the Matter of the Appeal of Laurelhurst Community Club et al.*, Hearing Examiner File No. W-11-007, Order on Motions to Dismiss/Cross Motion for Summary Judgment (April 10, 2012), at 2 (*"Laurelhurst Community Club*"). An appellant has SEPA standing if they: (1) allege an

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interest that falls within the zone of interests protected by SEPA; and (2) allege an injury in fact. *Kucera v. State Department of Transportation*, 140 Wn.2d 200, 212, 995 P.2d 63 (2000), *citing Leavitt v. Jefferson County*, 74 Wn. App. 668, 875 P.2d 681 (1994). A nonprofit corporation has the standing of its members. *Save a Valuable Environment v. Bothell*, 89 Wn.2d 862, 866, 576 P.2d 401 (1978).[4]

On a motion to dismiss for lack of SEPA standing, courts construe the evidentiary facts in favor of the nonmoving party. *See Leavitt*, 74 Wn. App. at 679 (noting alleged impacts were "speculative and undocumented; they are possible, but not necessary impacts. However, the claimed impacts are within the interests protected by SEPA and Leavitt alleges that they directly impact her property and interests. We will assume Leavitt has established standing[.]"); *see also Kucera, supra*, 140 Wn.2d at 200.

Here, Appellants have SEPA standing because they allege interests that fall within the zone of interests protected by SEPA and they allege an injury in fact.

B. Appellants' interests are within SEPA's zone of interests.

The City's mischaracterizes Appellants' alleged environmental impacts as "economic" in an attempt to place them outside SEPA's zone of interests. Motion, pp. 6-8. This argument has no merit.

The SEPA Rules define the elements of the environment to include specific elements of the "built environment." WAC 197-11-444(2). The built environment includes "land and shoreline use," which in turn includes "relationship to existing land use plans," "housing," aesthetics" and "historic and cultural preservation." The built environment also includes transportation, including "vehicular traffic." *Id.*

[4] Appellants Ms. Acquavella, Ms. Smith, Mr. Cunniff, Mr. Morris and Mr. McDaniel are members of SSTRA.

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Impacts to elements of the built environment that result from economic effects must be considered under SEPA. *West 514, Inc. v. City of Spokane,* 53 Wn. App. 838, 847-848, 779 P.2d 1065 (1989) ("We recognize that if the probable effect of competition is blight downtown such that the built environment is affected, then discussion of that effect in an EIS is called for."); *Indian Trails Property Assoc. v. City of Spokane,* 76 Wn. App. 430, 444, 886 P.2d 209 (1994) ("We agreed that if the probable effect of competition is such that the "built environment" is affected, review is called for by WAC 197-11-444(2).").

In addition, when an appellant alleges environmental impacts, the fact that an appellant has economic interests does not mean that the appellant lacks standing. The Washington Supreme Court recognized this critical distinction in *Kucera, supra,* where plaintiffs alleged shoreline damage from the operation of a high-speed ferry. 140 Wn.2d at 206. The plaintiffs were waterfront property owners along the ferry route. *Id.* The *Kucera* Court acknowledged that while the plaintiffs' interests "were undoubtedly motived by a desire to protect the economic value of their properties, their SEPA claim is based on the State's alleged consideration the *environmental* effects of the [ferry operations], not its economic effects." *Id.* at 213 (emphasis is original). Allegations of environmental impacts, regardless of the City's alternative speculated rationale for this appeal, plainly fall within SEPA's zone of interests.

