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SEATTLE HEARING EXAMINER

IN RE SEATTLE DEPARTMENT OF
TRANSPORATION, SEPA DETERMINATION
OF NON-SIGNIFICANCE (DNS), SEATTLE
BICYCLE MASTER PLAN

NO. _____

NOTICE OF APPEAL

The Westlake Stakeholders Group (“Appellants”) hereby submit this Notice of Appeal of the December 2, 2013 SEPA Determination of Non-Significance (DNS) issued by the Seattle Department of Transportation (SDOT) for the update to the Seattle Bicycle Master Plan (the “Plan”). A copy of the DNS is attached.

I. PARTIES

The Westlake Stakeholders Group is comprised of people who live in the area, who own, manage and work in the area, who own, operate, manage or represent businesses in the area, are tenants of these businesses, and who own and/or operate moorage and marinas in the Westlake neighborhood of Seattle located adjacent to or along the proposed alignment of certain bicycle facilities included within Plan, including the following:

- 1.1. Tim Zamberlin;
- 1.2. Bill Wehrenberg;
- 1.3. Peter Schrapen;
- 1.4. Gordon Rul;
- 1.5. Cam Strong;
- 1.6. David McClain;
- 1.7. Ann Bassetti;
- 1.8. Bill Wiginton;
- 1.9. Dick Schwartz;

- 1 1.10. Roger Drill;
- 2 1.11. Phil Bannon;
- 3 1.12. Pamela Hale;
- 4 1.13. Peter Avlogitos;
- 5 1.14. Randy Sandell;
- 6 1.15. Lynn Reister;
- 7 1.16. Joseph Zamberlain;
- 8 1.17. Ingrid Rasch;
- 9 1.18. Cathy Graubert;
- 10 1.19. Jo Seel; and
- 11 1.20. Marilyn Perry.

12 The address for the Westlake Stakeholders Group is c/o Cam Strong, 2565 Dexter
13 Avenue North, # 502, Seattle, WA 98109 and Veris Law Group PLLC at the address below.

14 The Westlake Stakeholders Group includes members from the Westlake community. The
15 Westlake community comprises 300 floating homes and live-aboards; 19 marinas, which include
16 approximately 1,200 moorage slips; 20 boat dealerships; 50 yacht repair/lift-out facilities; a
17 kayak and paddle-board company; the largest floatplane port in the contiguous United States; a
18 lake/bay tour cruise company; the only fuel dock on Lake Union; an indoor swimming pool with
19 65,000 annual visitors; a dragon boat club; and a rowing club.

20 For all the reasons explained below, the Plan and its attendant projects will substantially
21 and adversely impact the Appellants and the entities and people employed or represented by the
22 Appellants. Currently, at least one of the projects in the Plan located along Westlake Avenue
23 North is funded in the City's budget and SDOT is pursuing its completion. Along with other
24 projects in the Plan, the Westlake Avenue North project will create unsafe conflicts between
25 pedestrians, cyclists, and commercial/industrial/maritime/business traffic and activities; will
26 create traffic and safety hazards in and around the City and Westlake Avenue North area and
neighborhood; will cause loss of parking that is significant and adverse to City residents,
business owners/operators and the Appellants. The Appellants are collectively, individually, and
as to each entity and person they represent, harmed by the significant adverse impacts from the
Plan and the failure of the DNS to comply with the State Environmental Policy Act and its

1 implementing regulations. The Appellants have participated in the SEPA review process by
2 timely providing comments to the City Council.

3 II. WSG APPELLANTS' LEGAL REPRESENTATIVES

4 The Appellants are represented in this matter by Joshua C. Allen Brower and Danielle
5 Granatt, Veris Law Group PLLC, Seattle, WA 98101, telephone (206) 829-9590, fax (206) 829-
6 9245, email josh@verislawgroup.com and danielle@verislawgroup.com.

