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HEARING EXAMINER

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SEATTLE HEARING EXAMINER

In the Matter of the Appeal of  
THE BALLARD COALITION  
of the adequacy of the Final Environmental  
Impact Statement, prepared by the Seattle  
Department of Transportation for the Burke-  
Gilman Trail Missing Link Project

NO. \_\_\_\_\_

NOTICE OF APPEAL

The Ballard Coalition, an unincorporated association of labor, business, and industry groups, which includes among its members the Martin Luther King, Jr. County Labor Council of Washington, AFL-CIO (Labor Council), General Teamsters Union Local No. 174 (Teamsters), Salmon Bay Sand & Gravel Company (Salmon Bay), the Ballard Interbay Northend Manufacturing & Industrial Center (BNMIC), the North Seattle Industrial Association (NSIA), CSR Marine (CSR), and the Seattle Marine Business Coalition (SMBC) (collectively, the "Ballard Coalition"), hereby submits this Notice of Appeal of the May 25, 2017 Final Environmental Impact Statement (FEIS) issued by the Seattle Department of Transportation (SDOT) for the Burke Gilman Trail Missing Link Project (the Project), a copy of which is available at [http://www.seattle.gov/transportation/BGT\\_Ballard.htm](http://www.seattle.gov/transportation/BGT_Ballard.htm) and a courtesy copy of Vol. 1 of which is included with the original Notice of Appeal filed with the Hearing Examiner.

The Ballard Coalition is the successor in interest to, and includes many of the members of, the Ballard Business Appellants, which successfully appealed the Determinations of Nonsignificance (DNS) issued by SDOT between 2008 and 2012 for the Missing Link project.

NOTICE OF APPEAL

**Veris Law Group PLLC**  
1809 Seventh Ave, Suite 1400  
Seattle, Washington 98101  
TEL 206.829.9590  
FAX 206.829.9245

1 See e.g., the Findings and Decision of the Hearing Examiner, File W-12-002, issued August 27,  
2 2012 (“Hearing Examiner’s Prior Decision”).

3 I. INTRODUCTION

4 SDOT’s FEIS for the Project again fails to comply with the policies and requirements of  
5 the State Environmental Policy Act (SEPA) and its implementing regulations, and fails to  
6 comply with the City of Seattle’s (City’s) SEPA policies. The FEIS also fails to comply with the  
7 Hearing Examiner’s Prior Decision and with the March 2, 2012 Order of the King County  
8 Superior Court.

9 The Ballard Coalition respectfully requests that the Hearing Examiner find the FEIS  
10 inadequate as a matter of law, and order SDOT to prepare and issue a Draft and Final EIS that  
11 complies with the Hearing Examiner’s Prior Decision and that addresses the many additional  
12 deficiencies set forth herein.

13 A. PARTIES

14 The members of the Ballard Coalition<sup>1</sup> are labor organizations, trade and business  
15 associations, or entities that own, operate or represent businesses and/or workers in Ballard, or  
16 own or lease properties in Ballard located adjacent to or in the vicinity of the Project that will be  
17 impacted by the Project, including:

18 1. The Martin Luther King, Jr. County Labor Council of Washington, AFL-CIO, is a  
19 Washington non-profit corporation, whose address is 2800 First Avenue, Suite 206, Seattle, WA  
20 98121, telephone 206.441.8510;

21 2. The Teamsters are a labor association, whose address is 14675 Interurban Ave.  
22 South, Suite 303, Tukwila, WA 98168, telephone 206.441.6060;

23 3. Salmon Bay Sand & Gravel Co. is a Washington corporation, whose address is  
24 5228 Shilshole Ave NW, Seattle, WA 98107, telephone 206.784.1234;

25 \_\_\_\_\_  
26 <sup>1</sup> Additional labor, business and industrial groups and associations may join the Coalition on or before the  
prehearing conference to be held in this matter. In that case, the Coalition will provide an updated list.



1 4. BNMIC is an unregistered non-profit trade association, whose address is 604  
2 22nd Ave NW, Seattle, WA 98107-4027;

3 5. NSIA is a Washington non-profit corporation, whose address is 3500 1<sup>st</sup> Avenue  
4 West, Seattle, WA 98107, telephone 206.440.2660;

5 6. Ballard Terminal Railroad, L.L.C. is a company whose address is 4725 Ballard  
6 Avenue NW, Seattle WA 98107, telephone 206.782.1447;

7 7. CSR Marine is a Washington corporation whose address is 4701 Shilshole  
8 Avenue NW, Seattle, WA 98107, telephone 206.632.2001; and

9 8. Seattle Marine Business Coalition is a Washington non-profit corporation, whose  
10 address is 2201 West Commodore Way, Seattle, WA 98199, telephone 206.285.1707.