Here, Appellants allege interests that fall within SEPA's zone of interests. Specifically, Appellants allege interests relating to: (1) housing; (2) aesthetics; (3) traffic; and (4) historic resources. The Proposal directly impacts short term housing by restricting its use and prohibiting it in Appellants' properties. The limitation on short term rental will result in additional impacts to housing, specifically the conversion of multifamily housing to lodging use. In addition, the residences that can no longer be used for short term housing will not be maintained to high short

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term rental standards any more. Their condition will decline, causing aesthetic impacts. Further, the short term tenants who were previously able to stay near their Seattle destinations will need to look elsewhere for short term housing. They will need to stay in less proximate areas and drive to their destinations. This will result in increased traffic. Finally, short term rental occurs in some older properties. These properties are preserved due to their value as short term rentals. If the Proposal is adopted and prevents short term rental, then these homes will be demolished and redeveloped. *See* Acquavella, Cunniff, Friedland, McDaniel, Morris, Reid and Smith Declarations. These interests, without question, relate to elements of the environment. WAC 197-11-444(2). They are within SEPA's zone of interests. The fact that Appellants may also have economic concerns is not relevant. *Kucera, supra,* 140 Wn.2d at 213.

The City's reliance on *Snohomish County Property Rights Alliance v. Snohomish County ("SCPRA"),* 76 Wn. App. 44, 882 P.2d 807 (1994), and *Harris v. Pierce County,* 84 Wn. App. 222, 928 P.2d 1111 (1996), is misplaced. Motion, pp. 6-7. Here, Appellants allege environmental impacts within SEPA's zone of interest, not economic interests. *Kucera, supra,* 140 Wn.2d at 213; WAC 197-11-444(2)(b). In contrast, the *SCPRA* plaintiff challenged countywide planning policies alleging an interest in the "protection of individual property rights." *SCRPA, supra,* 76 Wn. App. at 52. The Court held "these economic interests are not within the zone of interests protected by SEPA." *Id.* In *Harris,* plaintiff challenged an ordinance authorizing a trail; the actual trail route would be determined after a final engineering plan. The Court held the "only interest is economic: owning property that could be condemned." 84 Wn. App. at 231. Unlike *SCPRA* and *Harris,* here Appellants allege injuries regarding the Proposal's environmental effects. These cases are inapposite. Appellant's alleged injuries fall squarely within SEPA's zone of interests.

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The City attempts to dismiss Appellants' allegation of housing impacts as "speculative." Motion, p. 7. Notably, the City does not allege that this interest is not environmental – nor could it credibly do so, given the language of WAC 197-11-444(2) clearly stating that housing is an element of the environment. Further, the City's assertion that these impacts are speculative is nonsense. The purpose and intent of the Proposal is to reduce short term housing and the plain language of the Proposal does so. Kaylor Declaration, Ex B, p. 7. The City claims that its "analysis" indicates that approximately 20% of the units offered may not comply. Motion, p. 7. However, as discussed previously, this so-called "analysis" is nothing of the sort. Instead, the City admits that the City's sole support is data provided by Airbnb for one month, January 2017. *Id*., p. 3, fn. 10. Airbnb occupies a unique place in the rental housing market. Most of its users offer rooms in their primary residence or otherwise share their primary residence with short term renters.[5] This is in contrast to all of the Appellants in this matter and other homeowners who offer short term rentals of entire properties that are not their primary residence. *See e.g.,* Kaylor Declaration, Ex. B, p. 3. Accordingly, the City is relying on a small sample of skewed data from which no valid conclusions can be drawn. The City has provided no comprehensive or independent analysis of the effect of the Proposal on housing as is required under SEPA.

Finally, the City also attempts to dismiss Appellants' claims of traffic impact. Again, the City asserts (with no support whatsoever) that these impacts are "speculative." Motion, pp. 7-8. The declarations of Appellants demonstrate otherwise. Appellants know their tenants. They rent to people whose destinations are close to their properties. They also know the short term market. If their short term rentals are forced to stop because the Proposal is adopted, there will be insufficient nearby short term rental options. Their tenants will be forced to rent in downtown or

[5] https://www.airbnbcitizen.com/about-airbnb-2/ ("4 of 5 hosts share the home in which they live").

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outlying areas and commute to their destinations. Reid Declaration, ¶4; Acquavella Declaration, ¶4; Friedland Declaration, ¶6; Morris Declaration, ¶6; McDaniel Declaration, ¶¶2, 3; Cunniff Declaration, ¶11. There is nothing speculative about this result. It is simple cause and effect. *See* Reid Declaration, ¶6.