7 III. INTRODUCTION

8 SDOT's DNS for the Plan fails to comply with the policies and requirements of the State
9 Environmental Policy Act (SEPA) and its implementing regulations, and fails to comply with the
10 City of Seattle's (City's) SEPA policies. SDOT either must redo its SEPA checklist to analyze
11 all of the adverse impacts that it ignores and then issue a new threshold determination, or
12 withdraw the DNS, issue a Determination of Significance (DS) for the Plan and prepare an
13 Environmental Impact Statement (EIS). An EIS is required "whenever a more than a moderate
14 effect on the environment is a reasonable probability" from a proposal or project. *See Norway*
15 *Hills Preservation & Protection Ass'n v. King County Council*, 87 Wn.2d 267, 278 (1976).
16 Whether a project will "significantly" affect the environment is measured by whether there is "a
17 reasonable likelihood of more than a moderate adverse impact on environmental quality." WAC
18 197-11-794(c). The Plan will result in significant and unmitigated adverse impacts to the
19 environmental quality of the Plan area and the Westlake neighborhood and surrounding
20 properties in particular.

21 IV. DNS INADEQUACIES

22 A. SDOT Failed To Study Traffic Hazards and Safety

23 The SEPA rules (both the City's and the State's) require SDOT to study safety and traffic
24 hazards because these are logical "impacts" associated with creating and locating bicycle
25 facilities along City rights-of-way, including arterials and Major Truck Streets as proposed in the
26

1 Plan. SMC 25.05.060.D.1, D.3 and D.4.¹ The SEPA rules specify the “content of environmental
2 review common to *all* environmental documents required under SEPA.” SMC
3 25.05.060(A)(Emphasis added); *also* WAC 197-11-060 (Emphasis in original). “SEPA’s
4 procedural provisions require the consideration of ‘environmental impacts...with attention to
5 impacts that are likely, not merely speculative.” *Id.* at D.1; *also* WAC 197-11-060.4.a.
6 “Impacts” is defined to include “effects upon the elements of the environment listed in SMC
7 25.0444.” SMC 25.05.752; *also* WAC 197-11-752 (referring to WAC 19-11-444). “Traffic
8 hazards” is listed at SMC 25.05.444.3.f and WAC 197-11-444.2.b.vi and thus is one of the
9 environmental elements that must be considered in *any* SEPA environmental analysis, not just an
10 EIS.

11 The Plan will create significant, unmitigated adverse safety and traffic hazards. Under the
12 Plan, the City proposes to add approximately 472 miles of new bicycle facilities, which, when
13 combined with the existing facilities, will create approximately 600+ miles of bicycle facilities
14 within City rights-of-way and/or private land(s). These bicycle facilities will include protected
15 bicycle lanes (cycle tracks), buffered bicycle lanes, bicycle lanes, off-street trails, and
16 neighborhood greenways. Many of these facilities will be located within the rights-of-way for
17 arterials, including proposed facilities along Westlake Avenue North.

18 ¹ “D.1 SEPA’s procedural provisions require the consideration of “environmental” impacts..., *with attention to*
19 *impacts that are likely, not merely speculative.*

20 D.3. Agencies shall carefully consider the range of probable impacts, including short-term and long-term
21 effects. Impacts shall include those that are likely to arise or exist over the lifetime of a proposal or, depending on
22 the particular proposal, longer.

23 D.4. *A proposal’s effects include direct and indirect impacts caused by a proposal.* Impacts include those
24 effects resulting from growth caused by a proposal, as well as the likelihood that the present proposal will serve as a
25 precedent for future actions. For example, adoption of a zoning ordinance will encourage or tend to cause particular
26 types of projects or extension of sewer lines would tend to encourage development in previously unsewered areas.”
(Emphasis added).

1 Westlake Avenue North is an arterial and, under the City's Comprehensive Plan,
2 designated as a Major Truck Street. Major Truck Streets are defined to mean:

3 A Major Truck Street is an arterial street that accommodates significant freight
4 movement through the city, and to and from major freight traffic generators. The street is
5 typically a designated principal arterial (see the "Planned Arterials Map" legend
6 definition). Major Truck Streets generally carry heavier loads and higher truck volumes
7 than other streets in the City.