11 Salmon Bay, Ballard Terminal Railroad, and CSR Marine are businesses located adjacent  
12 to or in the vicinity of the Project; are water-dependent or water-adjacent industrial uses, located  
13 on industrially zoned land; and have driveways, loading areas, railroad tracks or access that  
14 require truck and rail crossings across the Project, and/or require intermodal access including  
15 barge, rail, and truck. Each of these businesses would be adversely affected, resulting in  
16 immediate, concrete, and specific injury in fact if the Project proceeds as set forth in the FEIS.

17 The BINMIC is an unregistered non-profit trade association; NSIA is a business  
18 association of marine and industrial businesses and property owners; the SMBC represents the  
19 interests of 300 marine industrial land users within the Seattle City limits; the Labor Council is  
20 the central body of labor organizations in King County; and the Teamsters are an association  
21 representing the interests of workers including, but not limited to, heavy freight drivers, truck  
22 drivers, equipment operators, transit operators, and dock workers. For each of these  
23 organizations, one or more of its members' interests will be adversely affected, resulting in  
24 immediate, concrete, and specific injury in fact if the Project proceeds as set forth in the FEIS.

#### 25 **B. BALLARD BUSINESS APPELLANTS' LEGAL REPRESENTATIVES**

26 The above named parties are represented in this matter by Joshua C. Allen Brower, Leah  
B: Silverthorn, and Danielle N. Granatt, Veris Law Group PLLC, Seattle, WA 98101, telephone  
(206) 829-9590, fax (206) 829-9245, email [josh@verislawgroup.com](mailto:josh@verislawgroup.com), [leah@verislawgroup.com](mailto:leah@verislawgroup.com),

1 and [danielle@verislawgroup.com](mailto:danielle@verislawgroup.com); and Patrick J. Schneider, Foster Pepper PLLC, 1111 Third  
2 Avenue, Suite 3000, Seattle, WA 98101, telephone (206) 447-2905, fax (206) 749-1915, and  
3 email [pat.schneider@foster.com](mailto:pat.schneider@foster.com).

## 4 II. ISSUES ON APPEAL

### 5 A. THE FEIS DISREGARDS PRIOR, BINDING ORDERS OF THE 6 HEARING EXAMINER AND THE SUPERIOR COURT AND PROVIDES 7 EVEN LESS ADEQUATE ENVIRONMENTAL REVIEW OF 8 SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS THAN THE 9 SEPA REVIEW THAT THE HEARING EXAMINER DETERMINED TO 10 BE INADEQUATE IN THE HEARING EXAMINER'S PRIOR DECISION

11 Evaluation of this Project under SEPA began as early as 2008. The Ballard Business  
12 Appellants appealed, and in August 2012, after multiple rounds of appeals—before the Hearing  
13 Examiner, the King County Superior Court, and the Washington Court of Appeals, Div. I.—the  
14 Hearing Examiner ordered SDOT to prepare an EIS on the Shilshole Segment portion of the  
15 proposal. Hearing Examiner's Prior Decision at 9-10. In 2013, SDOT announced that it planned  
16 to prepare an EIS for the entire Project.

17 The Hearing Examiner's Prior Decision concluded that "the proposal would have  
18 significant adverse impacts in the form of traffic hazards along the Shilshole Segment because of  
19 conflicts between truck movements and the other vehicle traffic and trail users along the  
20 Segment." The Hearing Examiner's Prior Decision was based upon a 20% - 30% level of project  
21 design. In the FEIS, SDOT admits it based its entire SEPA evaluation "on designs at  
22 approximately 10% level of design for each of the build alternatives." SDOT further admits that  
23 the recently announced Preferred Alternative, which it did not select until the FEIS, is still at  
24 10% design and includes a segment that was never included in any prior alternatives or SEPA  
25 evaluation.

