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8 BEFORE THE HEARING EXAMINER  
9 CITY OF REDMOND

10 In the Matter of the Appeal of:

11 IRINA BERGER

12 of the January 29, 2016 Determination of Non-  
13 Significance for the Redmond City Center  
14 project at 16135 NE 85<sup>th</sup> Street.

HE No. SEPA 2015-01939

REPLY ON MOTION TO DISMISS

15 Under the most liberal reading of Appellant Irina Berger's ("Appellant") appeal and  
16 response brief, Appellant still fails to state a claim upon which relief can be granted. It appears  
17 that Appellant is arguing that there are significant impacts as a result of the Redmond City  
18 Center project ("Project"), and on that basis, Appellant requests that the Hearing Examiner  
19 invalidate the Project approval. However, Appellant did not challenge the Project Approval,  
20 LAND-2103-01989/SPE, and cannot seek to invalidate this approval in a State Environmental  
21 Quality Act ("SEPA") appeal. Even if Appellant had successfully stated a claim, which she has  
22 not, there is no substantive SEPA authority available to grant Appellant the relief she requests.  
23 The Applicant Cosmos Development Company's ("Applicant") Motion to Dismiss should  
24 accordingly be granted.  
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28 REPLY ON MOTION TO DISMISS  
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1 **A. The Hearing Examiner does not have jurisdiction to entertain zoning compliance**  
2 **claims in an appeal under SEPA**

3 Appellant's key concern is her belief that the Project is inconsistent with the Town  
4 Square zoning. Not only is this untrue, but this issue relates to zoning compliance and is not  
5 properly before the Hearing Examiner because Appellant did not appeal the approval of the  
6 Project, Project Number LAND-2013-01989/SPE.

7 **B. The Hearing Examiner does not have jurisdiction to grant Appellant's requested**  
8 **relief**

9 Appellant requests that the Hearing Examiner invalidate the Project approval. As noted  
10 above, Appellant did not challenge the project approval and accordingly relief cannot be granted  
11 to reverse that decision. Moreover, the Hearing Examiner does not have jurisdiction under  
12 SEPA to grant the requested relief.

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14 All exercise of substantive authority – including both mitigation and denial – is subject to  
15 the limitations of the substantive SEPA policies. *See* RMC 21.70.150.A; *see also* WAC 197-11-  
16 660; RCW 43.21C.060. Under the City of Redmond's ("City") substantive SEPA policies, the  
17 City may exercise its substantive authority in accordance with several codes and policies,  
18 including the Zoning Code. RMC 21.70.150.B. Here, the City determined that the Project  
19 complies with the Zoning Code under Project Number LAND-2013-01989/SPE, which was not  
20 appealed, and accordingly cannot reject the Project under its substantive SEPA authority.

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22 The Hearing Examiner must accordingly reject Appellant's argument and dismiss the  
23 appeal.  
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1 **C. Appellant's response fails to identify any alleged error of fact, law, or procedure**

2 In response, Appellant realleges that the Project will block light, affect, vegetation, and  
3 increase traffic. Appellant does not explain how these potential impacts are significant or how  
4 the SEPA Checklist and resultant DNS fail to account for those potential impacts, in violation of  
5 RMC 21.70.190.B.2.  
6

7 Based on the allegations in the appeal and response, it is difficult if not impossible for the  
8 Hearing Examiner to assign error to the City's decision when no error is alleged. Accordingly,  
9 the appeal must be dismissed.

10 **D. Appellant fails to demonstrate that she is specifically and concretely injured by the**  
11 **City of Redmond's SEPA Decision**

12 Appellant alleges that the height of the Project will block light to her residence, affect  
13 vegetation and increase traffic. This is insufficient to confer standing.


14 To have standing under SEPA, Appellant must demonstrate that (1) the interest she is  
15 seeking to protect is in SEPA's zone of interests; and (2) immediate, concrete and specific injury.  
16 The injury cannot be merely conjectural or hypothetical. *Trepanier v. Everett*, 64 Wn. App. 380,  
17 382, 824 P.2d 524 (1992). It is evident that Appellants' claim regarding light blockage relates to  
18 her view. *See* Response to Applicant's Motion to Dismiss, p. 1 ("preserving City traditional  
19 view.") To the extent Appellant is concerned about her view, she has no standing to challenge  
20 the DNS on that basis because preservation of private views is not within SEPA's zone of  
21 interests. Appellant has no right to a view. *Northeast Lake Washington Sewer and Water*  
22 *District*, 123 Wn.2d 550, 870 P.2d 305 (1994).  
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1 Appellant's other allegations fail to demonstrate how she is specifically, concretely, and  
2 adversely injured by the Project in any other way particular to her.<sup>1</sup> For instance, Appellant  
3 alleges that the building will affect vegetation in the area and will increase traffic. Appellant has  
4 not alleged how these issues specifically injure her, her claims are merely conjectural, and  
5 Appellant accordingly does not have standing to raise them. *See Trepanier, supra*, 64 Wn. App.  
6 at 382.  
7

8 For the reasons set forth above, Applicant respectfully requests that the Hearing  
9 Examiner dismiss Appellant's appeal. In the alternative, Applicant requests that the Hearing  
10 Examiner dismiss Appellant's claims regarding tree retention and zoning compliance.  
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12 DATED this 7<sup>th</sup> day of April, 2016.

13 MCCULLOUGH HILL LEARY, P.S.

14  
15 By:   
16 Courtney A. Kaylor, WSBA #27519  
17 Katie Kendall, WSBA #48164  
18 Attorneys for Applicant  
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26 <sup>1</sup> While Appellant correctly points out that there is no specific DNS comment period, Appellant failed to comment  
27 on the project itself during the project review and does not have standing to appeal.