8 <http://www.seattle.gov/transportation/streetclassmaps/trucklegend.pdf>.

9 Under the Plan, SDOT intends to create one or more new bicycle facilities within the
10 right-of-way for Westlake Avenue North. That facility will attract bicyclists, including children,
11 families and vulnerable users into direct conflict with commercial, industrial, maritime and
12 residential traffic and activities using Westlake Avenue North and the adjacent areas. This area
13 is heavily used by trucks, commercial, maritime and industrial traffic and activities, loading
14 docks, commercial and residential parking, and is a busy arterial. SDOT's Checklist is silent on
15 these issues.

16 The Plan also will create safety and traffic hazards because it does not require new
17 bicycle facilities to conform to Chapter 1515 of the Washington State Department of
18 Transportation Design Manual ("WSDOT Manual) or SDOT's own Right-of-Way
19 Improvements Manual ("ROW Improvement Manual"). Section 4.13 of the ROW Improvement
20 Manual states: "Per RCW 35.75.060 and 36.82.145, all bicycle facilities must comply with
21 Chapter [1515] of the WSDOT Design Manual which is consistent with the 1999 Guide for the
22 Development of Bicycle Facilities." These state statutes, in turn, both state: "Bicycle facilities
23 constructed or modified after June 10, 1982, *shall* meet or exceed the standards of the state
24 department of transportation." The Plan does not comply with these requirements because "it
25 intentionally does not contain a full list of detailed design standards." SDOT should be required
26 to adopt bicycle design facilities and identify them in the Plan as part of its SEPA review. For
27 example, SDOT should confirm that all new bicycle facilities, including any along Westlake
28 Avenue North, will comply with the AASHTO and WSDOT "design speed" and "minimum

1 sight stopping distance” requirements in Chapter 1515 of the WSDOT Manual in order to ensure
2 the Plan will not create traffic hazards. Until SDOT does, the DNS is inadequate and must be
3 withdrawn or revised.

4 **B. SDOT Failed To Study The Plan’s Relation To The Existing Land Use Plan And
5 Failed To Conduct The Balancing That Comprehensive Plan Requires**

6 The Plan is incompatible with the City’s Comprehensive Plan. The City’s SEPA Rules
7 codify WAC 197-11-44 in SMC 25.05.444, listing the elements of the environment that must be
8 examined in a threshold determination. The first element under the heading “Land Use” is
9 “*relation to existing land use plan.*” (Emphasis added). The City’s “land use plan” is its
10 Comprehensive Plan. The Growth Management Act requires the City to “perform its activities . .
11 . in conformity with its comprehensive plan,” RCW 35.70A.120, and the City’s Comprehensive
12 Plan requires that the competing policies that address the proposed Plan and its effect on the City
13 and the Westlake Avenue North area in particular are to be “reconciled and balanced” when
14 these policies are applied to a specific factual situation.

15 The Comprehensive Plan includes Goals and Policies that prioritize and promote efficient
16 freight and goods movement along arterials and Major Truck Streets. *See e.g.*, TG6. The
17 Comprehensive Plan also directs the City and SDOT to accommodate, preserve and improve
18 commercial transportation and mobility and access. *See e.g.*, T10. The DNS and the Checklist
19 do not adequately disclose or discuss the Plan’s inconsistencies with the goals and policies in the
20 City’s Comprehensive Plan, neighborhood plans and land use regulations including, but not
21 limited to the following:

22 UV-22: Strive to retain and expand existing manufacturing and industrial
23 activity.

24 UV-23: Maintain land that is uniquely accessible to water, rail, and
25 regional highways for continued industrial use.

26 EDG-5: Encourage the growth of key economic sectors that build on
Seattle’s competitive advantages to provide sustained growth in the future.

1 TG-1: Ensure that transportation decisions, strategies and investment are
2 coordinated with land use goals and support the urban village strategy.