In sum, Appellants have alleged interests within SEPA's zone of interests. The first part of the SEPA standing test is satisfied.

C. Appellants allege an injury in fact.

The City claims that Appellants lack standing because they have not shown an immediate, concrete and specific injury. Motion, pp. 8-12. The City is incorrect.

The City fails to recognize the legal standard applicable here. An appellant need not prove its ultimate case in order to establish standing. Instead, the SEPA standing injury in fact element "is satisfied when a plaintiff alleges the challenged action will cause specific and irreparable harm." *Kucera, supra*, 140 Wn.2d at 213 (emphasis added; internal quotations omitted). "A sufficient injury in fact is properly pleaded when a property owner alleges immediate, concrete and specific damage to property, even though the allegations may be speculative and undocumented." *Id*. (internal quotations omitted; emphasis added). In *Kucera, supra*, the Court found that property owners "clearly had standing" to challenge the State's compliance with SEPA in connection with its operation of a high-speed ferry simply because they alleged damage to both private and public shorelines. *Id*. The property owners had not demonstrated that this damage would actually result from the ferry operation, nor were they required to do so in order to have SEPA standing. *Id*. at 213, 217-221.

Similarly, in *Leavitt, supra,* the Court of Appeals found that a property owner had standing to challenge a county's SEPA compliance in adopting a new zoning code. The plaintiff

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alleged that she owned property adjacent to undeveloped land zoned for increased residential development. The plaintiff also alleged that she would be injured by stormwater runoff and increased traffic if the property were developed under the new zoning. The Court stated:

> Leavitt's alleged impacts are speculative and undocumented; they are possible, but not necessary, impacts of the Board's adoption of the Code. However, the claimed impacts are within the interests protected by SEPA and Leavitt alleges that they directly impact her property and interests. We will assume that Leavitt has established standing for purposes of review.

Id. at 679.

Under *Kucera* and *Leavitt,* Appellants have standing to raise SEPA claims. Appellants have alleged immediate, concrete and specific injuries based on how the Proposal would affect their individual situation.

- Dr. Friedland, owner of the Roy Street Commons, would be impacted because he would no longer be able to use his property for short term rental. This would prevent him from maintaining his building in the way that he does now. In addition, his short term tenants, many of whom have destinations in the immediate neighborhood, would need to commute into the area. Since he lives very close to his short term rental building, the aesthetic and traffic impacts would affect him directly. Friedland Declaration, ¶¶6, 8.

- Ms. Lyles would be impacted because she would no longer be able to stay at the Roy Street Commons. She would not be able to rent short term in this area, where many of her clients live. She would need to find short term rental in an outlying jurisdiction or even stay with relatives in Everett. She would then commute in to her destination. The traffic impacts would affect her directly. Friedland Declaration, ¶7.

- Ms. Acquavella would be impacted because she would no longer be able to use a short term rental duplex within walking distance of her home for her parents when they come to

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visit. They would need to stay in a more distant location and either they would drive to her house or she would drive to see them. Either way, she would experience a specific traffic impact. Acquavella Declaration, ¶4.

- Ms. Smith would be impacted because she would no longer be able to rent her property short term. She would not be able to use the house when she visits Seattle or offer it to her friends. She would not be able to maintain the property to the same standards. Accordingly, she would lose housing and the aesthetic impacts would affect her directly. Smith Declaration, ¶8.

- Mr. Morris would be impacted because he would no longer be able to use his properties for short term rental. This would prevent him from maintaining his homes in the way that he does now. In addition, his short term tenants, many of whom have destinations in the immediate neighborhood, would need to commute into the area. Since he lives in the same neighborhood as his rentals, the aesthetic and traffic impacts would affect him directly. Morris Declaration, ¶¶5, 6.

- Mr. McDaniel would be impacted because he would no longer be able to use his duplex for short term rental. This would prevent him from preserving this 118 year old home. He would ultimately redevelop the property. The loss of his older home would have aesthetic impacts and impacts to historic resources that would affect him directly. McDaniel Declaration, ¶4.

