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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. W-17-004

**RESPONSE IN OPPOSITION TO
CASCADE’S MOTION TO
INTERVENE**

I. INTRODUCTION

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 Terminal Railroad (BTRR), the Ballard Interbay Northend Manufacturing & Industrial Center (BNMIC), the North Seattle Industrial Association (NSIA), CSR Marine, Inc. (CSR), the Seattle Marine Business Coalition (SMBC), and the Northwest Marine Trade Association (NMTA) (collectively, the “Ballard Coalition”), opposes the Cascade Bicycle Club’s (Cascade) Motion to Intervene in the above-

RESPONSE IN OPPOSITION TO
CASCADE’S MOTION TO INTERVENE 1

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1 captioned matter because Cascade’s interests are identical to and adequately represented by the
2 Seattle Department of Transportation (SDOT) and because Cascade’s participation in this and
3 previous iterations of appeals in this matter have caused substantial delay and confusion. As a
4 result, intervention under HER 3.09 should be denied. Alternatively, Cascade should be
5 excluded from pre-hearing motions practice and should be limited to pre-and post-hearing
6 briefing and presentation of no more than one factual witness for the sole purpose of preserving
7 its facts for appeal, which is consistent with the Hearing Examiner’s rulings on intervention in
8 prior cases. *See, e.g. In re Foss Maritime & Port of Seattle*, Order on Motion for
9 Reconsideration, at ¶8, S-15-001 & S-15-002 (Seattle Hearing Examiner, July 14, 2015), a copy
10 of which is attached as Exhibit A to the Declaration of Joshua C. Brower (Brower Decl.).

11 **II. ARGUMENT**

12 The Hearing Examiner’s rules for intervention are clear—intervention should not be used
13 as a “substitute means of appealing a decision for those who could have appealed but failed to do
14 so.” HER 3.09(a). Intervention is only appropriate if the intervenor has a “substantial interest
15 that is not otherwise adequately represented” and intervention will not “unduly delay the hearing
16 process, expand the issues beyond those stated in the appeal, or prejudice the rights of the
17 parties.” HER 3.09(b)-(c). Finally, if intervention is granted, the Examiner may limit the
18 participation of Cascade to reduce delay and duplication. HER 3.09(c).

19 **A. Cascade’s Interests are Adequately Represented by SDOT**

20 Cascade admits that it is aligned with SDOT to defend the adequacy of the Final
21 Environmental Impact Statement (FEIS) and seeks the same outcome as SDOT, connecting the
22 Missing Link (the project that is the subject of the FEIS) through the “Shilshole South”
23 alternative. As such, Cascade is using intervention as a substitute for its failure to timely file an
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1 appeal, which it could easily have done despite being aligned and in lock-step with SDOT.¹ In
2 its Motion, Cascade states as its sole basis for intervention its ability to “bring[] the perspectives
3 of those directly impacted by the present unsafe conditions of the existing circulation system and
4 those who would benefit from the completed trail.” Motion at p. 3. However, Cascade has
5 already been heavily involved with, and works directly with SDOT on a regular basis on bicycle
6 safety issues, and its interests are no different than those protected by SDOT and SDOT’s
7 implementing regulations, goals, and policies.

8 The FEIS explicitly states that safety of trail users, including bicyclists, is a primary
9 interest for SDOT. *See e.g.* FEIS § 1.7.1 (“safety is a key component of this project”).² SDOT
10 also specifically states that it evaluated the consistency of the Missing Link with the Seattle
11 Bicycle Master Plan, which is cited in the FEIS stating that “[t]he Missing Link is identified as a
12 “catalyst project” whose completion would eliminate a critical network gap and increase user
13 safety.” FEIS §§ 5.2.5 & 5.3.1. The Seattle Bicycle Master Plan 2014, at Table 7-2³ states as
14 one of its primary goals safety:

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22 ¹ To the extent Cascade is not aligned with SDOT on the Preferred Alternative set forth in the FEIS, it had the
opportunity, and chose not, to appeal appeal within the appropriate deadline.

23 ² The FEIS for the Missing Link is available at: http://www.seattle.gov/transportation/BGT_Ballard.htm

24 ³ Available at http://www.seattle.gov/transportation/docs/bmp/apr14/SBMP_21March_FINAL_full%20doc.pdf (last
visited June 23, 2017).