26 In its Second Order of Remand issued March 2, 2012, in Cause No. 09-2-26586-1 SEA,  
the King County Superior Court determined that a 10% level of design was not sufficient to  
identify the adverse impacts of the proposal. The Court remanded the matter to SDOT "for the  
limited purpose of more fully designing the Shilshole Segment so that the impacts of the



1 | proposal on the adjoining land uses, and any proposed mitigation of those impacts, may be  
2 | identified.” The Superior Court retained jurisdiction over this matter, and another Department of  
3 | the Superior Court retains such jurisdiction today, having recently rejected the City’s attempt to  
4 | dismiss that pending appeal.

5 | The FEIS not only has been prepared in violation of the Superior Court’s Second Order  
6 | of Remand, the FEIS does not acknowledge or disclose the probable significant adverse impacts  
7 | that the Hearing Examiner determined to exist based upon SDOT’s 20% - 30% level of design.  
8 | Instead of disclosing these probable significant adverse environmental impacts, the FEIS vaguely  
9 | asserts that adverse impacts that it does not identify with specificity will be mitigated when the  
10 | project is more fully designed. The FEIS thus affirmatively conceals rather than discloses the  
11 | significant adverse environmental impacts that the Hearing Examiner’s Prior Decision has  
12 | already determined to exist.

13 | In sum, the FEIS does not comply with the Hearing Examiner’s Prior Order or with the  
14 | Court’s Second Order of Remand. The FEIS conceals rather than discloses the probable  
15 | significant adverse environmental impacts that the Hearing Examiner has already determined  
16 | will result from those portions of SDOT’s Preferred Alternative that are similar to, if not exactly  
17 | the same as, the prior routes analyzed in SDOT’s previous SEPA reviews, all of which have been  
18 | found to be deficient. The FEIS thus violates the very purpose of SEPA, which is to inform  
19 | decision-makers, and violates multiple provisions of the SEPA Rules, including, but not limited  
20 | to, SMC 25.05.400 and .440.

21 | In addition, by concealing rather than disclosing the probable significant adverse  
22 | environmental impacts that the Hearing Examiner has already identified, the FEIS demonstrates  
23 | that it violates the very purpose of an EIS, as set forth in SMC 25.05.400.B: The FEIS does not  
24 | “provide an impartial discussion of significant environmental impacts” and does not “inform  
25 | decision-makers and the public of reasonable alternatives.” The FEIS violates this requirement  
26 | because:

- SDOT continues to be both the project proponent and the SEPA lead agency;

- 1 • SDOT improperly failed to properly evaluate and analyze design alternatives, such as  
2 protected bicycle facilities or cycle tracks, along with locational alternatives for the  
3 Project, even though this issue was properly raised during Project Scoping and even  
4 though the City promised it would do so; and
- 5 • SDOT improperly and over-narrowly defined the “Project Objective,” *see e.g.*  
6 Section 1.2 and remainder of FEIS, to be the completion of a “multi-use trail,”  
7 thereby predetermining the outcome.

8 **B. SDOT IMPROPERLY DESCRIBED THE PROPOSAL AS A PREFERRED  
9 SOLUTION, NOT AN OBJECTIVE, CONTRARY TO SEPA'S  
10 REQUIREMENTS**

11 Under SEPA, “[p]roposals should be described in ways that encourage considering and  
12 comparing alternatives. Agencies are encouraged to describe public or nonproject proposals in  
13 terms of objectives rather than preferred solutions.” WAC 197-11-060(3)(a)(iii). SDOT  
14 describes its project objective in the FEIS as the creation of a multi-use trail through the study  
15 area, but this “objective” is in fact a preferred solution that precludes the analysis of reasonable  
16 alternatives, *e.g.*, the creation of protected bicycle lanes, including a cycle track facility on Leary  
17 Avenue. The FEIS thus violates SMC 25.05.060 and the many provisions of the SEPA rules,  
18 including SMC 25.05.400 and 440, that require an EIS to study reasonable alternatives, including  
19 alternative *designs* not just locational alternatives, to achieve the Project objective.