3 TG-2: Manage the street system safely and efficiently for all modes and
4 users and seek to balance limited street capacity among competing uses.

5 TG-3: Promote safe and convenient bicycle and pedestrian access
6 throughout the transportation system.

7 TG-6: Promote efficient freight and goods movement.

8 TG-19: Preserve and improve mobility and access for transport of goods
9 and services.

10 TG-22: Reduce of mitigate air, water and noise pollution from motor
11 vehicles.

12 TG-23: Promote energy-efficient transportation.

13 TG-25: Promote the safe and efficient operation of Seattle's transportation
14 system.

15 T-7: Designate a traffic network that includes Major Truck Streets,
16 defined to mean "an arterial street that accommodates significant freight
17 movement throughout the city and connects to major freight traffic generators."

18 T-48: Recognize the importance of the freight network to the city's
19 economic health when making decisions that affect Major Truck streets as well as
20 other parts of the region's roadway system. Complete Street improvements
21 supporting freight mobility along with other modes of travel may be considered
22 on Major Truck streets.

23 T-51: Consider the needs for local delivery and collection of goods at
24 businesses by truck when making street operational decisions and when
25 developing and implementing projects and programs for highways, streets and
26 bridges.

LU-G22: Provide opportunities for industrial activity to thrive in Seattle.

LU-G23: Accommodate the expansion of existing businesses within Seattle,
thereby stabilizing the city's existing industrial areas. Promote opportunities for
new businesses that are supportive of the goals for industrial areas.

LU-G51: Encourage economic activity and development of water-dependent
uses by supporting the retention and expansion of existing water-dependent
businesses and planning for the creation of new developments in areas now
dedicated to such use.

1 LU-254: Concentrate industrial and commercial shoreline uses by
2 supporting the retention and expansion of existing water-dependent businesses,
and planning for the creation of new developments in areas now dedicated to such
3 use.

4 SLU-G9: A neighborhood with principal arterials that move people and
freight efficiently through the neighborhood, support local access, and provide
5 circulation for all modes.

6 Not a single of these Comprehensive Plan Goals or Policies is discussed in the Checklist.
7 SDOT's answers to the Comprehensive Plan questions in the Checklist were narrowly contrived
8 to address only positive impacts of the proposed bicycle facilities and intended to conceal the
9 likely significant adverse impacts. At a minimum, SDOT is required to conduct a balancing
10 analysis to determine whether the Plan is compatible with these Goals and Policies in the
Comprehensive Plan, which it failed to do.

11 Additionally, in 2014, the City will be preparing a Freight Master Plan, on par with the
12 City's other functional plans, including the Pedestrian Master Plan and the Bicycle Master Plan.
13 At a minimum, SDOT must review, consider and balance the goals, policies and directives in
14 Freight Master Plan in conducting its SEPA review and analysis for the Plan. For example,
15 SDOT must consider whether additional bicycling facilities along Westlake Avenue North, a
16 Major Truck Street, are necessary or required since the City recently constructed multi-million
17 dollar state-of-the-art bicycle facilities on Dexter Avenue, which is just one block away. SDOT
18 must analyze whether redundant facilities that parallel each other are required, especially along a
Major Truck Street.

19 **C. SDOT Failed To Adequately Study Parking Impacts**

20 SDOT failed to adequately analyze parking impacts from the Plan, and in particular from
21 proposed bicycle facilities along Westlake Avenue North. The Appellants and numerous
22 businesses, residents, and visitors use and rely on the parking spaces located within the Plan area
23 and along and adjacent to Westlake Avenue North. Many parking spaces will be removed as
24 part of constructing bicycle facilities specified and outlined in the Plan, including spaces along
Westlake Avenue North. These spaces are used 24/7 by businesses, residents and patrons.

