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OFFICE OF
HEARING EXAMINER

BEFORE THE SEATTLE HEARING EXAMINER

In the Matter of the Appeal of:

Examiner File No. W-13-009

WESTLAKE STAKEHOLDERS GROUP

**REPLY IN SUPPORT OF MOTION
TO INTERVENE AND MOTION TO
WAIVE NOTICE REQUIREMENTS¹
BY CASCADE BICYCLE CLUB**

From a decision by the Director, Department
of Transportation, regarding a SEPA
determination of Non-Significance.

I. Introduction

The Westlake Stakeholders Group ("Westlake") fails to identify any coherent reason why the Cascade Bicycle Club (the "Club") should not intervene in an appeal related to an update of Seattle's Bicycle Master Plan (the "Plan"). The Club represents the interests of bicyclists, participated extensively in the public process leading up to the Plan, and has an interest in seeing it implemented rather than delayed. The Club should be allowed to intervene.

II. Supplemental Facts and Argument

A. The Club has a direct and immediate interest in the Plan's implementation.

Westlake disingenuously claims that the Club has no interest in the implementation of the Plan by citing portions of the Club's website related to the Club's educational activities and fundraising. (Opposition at 3-4.) Westlake's opposition is premised upon a fundamental misunderstanding of the Club. At the prehearing

¹ The motion to waive notice requirements is now moot.

1 conference Westlake's counsel characterized the Club as a lobbying organization.
2 Westlake's response at 5:17-20, 6:12-13 and 7:3-4 repeats this characterization by
3 asserting that the Club seeks intervention to protect its ability to lobby City government.
4 Westlake's counsel should know his characterizations to be incorrect.

5 The Club is a membership organization with over 15,000 members, the majority of
6 whom reside within the City of Seattle. As cyclists, those members are directly affected
7 by the Plan and the delays implementation caused by Westlake's appeal.² A delay in
8 implementation adversely impacts the Club's members by delaying improvements to
9 remove hazardous cycling conditions. As evidence of such impact, Club members
10 submitted over 4,000 comments, letters and signatures on petitions in support of the Plan.
11 The impact of delay is particularly true along Westlake, where a cyclist must make the
12 Hobson's choice of cycling within a busy arterial with inadequate space or maneuvering
13 through parking areas with no designated route. SDOT has stated that Westlake was cited
14 at the second most desired location for improved bicycle infrastructure during the BMP
15 update process. Clearly bicyclists have an interest in improving bicycling through the
16 corridor, and this is an interest that Cascade is uniquely positioned to represent.

17 The impacts to the Club's members are not just prospective, as Westlake contends.
18 Certainly, a future beneficial or adverse impact is the kind of interest contemplated by
19 intervention--most, if not all, interventions before the Examiner involve a prospective and
20 not a current impact. *See Loveless v. Yantis*, 82 Wn.2d 754, 759 (1973)(neighborhood
21 group allowed to intervene in appeal of a permit). But the delay in implementation
22 presently affects Club members, through the delay in construction of improvements, the
23 perpetuation of poor road conditions, and the continuation of hazards that Club members
24 must endure.

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27 ² In December, 2013, the City Council was scheduled to pass the Plan, but declined to take a vote
on account of the appeal by the Westlake Stakeholders Group.

1 And Westlake's claim that the Club's members have the same interest as any other
2 citizen of Seattle and therefore should not be allowed to intervene is curious. Westlake's
3 members want Westlake Avenue configured a certain way: they want the maximum
4 amount of parking and vehicle travel possible. And the Club's members also want
5 Westlake and Seattle's other roadways configured a certain way: they want to be able to
6 safely share the roads through safe and effective bikeways. The Club's members will be
7 harmed economically through having longer commutes and/or not being able to safely
8 bike commute if the Plan is not implemented. Westlake conversely claims it will suffer
9 economically if the plan is implemented. If the Club's members do not have standing to
10 participate in this appeal, then neither do Westlake's.

11
12 **B. Reversal of the Plan will adversely impact the Club and its members.**

13 Westlake claims that the Club has no interest in this proceeding because the
14 Club's only goal is to lobby the Seattle city government for future changes to the Plan.
15 This is a ridiculous argument. The Club has already worked with Seattle and other
16 stakeholders to help craft this update to the Plan. The Club's interest is in seeing its hard
17 work implemented and the Plan's benefits to bicyclists realized as soon as possible.
18 Westlake's appeal asks for an EIS on a non-project action that patently does not need
19 one. In the unlikely event that the Examiner grants this frivolous appeal, the Plan would
20 be delayed—and the Club's members would have to suffer unsafe roadways for even
21 longer.