1 **Table 7-2: Prioritization Evaluation Criteria**

Theme	Criteria Definition
<p>2 Improve SAFETY</p> <p>3</p> <p>4</p> <p>5</p>	Addresses location with bicycle collision history and emphasis on vulnerable roadway users
	Enhances bicyclist safety by promoting travel on streets with low motorist speeds and low volumes
	Addresses locations or streets that are associated with greater bicyclist stress and more severe collision potential due to high motor vehicle volumes (ADT) and high speeds
<p>6 Enhance CONNECTIVITY</p>	Removes a barrier or closes a system gap in the bicycling network
	Makes a connection that will immediately extend the bicycle network
<p>7 Address EQUITY</p> <p>8</p> <p>9</p>	Serves populations that are historically underserved, including areas with a higher percentage of minority populations, households below poverty, people under 18, people over 65, and households without access to an automobile
	Provides a health benefit for people in areas with the greatest reported health needs, represented by obesity rates, physical activity rates (self-reported), and diabetes rates
<p>10 Increase RIDERSHIP</p> <p>11</p> <p>12</p>	Provides a connection to destination clusters
	Provides a connection to areas with high population density
<p>13 Enhance LIVABILITY</p> <p>14</p>	Reaches the greatest number of riders, but recognizes that all bicycle facilities provide a measurable benefit to at least some bicyclists Distribute bicycle facilities across the city so people riding bicycles can reach all destinations

15 Cascade was heavily involved with drafting the Seattle Bicycle Master Plan, and continues to be
16 heavily involved with SDOT projects:

17 There are a variety of bicycle-related partners that SDOT already works closely
18 with: at a statewide level – The Bicycle Alliance of Washington and Cascade
19 Bicycle Club; at a city scale – Commute Seattle and Seattle Neighborhood
20 Greenways; and at a neighborhood level – Bike Works, West Seattle Bicycle
21 Connections and other neighborhood groups and bicycle shops.

22 Seattle Bicycle Master Plan, 2014, at p. 98. SDOT and Cascade’s interests in the safety of
23 bicyclists are identical: SDOT’s stated interest is in the safety of trail users, including bicyclists,
24 and Cascade’s stated interest is in the safety of bicyclists using the Missing Link. Because the
25 safety interests of bicyclists are already adequately represented in this matter by SDOT and

1 Cascade's interests in particular are adequately represented by SDOT, Cascade does not have a
2 unique interest that entitles it to intervention.

3 **B. Cascade's Participation Has Been, and Will Continue to Be, Demonstrably**
4 **Duplicative and Will Delay the Process**

5 Cascade is correct that it has been involved in the previous iterations of appeals in this
6 matter, which, with the benefit of hindsight, clearly caused delay and confusion. Here, as before,
7 Cascade only seeks to bolster SDOT's identical interests and push its members' majority-
8 preferred alternative of the Trail ("majority preference" is not a SEPA factor). And as before,
9 Cascade's participation will only increase delay and costs, and serve to distract from the core
10 issues of this case: that of SEPA compliance. Such delay is contrary to HER 3.09(c), which
11 dictates that intervention should not "unduly delay the hearing process." The time has come to
12 limit Cascade's intervention and allow the real parties in interest to focus this appeal.

13 A few examples illustrate how Cascade's involvement causes nothing but delay,
14 including its latest needless briefing. On June 14, 2017, counsel for Cascade sent an email to
15 SDOT's and Ballard Coalition's attorneys, indicating that Cascade planned to move for
16 intervention. A copy of the June 14 - June 16, 2017 email exchange amongst counsel is attached
17 as Exhibit B to the Brower Decl. The parties then set forth a briefing schedule. The Ballard
18 Coalition asked SDOT and Cascade to confirm that they would both file their briefs *before* the
19 Ballard Coalition filed its Response so there would be no confusion or delay, as had occurred in
20 Superior Court when Cascade recently filed an untimely brief. Instead of answering this simple
21 request, SDOT and Cascade postured and refused to agree to a straightforward briefing schedule.
22 *Id.* Then, on June 23, 2017, Cascade filed a Motion for Leave to File Reply, seeking a run around
23 on the briefing schedule to impose a June 26 deadline for the Ballard Coalition to file its
24 Response, and proposing July 3, 2017, as Cascade's Reply deadline. Again, instead of honoring

1 a simple agreement, Cascade is needlessly wasting everyone's time and money by filing a
2 wasteful motion.

