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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

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,

Appellants.

Hearing Examiner File

W-17-004

**REPLY IN SUPPORT OF CASCADE
BICYCLE CLUB MOTION TO
INTERVENE**

The Ballard Coalition opposes Cascade’s Motion To Intervene on the ground that “Cascade’s interests are identical to and adequately represented by the Seattle Department of Transportation . . .” Response In Opposition to Cascade’s Motion To Intervene (“Coalition Response”) at 2. In its motion Cascade cited some authority on this key point. Cascade quoted two Washington Supreme Court opinions holding that intervention by private parties is appropriate *even when* the private party seeks the same relief as the government, because governmental agencies have a responsibility to represent all citizens, whereas the interests of private stakeholders are narrow and focused. Cascade Motion at 3 (citing caselaw).

The Coalition did not address this authority, even though it is dispositive of their principal objection to Cascade’s intervention. In fact, the Coalition cited no authority in support

1 of its contention that intervention should be denied because SDOT can adequately represent
2 Cascade's interests. Instead, the Coalition devotes pages to showing that SDOT and Cascade
3 share a concern for the safety of trail users, and that Cascade was involved in the development of
4 the Seattle Bicycle Master Plan. Coalition Response at 3-4.

5
6 Cascade has indeed advocated for the completion of the Missing Link, and Cascade
7 supports the Proposed Action described in the Final EIS. That does not mean SDOT's and
8 Cascade's interests are identical, or that SDOT can adequately protect Cascade's interests. The
9 caselaw that the Coalition ignored holds that intervention should be granted because the interests
10 of private entities and government agencies differ, even where the private entity supports a
11 government decision. *See also CLEAN v. City of Spokane*, 133 Wn.2d 455, 460-62, 474, 947
12 P.2d 1169 (1997) (affirming order allowing intervention even though the City is "charged with
13 representing the interests of all residents" because the intervening parties represented a "more
14 narrow private interest" and disposition would impair their ability to protect their interest).

15
16 The Coalition does cite one example of an order in which the Hearing Examiner limited
17 the scope of participation by an intervenor, Coalition Response at 7, but the *Foss Maritime*
18 decision is more helpful to Cascade than to the Coalition. That case involved the appeal of a
19 Director's Interpretation. Two parties moved to intervene. Puget Soundkeeper Alliance
20 ("Soundkeeper") moved to intervene in support of the City's position. Appellants opposed on
21 grounds that the City would adequately represent Soundkeeper's interests. The Hearing
22 Examiner approved the intervention of Soundkeeper without restrictions:

23
24 Courts have noted that only a minimal showing may be required
25 regarding whether an intervenor's interests are adequately
26 represented; *Columbia Gorge Audubon Society v. Klickitat County*,
98 Wash.App. 618, 629, 989 P.2d 1260, 1266 (1999) (citations
omitted). In this case, the Department would not seek judicial

1 review if the Hearing Examiner were to reverse the Department's
2 interpretation. The proposed intervenors have demonstrated that
3 they have a substantial interest that is not otherwise adequately
4 represented.¹

5 Maritime interests opposed to the Director's Interpretation ("T-5 Intervenors") also
6 moved to intervene. The Hearing Examiner limited the participation of T-5 Intervenors, noting
7 that T-5 should have appealed the City decision. The Examiner explained the disparate results as
8 follows: "T-5 has repeatedly cited the status granted to Intervenor Soundkeeper as support for
9 granting its request, but the entities are differently situated. *Soundkeeper would not have been in*
10 *a position to appeal DPD's decision, since Soundkeeper agrees with DPD's decision.*"²

11 In this proceeding Cascade will play a role analogous to that of Soundkeeper. Cascade
12 could not have appealed the Final EIS because Cascade agrees with the City that it meets the
13 requirements of SEPA. Cascade moved to intervene to join the City in defending the Final EIS.
14 In support of that role, Cascade seeks the authority to call its own witnesses, to participate in all
15 briefing and to present the independent perspective of an advocacy organization with a deep
16 understanding of the risks and opportunities presented by the Missing Link route options
17 presented in the Final EIS. Cascade's intervention will not "unduly delay the hearing process,"
18 HER 3.09(c), in part because Cascade's positions warrant no less attention than those of the
19 Coalition, and in part because Cascade shares the City's goal to expedite the resolution of this
20 appeal.
21

22 _____
23 ¹ *In re Foss Maritime & Port of Seattle*, Order on [Puget Soundkeeper Alliance] Motion
24 To Intervene at ¶ 5, S-15001 & S-15-002 (Seattle Hearing Examiner, June 5, 2015), copy
25 attached as Exhibit A to this Reply.

26 ² Order on Motion For Reconsideration at 2 (emphasis added), Exh. A to the Declaration
of Joshua C. Brower In Support of Ballard Coalition's Response In Opposition To Motion To
Intervene.

1 It is ironic that a Coalition founded to delay and frustrate the City's plan to complete a
2 trail on the route chosen by SDOT would complain about a potential for delay. So far the
3 Coalition's SEPA challenges have consumed nine years and four administrative/judicial
4 appeals.³ The Coalition has no grounds to complain that "delay" will prejudice the interests of
5 its members.
6

7 Cascade's intervention has been unconditionally approved in three previous Missing Link
8 appeals. See Declaration of Matthew Cohen In Support of Cascade Bicycle Club's Motion To
9 Intervene, Exh. A, B and C. The Coalition presents no reason to follow a different course here.
10 Cascade sees no need for oral argument on its motion, and hopes the Hearing Examiner can grant
11 it in advance of the pre-hearing conference scheduled for July 6, 2017.
12

13 Dated this 3rd day of July, 2017.

14 STOEL RIVES LLP

15 

16 Matthew Cohen, WSBA #11232

17 Rachel H. Cox, WSBA #45020

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24 Attorneys for Intervenor Cascade Bicycle Club

25 ³ The first SEPA appeal by "Ballard Business Appellants" was filed in 2008. The SDOT
26 Missing Link website summarizes the project history.
http://www.seattle.gov/transportation/BGT_Ballard.htm#history.

