**BEFORE THE HEARING EXAMINER**
**CITY OF SEATTLE**

In the Matter of the Appeal of

**THE BALLARD COALITION**

of adequacy of the FEIS issued by the Director, Seattle Department of Transportation

Hearing Examiner Files:
**W-17-004**

**ORDER ON MOTION TO DISMISS**

This matter concerns the appeal of the Final Environmental Impact Statement ("FEIS") issued by the City of Seattle Director of the Seattle Department of Transportation' ("City") for the Burke-Gilman Trail Missing Link Project ("Project"). The FEIS has been appealed by the Ballard Coalition ("Appellant"). The Ballard Coalition has filed a dispositive motion ("Motion"). The City has filed a response in opposition to the motion, and the Appellant has filed a reply to the response. The Hearing Examiner has reviewed the file in this matter including the motion documents.

The Motion argues that the FEIS is inadequate as a matter of law, because it relies on designs at approximately ten percent level of design for each of the build alternatives identified in the FEIS. The parties do not dispute this attributed level of design for the FEIS alternatives. The Appellant argues that this level of design was determined inadequate at an earlier stage of litigation for the planning that is the subject of the FEIS by King County Superior Court Judge Jim Rogers in King County Superior Court File No. 09-2-326586-1 SEA (consolidated), and as a result is inadequate as a matter of law. As authority for its position the Appellant cites the oral transcript of the Court's decision:

> I conclude with limited issues that **SDOT has not sufficiently planned the project in order to even be able to consider whether there would be impacts in certain limited situations.** Let me be very clear. SEPA does not dictate the specific degree of project completion for SEPA review. It may be 10%. It may be 60%. It may be a different number entirely. All may be adequate depending on the project. The question is not the level of planning. **The question is whether or not there is enough to know whether it can be reviewed under SEPA for its impact. The reason for this is what hasn't been decided can't be reviewed.** Now this in many cases, the issue here for example, which is a very limited issue, would be simply a design issue as was testified to. But here the record in front of me, which is all I have, indicates that it may have, in fact, great impacts, among impacts supposed to be accounted for in the checklist. Secondly, if in fact there is impact, and I don't even know that there would be, if that decision was made later on it could make the decision potentially unreviewable. Again, the record is very ambiguous on this point. It **is simply not fair to defer decisions and to trust the party malting the decisions to reach the right outcome,**

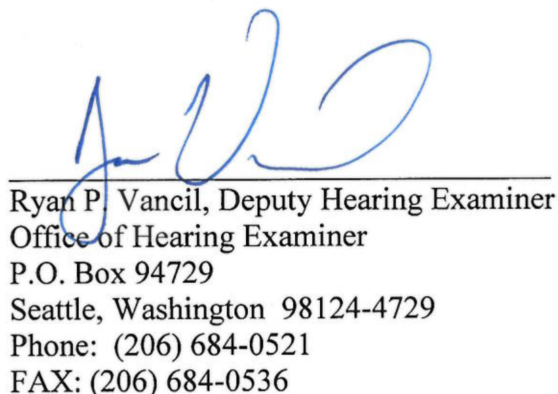
> because this defeats the entire policy of the checklist review. Conducting this issue, which again is a very limited issue I've thought about a flip test which judges sometimes use. If Covich Williams was applying for a project that might severely impact an existing bike trial, would it be sufficient for a SEPA review to allow them to say to trust our future decisions for the impact it might have. And I dare say it would be [inaudible]
> appeal.
>
> Therefore, in conclusion of law no. 9, which states it was not unreasonable to let SDOT wait to identify which mitigation measures it would employ at specific locations that the project was adequately described for purpose of SEPA review, I find is not supported factually in the record.

Motion at 4 (emphasis in original).

The transcript of the Court expressly states the opposite principle for which it is cited. The Court makes clear that SEPA analysis does not mandate a specific level of design, states that ten percent level of design or sixty percent may be adequate, and dismisses level of design as the determinative issue. In its decision the Court clearly indicates that the degree of project development necessary to reasonably identify environmental impacts is a question of fact. In the matter under consideration in that decision the level of analysis possible under ten percent level of design proved inadequate, but the Court's decision was not based on the percentage of design level that had been completed. Therefore, Appellant's argument that a ten percent level of design is inadequate as a matter of law is unsupported.

The Appellant's Motion is **DENIED**.

Entered this 18th day of September, 2017.



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**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 Dismiss** to each person listed below, or on the attached mailing list, in the matter of **The Ballard Coalition**, Hearing Examiner File: **W-17-004,** in the manner indicated.

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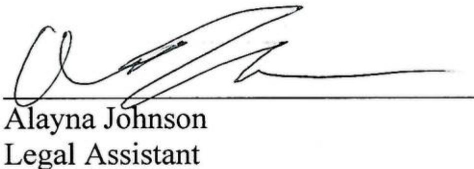
Dated: September 18, 2017



Alayna Johnson
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