22 **C. The City and the Club have different interests.**

23 Seattle must consider the perspective of all its citizens and visitors, including
24 Westlake's interests. *Loveless*, 82 Wn.2d at 759. Accordingly, the Club's specific
25 interests representing bicyclists are not adequately represented merely because the City is
26 defending the appeal. The Club wants to see the Plan implemented as soon as possible
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1 with the maximum benefit to bicyclists. The City has to weigh the competing interests of
2 all stakeholders, and the long-term impacts of the Examiner's decision on other projects
3 and programs.

4 Westlake's claim that because the Club avers that it will raise no new issues means
5 it cannot demonstrate an interest independent of the City's is absurd. HER 3.09(c) allows
6 the Examiner to deny a request for intervention if new issues are raised. Claiming that an
7 intervener must raise new issues in order to identify a legally cognizable interest when
8 HER 3.09(c) allows the Examiner to reject a motion to intervene for doing so effectively
9 means no one could ever intervene.

10 **D. There will be no delay of the appeal.**

11 Westlake claims that the appeal will be delayed because the Club's presence will
12 "double the amount of time at hearing and double the cost". (Opposition at 8.) But the
13 test is whether the Club's intervention will unduly delay the proceedings. HER 3.09(c).
14 There will be no delay, let alone an undue delay. The Club has moved to intervene early
15 in the proceeding, and asks for no scheduling delays. It will coordinate with the City to
16 ensure there is no duplication of briefing or evidence, as it has done in its interventions in
17 the Missing Link appeals.

18 The only delay from intervention would likely be caused by Westlake, through its
19 claimed need to gather the Club's membership records and take discovery of its
20 members. See Westlake Response at 5:3-9. Westlake confuses the showing necessary to
21 establish judicial standing to bring an appeal with the interest necessary to support
22 intervention in defense of a challenge.

23 Similarly, Westlake's gratuitous inclusion of an email from a former Club staff
24 member simply has no bearing on whether the Club should be allowed to intervene. The
25 former staff member, John Mauro, moved to New Zealand (about 7,000 miles away) and
26 no longer has any affiliation with the Club. Mr. Mauro left Seattle some time ago, and the
27

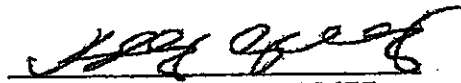
1 Club has hired two policy directors since his departure. He does not speak for the Club,
 2 and the Club had no involvement in his personal email. Moreover, his email is clearly not
 3 a "personal threat" -- he is in New Zealand, and jokingly ended his communication to
 4 Westlake's attorney with "[u]ntil we meet next time in a dark, parking-protected
 5 greenwave cycletrack alley in a city near you". No reasonable person would view this as
 6 anything other than what it was: humor. And in case there was any doubt, Mauro sent an
 7 additional email clarifying his intent. *See Att. A.*

8 **III. Conclusion**

9 The Club has identified an interest in the proceedings, demonstrated that the City
 10 will not adequately represent that interest, and proven that its intervention will not unduly
 11 delay the proceedings. The request to intervene should be granted.

12 DATED this 21st day of January, 2014.

14 NEWMAN DU WORS, LLP

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16 Keith Scully, WSBA 28677
 17 Attorneys for the Cascade Bicycle Club

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VERIFICATION

I, Thomas Goldstein, the Director of Policy for the Cascade Bicycle Club, declare under the penalty of perjury under the laws of the State of Washington that the facts presented in part II of this motion are true and correct to the best of my knowledge and belief. I have personal knowledge of each fact contained therein. Further, Attachment A to this Reply is a true and correct copy of an email I received.

Signed in Seattle, Washington this 21st day of January, 2014.


Thomas Goldstein

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that, on this day, I delivered or caused to be delivered a copy of this document to the Hearing Examiner and the parties as provided below:

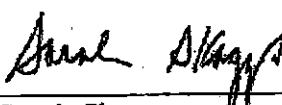
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DATED this 21st day of January, 2014, at Seattle, Washington.



Sarah Skaggs

REPLY IN SUPPORT OF MOTION TO INTERVENE BY
CASCADE BICYCLE CLUB - 7

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Attachment A

----- Forwarded message -----

From: John <johnmauro3@gmail.com>

Date: Thu, Jan 16, 2014 at 2:30 PM

Subject: RE: Email to Josh

To: Brock Howell <brock.howell@cascadebicycleclub.org>, "thomasg@cascadebicycleclub.org" <thomasg@cascadebicycleclub.org>

Hi Josh -

In hindsight I sent an email earlier this week that may have crossed a line or been misinterpreted. Obviously ever since the good times in Copenhagen we've had some pretty informal, colorful and, at times, antagonistic conversations. And even now that I live in New Zealand, sometimes I find myself getting a little too passionate about bicycling in Seattle. I realize that in my attempt to see if I could prick your conscience my "protected-parking greenwave cycletrack alley" joke could have been interpreted as an inappropriate allusion to a veiled threat. Of course I would never threaten you even when you frustrate the heck out of me.

My sincere apologies,

John