20 **C. SDOT FAILED TO PROVIDE PUBLIC NOTICE OF OR  
21 APPROPRIATELY EVALUATE A NEW SEGMENT OF THE  
22 PREFERRED ALTERNATIVE—IT IS IMPROPERLY PIECEMEALING  
23 THE PROJECT, AGAIN.**

24 The FEIS includes virtually no additional information in the description of each  
25 Alternative, with the exception of what SDOT incorrectly characterizes as “one minor route  
26 connection” in its Preferred Alternative, which in fact is an entirely new segment of the route  
that was never analyzed prior to the release of the FEIS. SEPA requires that the lead agency  
provide public notice of environmental review of a Project and that the public have the



1 opportunity to comment on such Project. WAC 197-11-510 & 197-11-535. See also WAC 197-  
2 11-060 (requiring that the agency “make certain that the proposal that is the subject of  
3 environmental review is properly defined.”) This new segment was *not in any way included in*  
4 *the draft environmental impact statement*, thus has never been analyzed or presented to the  
5 public for consideration or public comment.

6 **D. SDOT FAILED TO ADEQUATELY STUDY TRAFFIC HAZARDS AND SAFETY**

7 SEPA requires SDOT to evaluate safety and traffic hazards sufficient for a decisionmaker  
8 to evaluate alternatives. See, e.g. SMC 25.05.060.D; SMC 25.05.060; WAC 197-11-060 and  
9 197-11-444. The Project will create significant, unmitigated adverse traffic hazards. The  
10 Preferred Alternative will cross numerous industrial driveways (approximately 55) and roadways  
11 along its nearly mile-and-a-half stretch—*or one driveway/roadway every 144 feet* – in the  
12 middle of a heavily populated urban area where numerous businesses, that provide thousands of  
13 family-and union-wage jobs, are either directly adjacent to or in the immediate vicinity of the  
14 Project. The Project will be a recreational attraction for children and families but will have  
15 limited site distances and inherent safety issues. The Project will bring vulnerable users into  
16 direct conflict with industrial and maritime traffic and activities. The Project is in almost  
17 constant conflict with heavy trucks, a railroad, forklift traffic, maritime and industrial traffic and  
18 activities, loading docks, commercial parking, and busy arterial streets along its entire alignment.  
19 It is very likely a trail user will get hurt or killed. SDOT’s failures to evaluate safety and traffic  
20 hazards include, but are not limited to, the following:

- 21 • SDOT’s AutoTURN analysis is incomplete and fails to adequately evaluate traffic  
22 hazards and safety;
- 23 • SDOT’s AutoTURN analysis is incomplete because it is not based on an  
24 evaluation of the actual trucks/vehicles that use existing driveways;
- 25 • SDOT’s traffic and safety evaluation relies on incomplete information about the  
26 nature and extent of the businesses and uses along the project;

1 • The FEIS improperly relies on studies and outreach that have yet to occur and are  
2 undefined;

3 • The FEIS is incomplete because SDOT is using an on-going process occurring  
4 after the FEIS was issued, its Design Advisory Committee (DAC), to a) conduct public outreach  
5 to impacted and affected businesses and property owners along the Preferred Alternative routes  
6 to obtain information that should have been included in the Draft and FEIS; b) further design the  
7 Preferred Alternative to 30%, 60%, 90% and 100%, which further design should have been  
8 performed before and included in the Draft and FEIS; and c) evaluate whether a multi-use trail  
9 like the Preferred Alternative can be designed to operate safely in the selected location, which  
10 evaluation and information should have been included in the Draft and FEIS;

11 • The FEIS fails to adequately evaluate and/or confirm the Project's consistency  
12 with the: a) Washington state department of transportation ("WSDOT") design manual  
13 ("WSDOT Manual"); b) SDOT's own right-of-way improvements manual ("ROW Improvement  
14 Manual"); c) WSDOT's city and county design standards for all Alternatives or design  
15 standards; d) the design standards contained in the AASHTO "guide for the development of  
16 bicycle facilities"; e) the design standards contained in the National Association of City  
17 Transportation Officials (NACTO) urban bikeway design guide; or f) the Federal Highway  
18 Administration (collectively, "Design Standards").

19 • The Project as currently designed violates the Design Standards because the  
20 FEIS's fails to confirm consistency with Design Standards, including, without limit, multi-user  
21 trail location, trail width, design speed; sight distances; crossing designs, intersection designs,  
22 and other standards articulated in and contained within the Design Standards;

23 • SDOT does not adequately apply and conform the Project to the Design  
24 Standards, which in turn causes, among other things, traffic hazards, obstacles, shy-distance  
25 violations, increased conflicts between motorized and non-motorized users, and dangerous sight  
26 distance concerns;

• The FEIS's failure to evaluate all traffic hazards and safety considerations renders  
it inadequate and constitutes impermissible piecemealing.