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CERTIFICATE OF SERVICE

I certify that on this date of July 3, 2017, I filed a copy of the *Reply in Support of Cascade Bicycle Club Motion to Intervene* with the Seattle Hearing Examiner via hand delivery.

I also certify that on this date I caused to be served a true and correct copy of the foregoing documents on the following persons and a courtesy copy was also electronically mailed to:

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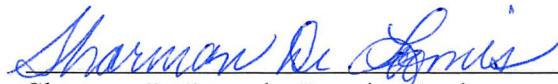
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Attorney for Defendant
City of Seattle Department of Transportation

1 I certify under penalty of perjury under the laws of the state of Washington that the
2 foregoing is true and correct.
3

4 DATED: July 3, 2017, at Seattle, Washington.

5
6 
7 Sharman D. Loomis, Practice Assistant
8 STOEL RIVES LLP

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**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeals of

S-15-001 and S-15-002

FOSS MARITIME and PORT OF SEATTLE

From an interpretation by the Director,
Department of Planning and Development

Director's Interpretation:
15-001

**ORDER ON MOTION TO
INTERVENE**

1. On May 27, 2015, a motion to intervene in the above-referenced appeals was filed by Puget Soundkeeper Alliance, Seattle Audubon Society, Sierra Club, and Washington Environmental Council ("proposed intervenors"). The Appellants, Foss Maritime and Port of Seattle, filed objections to the motion on June 2, 2015. The proposed intervenors filed supporting declarations on June 2, 2015 and a reply on June 3, 2015. The Hearing Examiner has reviewed the filings, and grants the motion for the reasons stated below.

2. These appeals challenge the Director of the Department of Planning and Development's Interpretation 15-001, which concluded that a use permit is required for the seasonal moorage of an exploratory drilling rig and two accompanying tugboats at the Port of Seattle's Terminal 5 facility. The appeal hearing is currently scheduled for July 23, 2015.

3. Hearing Examiner Rule 3.09 addresses intervention. Under HER 3.09(a), intervention is not a substitute means of appealing a decision. The proposed intervenors' request indicates that they seek to defend the City's interpretation; the intervention request here is not an attempt to appeal the decision.

4. Under HER 3.09(b), a person or entity seeking to intervene must demonstrate a substantial interest that is not otherwise adequately represented. The motion and declarations indicate that the proposed intervenors have longstanding interests in the use, protection, and restoration of Puget Sound, Elliott Bay, and the Duwamish River. The motion asserts that these interests will be harmed if the appeals are granted and the subject activities are not required to obtain a new use permit, since a new permit process will require environmental review and public involvement regarding the subject use of this shoreline area, all of which are of integral interest to the proposed intervenors. The filings also indicate that the proposed intervenors operate a monitoring program which includes regular boat patrols near the terminus of Longfellow Creek, and that this program is impaired by the exclusion zone that has been set up around Terminal 5 on account of the

S-15-001 and S-15-002 - ORDER

Page 1 of 2

Exhibit A - 1

activities which are the subject of the interpretation. The proposed intervenors have shown a substantial interest in this matter.

5. Courts have noted that only a minimal showing may be required regarding whether an intervenor's interests are adequately represented; *Columbia Gorge Audubon Society v. Klickitat County*, 98 Wash. App. 618, 629, 989 P.2d 1260, 1266 (1999)(citations omitted). In this case, the Department would not seek judicial review if the Hearing Examiner were to reverse the Department's interpretation. The proposed intervenors have demonstrated that they have a substantial interest that is not otherwise adequately represented.

6. Intervention will not delay the hearing process; expand the issues or prejudice the rights of other parties. As noted by the Appellants, the appeals concern the Director's interpretation, not the alleged environmental impacts of the subject activities, but the intervention request does not on its face seek to expand the issues beyond those relevant to the appeals, delay the process, or otherwise show that intervention will prejudice the rights of the other parties. The motion for intervention is therefore granted.

Entered this 5th day of June, 2015.



Anne Watanabe
Deputy Hearing Examiner
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**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

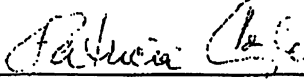
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached ORDER ON MOTION TO INTERVENE to each person listed below, or on the attached mailing list, in the matter of FOSS MARITIME AND PORT OF SEATTLE, HEARING EXAMINER File S-15-001 AND S-15-002, in the manner indicated.

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<p><u>Intervenors</u></p> <p>Joshua Brower Veris Law Group <u>josh@verislawgroup.com</u></p> <p>Patti Goldman Earthjustice <u>pgoldman@earthjustice.org</u></p> <p>Matthew Baca Earthjustice <u>mbaca@earthjustice.org</u></p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid</p> <p><input type="checkbox"/> Inter-office Mail</p> <p><input checked="" type="checkbox"/> E-mail</p> <p><input type="checkbox"/> Fax</p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Legal Messenger</p>

Dated: June 5, 2015


 Name: Patricia A. Cole
 Title: Executive Assistant