1 People use them during the day when they go to work and to local businesses. They use them
2 during the night and weekends when they frequent local establishments. Casual observation
3 shows that there is high demand for this parking. To date, SDOT has conducted no analysis to
4 determine the significant adverse impacts associated with and arising from removing parking
5 spaces and replacing them with bicycle facilities. Until SDOT does, its SEPA review is
6 inadequate.

6 **D. Future Environmental Review Is Inadequate**

7 SDOT's SEPA review is fatally flawed because SDOT cannot rely upon future
8 environmental review as part of its threshold determination for the Plan. Throughout the
9 Checklist, SDOT repeatedly states that it will conduct future environmental review for projects
10 included in the Plan. SDOT cannot rely on such future environmental review for a number of
11 reasons.

12 First, the Plan will induce future development, including the creation of new bicycle
13 facilities along Westlake Avenue North that are currently funded in the City's budget. As such,
14 these facilities are not speculative and instead are probable or certain. *King County v. Boundary*
15 *Review Board*, 122 Wn.2d 648 (1993). As outlined above, bicycle facilities along Westlake
16 Avenue North will create significant adverse environmental impacts. Because many of the
17 facilities included in the Plan will be constructed and will create significant adverse
18 environmental impacts, it is improper for SDOT to defer environmental review until actual
19 project construction. *Id.*

20 Second, it is highly unlikely future environmental review will ever occur for any of the
21 projects and proposals in the Plan, including the proposed facilities along Westlake Avenue
22 North that are currently funded. SDOT will not conduct future environmental review because it
23 considers bicycle facility construction to be "Minor New Construction" that is categorically
24 exempt from SEPA review pursuant to SMC 25.05.800.B.3. As such, SDOT will not conduct
25 any future environmental review for most if not all of the projects included in the Plan.

1 And last, the Plan and its attendant projects are not Categorically Exempt because they
2 include a series of actions that are physically and functionally related to each other and together
3 will have probable significant adverse environmental impacts. SMC 25.05.305.A.2.b. Again,
4 SDOT cannot rely upon future environmental review and thus its DNS is flawed.

5 **E. SDOT Failed To Study Alternatives**

6 SDOT's analysis in the Checklist is incomplete and inadequate because SDOT failed to
7 study alternatives to the Plan, such as modal, design or locational alternatives. Analysis of
8 alternatives is required at the threshold determination stage by two separate SEPA requirements,
9 RCW 43.21C.030(2)(e) and WAC 197-11-330(3)(a); required pursuant to a decision of the
10 Washington State Supreme Court, *Feil v. Eastern Washington Growth Management Hearings*
11 *Board*, 172 Wn.2d 367, 259 P.3d 227 (2011); and required pursuant to 40 years of NEPA case
12 law interpreting the exact same language in SEPA. *See Monroe County Conservation Council,*
13 *Inc., v. Volpe*, 472 F.2d 693, 697 (2nd Cir. 1972)(FN 8)(Emphasizing the importance of
14 considering alternatives under § 4332(2)(E)); *also Trinity Episcopal School Corp. v. Romney*,
15 523 F.2d 88 (2d Cir. 1975); *also City of New York v. United States Department of*
16 *Transportation*, 715 F.2d 732 (2d Cir. 1983); *also Bob Marshall Alliance v. Hodel*, 852 F.2d
17 1223 (9th Cir. 1988)("Moreover, consideration of alternatives is critical to the goals of NEPA
18 even where a proposed action does not trigger the EIS process."). The SEPA rules require the
19 responsible official to take into account that "the same proposal may have a significant adverse
20 impact in one location but not another location." WAC 197-11-330(3)(a). This rule necessarily
21 requires the responsible official to analyze and compare the "significant adverse impacts" of a
22 proposal in the proposed and alternative locations. Until SDOT compares these alternatives—
23 modal, design and locational--the Responsible Official cannot fulfill his/her duty under SEPA of
24 analyzing whether "the same proposal may have a significant adverse impact in one location but
25 not another location." WAC 197-11-330(3)(a). In *Feil*, the Washington State Supreme Court
26 stated this section of SEPA imposes a duty on SDOT to study, develop and describe appropriate
alternatives to the Plan in its SEPA threshold determination.