**E. SDOT FAILED TO ADEQUATELY CONSIDER THE PROJECT'S  
CONSISTENCY WITH APPLICABLE LAND USE REGULATIONS**

The Project as currently designed is incompatible with the City's 2035 Comprehensive  
Plan, adopted in November of 2016 (the "Comprehensive Plan"). The City of Seattle's SEPA  
statutes and regulations are codified at SMC 25.05 et seq. SMC 25.05.444.B.2.a requires that the



1 EIS evaluate "Land Use", which is defined as the Project's "*relation to existing land use plan.*"  
2 (Emphasis added), i.e. the Comprehensive Plan.

3 This portion of Ballard—from 11<sup>th</sup> NW to the Ballard Locks-- is a critical corridor and an  
4 integral part of the maritime and industrial business community in Seattle. A significant portion  
5 of the Preferred Alternative is designed a "Major Truck Street" in the Comprehensive Plan,  
6 prioritized for heavy freight movement. Likewise, the City's land use Policies and Goals in its  
7 Comprehensive Plan give special priority to water-dependent uses in this area; and these  
8 maritime and industrial uses receive the highest priority and protection from non-compatible and  
9 competing uses. Routing a recreational trail such as the Project through the heart of the  
10 maritime/industrial area ignores these Goals and Policies and will significantly and adversely  
11 impact environmental quality and the Ballard Coalition. At a minimum, SDOT is required to  
12 conduct a balancing analysis to determine whether the Project is compatible with these Goals and  
13 Policies in the Comprehensive Plan, which it failed to do.

14 The FEIS does not adequately disclose or discuss the Project's inconsistencies with  
15 the goals and policies in the Comprehensive Plan and its attendant neighborhood plans including  
16 but are not limited to the following goals and policies:

- |    |         |         |          |
|----|---------|---------|----------|
| 15 | AL-P32: | BI-G10: | BI-P14:  |
| 16 | BI-G1:  | BI-G11: | BI-P15:  |
| 17 |         |         |          |
| 18 | BI-G2:  | BI-P2:  | BI-P21:  |
| 19 | BI-G4:  | BI-P3:  | GS 1.17: |
| 20 |         |         |          |
| 21 | BI-G5:  | BI-P5:  | GS 1.18: |
| 22 | BI-G6:  | BI-P5:  | GS 1.20: |
| 23 |         |         |          |
| 24 | BI-G8:  | BI-P11: | GS 1.21: |

1	ED-G2:	T-5.3:	LU-10.27:
2	TG-1:	T-5.7:	T 2.5:
3			
4	TG-6:	T-5.9:	LU-G10:
5			
6	T-6.1:	LU-10.2:	SA-P40:
7	T-6.4:	LU-10.3:	SA-P1:
8			
9	T-6.5:	LU-10.11:	SA-G8:
10	T-6.8:	LU-10.16:	SA-G18:
11			SA-G33:
12	T-8.2:	LU-10.26:	SA-P76:

13 In addition, the FEIS, failed to include and consider, or dismissed with no evaluation,  
 14 actual impacts on certain existing and future businesses, freight, rail, and other uses, and  
 15 locations and configurations. The FEIS failed to obtain and rely on adequate and full  
 16 information regarding actual business activities and other operations that will be affected by the  
 Project sufficient to analyze appropriate SEPA factors.

17 The FEIS also does not adequately disclose or discuss the Project's inconsistencies with  
 18 the goals and policies in the following plans and policies:

- 19 • The Crown Hill/Ballard Neighborhood Plan, which does not apply to the Project  
 20 Area;
- 21 • Ballard-Interbay Northend Manufacturing and Industrial Center (BINMIC)  
 22 Neighborhood Plan, which specifically states the Project should not be located in the  
 BINMIC area;
- 23 • The City of Seattle Ballard Urban Design and Transportation Framework Final  
 24 Report (City of Seattle, 2016a);



- 1 • The Seattle Move Ballard Draft Plan (SDOT, 2016b);
- 2 • The City of Seattle Freight Master Plan (SDOT, 2016a); and
- 3 • The Shoreline Master Program Code (SMC 23.60A).