3 A similar issue arose recently when SDOT filed an unsuccessful dispositive motion in a
4 related appeal before the King County Superior Court at Cause No. 09-2-26586-1 SEA
5 (consolidated). There again, the parties agreed on a briefing schedule for SDOT's motion and
6 again Cascade violated the agreement. Instead of filing a joinder to SDOT's motion on the date
7 it was filed, Cascade filed a Response in support on the same day that the Ballard Coalition's
8 Response in Opposition was due, which essentially echoed and expanded upon SDOT's
9 arguments. Because of its improper and untimely filing, Ballard Coalition was not afforded an
10 opportunity to respond to Cascade's brief prior to the hearing before the Superior Court. While
11 ultimately the Superior Court denied SDOT's motion, Cascade's actions caused delays, its
12 duplicative filings increased the transactional costs for the parties, and it added a layer of
13 confusion in an already complicated appeal.

14 Finally, Cascade's participation in evidentiary hearings before this tribunal has likewise
15 caused substantial confusion and delay. For example, Cascade's counsel, in the 2012 Hearing
16 before this tribunal, objected to the Ballard Coalition's presentation of certain evidence, and then
17 proceeded to present its own version of such evidence, resulting in significant evidentiary
18 objections and argument. *See e.g.* Brower Decl. at Ex. C, Hearing Transcript, pages 121-122,
19 124-127, 129-134, & 136. This alone shows it is not speculative to state that Cascade's
20 involvement in this case will again cause further delay and confusion. It has been demonstrated
21 time and again that its involvement adds nothing to the issues raised in this SEPA appeal and
22 simply delays the process.

1 To the extent the Examiner is inclined to grant intervention, Cascade’s participation
2 should be limited to avoid further confusion and delay, which is consistent with the Examiner’s
3 prior precedent. In *In re Foss Maritime & Port of Seattle*, the City of Seattle objected to
4 intervention by a group of approximately fifteen maritime, industrial, and labor businesses and
5 organizations, claiming that these intervenors’ interests were properly and adequately represented
6 by the other parties and that allowing intervention would cause delay and confusion. *See In re*
7 *Foss Maritime & Port of Seattle*, S-15-001 & S-15-002 (Seattle Hearing Examiner 2015). The
8 Examiner agreed with the City; and, consistent with HER 3.09, granted “limited participation” to
9 the intervenors and allowed them to call just one witness at the hearing. *Id.* (July 14, 2015 Order
10 on Motion for Reconsideration at ¶ 8). If intervention is permitted here, Cascade’s participation
11 should be similarly limited and it should be excluded from any pre-hearing motions practice,
12 should be limited to an opening and closing brief (if any) and presentation of no more than one
13 factual witness at hearing for the sole purpose of preserving its facts for appeal.

14 **III. CONCLUSION**

15 Cascade’s own submissions, and SDOT’s inclusion of Cascade in its safety policies and
16 evaluations, demonstrates that SDOT already adequately protects the interests of bicyclists
17 relative to the “present unsafe conditions of the existing circulation system and those who would
18 benefit from the completed trail,” which is the only basis Cascade sets forth for intervention.
19 Motion at p. 3. Not only is Cascade’s participation duplicative of SDOT’s, it has demonstrably
20 served to delay and increase the costs and time of these proceedings, as evidenced by its current
21 frivolous motions practice and its prior participation at earlier hearings before this tribunal.
22 Cascade’s Motion does not meet the threshold requirements of HER. 3.09 and it should not be
23 permitted to continue to needlessly complicate these proceedings. For these reasons, Ballard
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1 Coalition respectfully requests the Examiner deny Cascade’s motion to intervene. Alternatively,
2 to the extent intervention is granted, Cascade’s participation should be excluded from any pre-
3 hearing motions practice, should be limited to an opening and closing brief (if any) and
4 presentation of no more than one factual witness at hearing for the sole purpose of preserving its
5 facts for appeal, and for all other appropriate relief.

6 DATED this 26th day of June, 2017.

7
8 VERIS LAW GROUP PLLC and
9 FOSTER PEPPER PLLC

10 /s/ Joshua C. Brower

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15 *Attorneys for the Ballard Coalition*

1 **DECLARATION OF SERVICE**

2 I declare under penalty of perjury under the laws of the State of Washington that on this
3 date I caused the foregoing document to be served on the following persons via the methods
4 indicated:

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23 Dated at Seattle, Washington, this 26th day of June, 2017.

24 /s/ Megan Manion
25 Megan Manion, Veris Law Group PLLC