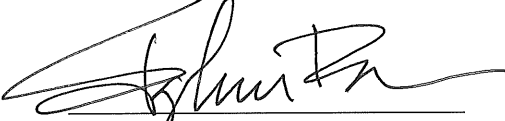
1 The Appellants reserve the right to amend this Notice of Appeal to state additional
2 challenges to the adequacy of the DNS relating to the impacts and mitigation of the Plan and
3 reasonable alternatives to the Plan.

4 **VI. RELIEF REQUESTED**

5 The Appellants respectfully request the Hearing Examiner determine the DNS inadequate
6 and remand this matter to SDOT for preparation of a new checklist and new threshold
7 determination; or, in the alternative, determine that the impacts of the proposed Plan are
8 significant and direct SDOT to prepare an EIS to fully address the significant adverse impacts of
the Plan identified above.

9 DATED this 23rd day of December 2012.

10 VERIS LAW GROUP PLLC

11 

12 Joshua C. Allen Brower, WSBA No. 25092

13 Danielle Granatt, WSBA No. 44182

14 Attorneys for Appellants

**SEPA DETERMINATION OF NON-SIGNIFICANCE (DNS)
SEATTLE DEPARTMENT OF TRANSPORTATION
SEATTLE BICYCLE MASTER PLAN**

Description of proposal: The Seattle Bicycle Master Plan, which is a major update to the last version of the BMP which was adopted in 2007, is a long-range system plan to achieve the vision that riding a bicycle is a comfortable and integral part of daily life in Seattle for people of all ages and abilities. It provides a policy framework around what the plan will accomplish, and defines a number of strategies and actions for how the plan will be implemented over time. Bicycling provides a cost-effective, healthy, and convenient means of transportation, which helps advance a number of city goals (for example, the City's carbon reduction goals in the Climate Action Plan), increases social interaction on streets, offers alternatives to driving on congested roadways, and reduces pollution. Through the updated Bicycle Master Plan, Seattle will make its transportation system more environmentally, economically, and socially sustainable.

Proponent and Lead Agency:

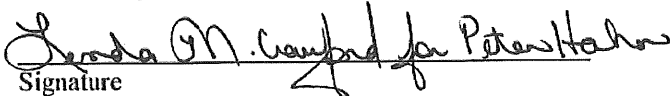
City of Seattle, Department of Transportation (SDOT)
Seattle Municipal Tower
P.O. Box 34996
Seattle, WA 98124-4996

Location of proposal: The Bicycle Master Plan applies to the entire city of Seattle. SDOT has determined that this proposal would not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information may be examined in the Seattle Department of Planning and Development Public Resource Center at 700 Fifth Ave, Suite 2000, Seattle. Documents are also available at the main branch of the Seattle Public Library, 1000 Fourth Ave, Seattle, WA 98104.

This DNS is issued under WAC 197-11-340(2) and Seattle Municipal Code (SMC) 25.05.340; the lead agency will not act on this proposal for 14 days from the issue date below. **Comments must be submitted by 5:00 p.m. on December 16, 2013.**

Issue Date: December 2, 2013

SEPA Responsible Official: Peter E. Hahn, Director, SDOT


Signature

11/25/13
Date

Agency contact: Kevin O'Neill Telephone: (206) 386-4556

Any interested person may appeal this DNS by submitting a Notice of Appeal and an \$85.00 filing fee either online at www.seattle.gov/examiner/efile, or by mail at P.O. Box 94729, Seattle, WA 98124-4729, to the Office of the Hearing Examiner located on the 40th floor of the Seattle Municipal Tower at 700 Fifth Ave.; telephone: (206) 684-0521. **The appeal must be in writing and filed no later than 5:00 p.m. on December 23, 2013.** The appellant should be prepared to make specific factual objections. See SMC 25.05.680 A(2)(a)(ii) for SEPA appeal procedures.