#### 4 **F. SDOT FAILED TO ADEQUATELY STUDY PARKING IMPACTS**

5 SDOT failed to adequately obtain information and analyze parking impacts from the  
6 Project, including but not limited to its use of unsupported inferences and assumptions, its flawed  
7 and insufficient Traffic Study, and a failure to evaluate actual conditions and uses of parking in  
8 the vicinity of the Project. The FEIS makes incorrect and unsupported assumptions and  
9 conclusions regarding the impact of removing parking within the Project area. The Coalition  
will be adversely impacted by the Project's elimination of parking spaces.

#### 10 **G. SDOT FAILED TO ADEQUATELY EVALUATE CUMULATIVE** 11 **IMPACTS**

12 SDOT failed to accurately, adequately, or reasonably describe and consider the  
13 cumulative effects of the Project as required by SEPA. SEPA acknowledges that a project or  
14 action may create undue impacts when combined with the cumulative effects of prior or  
15 simultaneous developments and requires a reasonable assessment of certain factors in  
16 determining whether the project or action may be conditioned or denied to lessen or eliminate its  
17 cumulative effects on the environment. *See* SMC 25.05.670; *see also* WAC 197-11-792. SDOT  
18 woefully failed to adequately or reasonably assess the cumulative impacts that may result from  
19 the Project, including but not limited to, the cumulative impact caused by the Project in  
20 conjunction with other planned or anticipated projects in the vicinity of the Project, including,  
21 without limit, Seattle Public Utilities Combined Sewer Outflow (CSO) project. SPU is under a  
22 Consent Decree to complete the CSO project by 2025. A portion of the CSO project will be  
23 located exactly where SDOT plans to construct nearly one-third (1/3) of the Preferred  
24 Alternative. SDOT will either have to wait until after SPU constructs the CSO project or, if  
SDOT goes first, SPU will tear out the trail and SDOT will have to rebuild and replace it. None  
of this is disclosed or discussed in the FEIS.

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**VI. SDOT FAILED TO STUDY THE PROJECT'S IMPACT ON THE SHORELINE ENVIRONMENT**

At least two portions of the Preferred Alternative are located within the City's designated Shoreline Environment. Despite this, the FEIS claims that the Project is exempt from obtaining a Shoreline Substantial Development permit because "reconfiguring the existing right-of-way for the Missing Link would be allowed within the shoreline district under the SMP." SDOT is violating SEPA by: a) falsely asserting that it is proposing to repair and replace an existing development instead of building a brand new multi-user trail where one has not previously existed; b) failing to analyze or disclose the true effect of the Project on the Shoreline Environment or conformity to the City's Shoreline Master Program; c) failing to properly and adequately disclose and analyze the Project's relationship to and conformity to the City's Shoreline Master Plan and Program, all as required by SEPA. See e.g., WAC 197-11-444. SDOT is misrepresenting the scope and nature of the Project within the Shoreline Environment, and thus its SEPA analysis is fatally flawed and inadequate because the FEIS violates SEPA's policies and requirements, its implementing regulations, and fails to comply with the City's SEPA policies.

**VI. RESERVATION OF RIGHTS**

The Ballard Coalition reserve the right to amend this Notice of Appeal to state additional challenges to the adequacy of the FEIS relating to the impacts and mitigation of the Project and reasonable alternatives to the Project.

**VI. RELIEF REQUESTED**

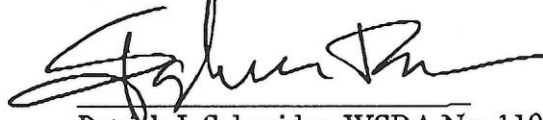
The Ballard Coalition respectfully requests the Hearing Examiner order SDOT to either withdraw the FEIS in order to properly and completely analyze the significant adverse environmental impacts of the Project, or, in the alternative, order SDOT to prepare and issue a new Draft and Final Supplemental EIS to address the many deficiencies set forth herein.



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DATED this 8th day of June 2017.

VERIS LAW GROUP PLLC and  
FOSTER BEPPER PLLC



Patrick J. Schneider, WSBA No. 11957  
Joshua C. Allen Brower, WSBA No. 25092  
Leah B. Silverthorn, WSBA No. 51730  
Danielle Granatt, WSBA No. 44182  
Attorneys for the Ballard Coalition

4823-4063-5466, v. 6

NOTICE OF APPEAL

**Veris Law Group PLLC**  
1809 Seventh Ave, Suite 1400  
Seattle, Washington 98101  
TEL 206.829.9590  
FAX 206.829.9245

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