- Mr. Cunniff would be impacted because he would no longer be able to use his duplex for short term rental. He would lose the use of this home during the time between short term tenants. The loss of housing would affect him directly. This would prevent him from maintaining his homes in the way that he does now. In addition, his short term tenants, many of

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whom have destinations in the immediate neighborhood, would need to commute into the area. Since he is often in the area, this would affect him directly. Cunniff Declaration, ¶¶10, 11.

These very specific and allegations of direct impacts to individual Appellants more than meets Appellants' obligation to allege an injury in fact.

Appellants have also submitted the declaration of an expert in the effect of land use regulations and economic considerations on the built environment. He confirmed that the impacts identified by Appellants are impacts of the Proposal. He further explained that the City's assertion the impacts are speculative "is contradicted by fundamental principles of land use planning and economics." He stated that the past is replete with examples of land use regulation and economic conditions affecting the physical environment. One need only look to the famous example of the City of Detroit, its economic decline and its recent land use planning efforts, to see how both economic conditions and land use regulation can and do affect the physical environment. Finally, he concluded that the alleged environmental impacts are direct, immediate and concrete consequences of the proposed short term rental regulations. Reid Declaration, ¶6.

The City relies on two Court opinions and one Hearing Examiner decision to advance its inaccurate interpretation of the SEPA injury in fact element. Motion, pp. 11-12. All three are inapposite. In *Trepanier v. Everett*, 64 Wn. App. 380, 824 P.2d 524 (1992), *review denied*, 119 Wn.2d 1012, 833 P.2d 386 (1992), the Court found that the plaintiff, the owner of a civil engineering and land use consulting firm, lacked standing to bring a SEPA challenge to Everett's adoption of a new zoning code. The Court did not consider whether the plaintiff's status as a property owner and resident was sufficient to establish standing. Instead, the Court found that the petitioner lacked standing because his claim that reduced densities in Everett would cause

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increased development with attendant impacts in unincorporated Snohomish County had "absolutely no factual support in the record" but, instead, was contradicted by the record. In contrast, here, Appellants have submitted declarations explaining specifically how they will be directly affected by the Proposal given their particular circumstances. Trepanier does not help the City.

The City relies on *SCPRA, supra,* for the principle that SEPA standing cannot be based on citizen status. In that case, the Court determined that a nonprofit association and individual property owner and resident lacked SEPA standing to challenge the county's SEPA compliance in connection with its adoption of county-wide planning policies. On the injury in fact element, the Court found that the plaintiffs did not allege sufficient injury because they did not present any facts showing harm; indeed, the Court found that "no evidence exists in the present case to show that [the plaintiffs'] interests are affected or that some harm is occurring." 76 Wn. App. at 54. Here, Appellants are not alleging standing based on their status as citizens. Rather, they have specifically identified how the Proposal will affect them. *SCPRA* is inapplicable.

Finally, the City relies on the Hearing Examiner decision in the appeal of *Keep Washington Beautiful and Total Outdoor*, HE File No. W-13-003 and W-13-004. In that case, the Hearing Examiner considered a SEPA challenge to a proposed ordinance limiting the size of on-premises wall signs. The Hearing Examiner found that alleged injuries resulting from the loss of revenue from reduced signage were too speculative. This case presents an entirely different situation. Signs are not an element of the environment. Housing, in contrast, is an element of the environment, and the Proposal directly impacts housing. The consequences of the loss of short term housing – in the areas of aesthetics, traffic and historic resources – are not speculative. Rather, they are supported by declarations by the individuals affected explaining

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exactly why these impacts will occur given their individual circumstances as well as by an expert declaration. The allegations are not speculative. *Keep Washington Beautiful* is inapposite.

In sum, the declarations provided more than satisfy Appellants' obligation to allege an injury in fact. The second element of standing is satisfied.

IV. CONCLUSION

For these reasons, the Hearing Examiner should find that Appellants have standing and should deny the City's motion to dismiss.

DATED this 14th day of July, 2017.

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