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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

**CASCADE BICYCLE CLUB
OPPOSITION TO BALLARD COALITION
MOTION TO CONTINUE HEARING**

The Ballard Coalition opposed Cascade’s intervention in this appeal on grounds that it would delay the appeal.¹ Now the Coalition would like to jettison the hearing schedule approved by the parties and the Hearing Examiner in July. The Coalition contends that “due process” requires postponement of the hearing so that the Coalition’s army of attorneys may have adequate time to digest documents SDOT produced in response to the Coalition’s discovery requests.

Cascade urges the Hearing Examiner to deny the Coalition’s motion. Even before issuance of the Pre-Hearing Order the Coalition launched a discovery program designed to set up

¹ Ballard Coalition Response In Opposition To Cascade’s Motion To Intervene at 2, 5, 6 and 7 (filed June 26, 2017).

1 this motion. The Coalition framed its discovery requests for maximum breadth and burden. The
2 Coalition’s 31 document requests to SDOT include such “narrowly tailored” inquiries as the
3 following:

- 4 • “Produce all documents prepared between January 2013 and May 2017 that relate
5 in any way to the discussion and evaluation of “safety” as that term is used
6 throughout the DEIS and the FEIS.”²
- 7 • “[P]roduce all drafts of all evaluations, data collections, studies, or other reports
8 that you considered, evaluated or relied upon that relate to the Environmental
9 Impacts of the Missing Link, whether or not they are referenced in the DEIS or
10 FEIS and were prepared between January 2013 and May 2017.”³

11 In discovery against Cascade, the Coalition pursued the same broad and burdensome
12 approach it inflicted upon SDOT.⁴ For good measure, the Coalition used the discovery rules as a
13 vehicle for a political intelligence campaign of no plausible relevance to this appeal.⁵

14 A party that propounds a document request to SDOT for “all drafts of all evaluations,
15 data collections, studies, or other reports that you considered, evaluated or relied upon that relate

16 ² RFP No. 31, Petitioners’ First Set of Interrogatories and Requests For Production Issued
17 To Respondent the City of Seattle and SDOT, Ex. A to Declaration of Erin Ferguson In Support
18 of Response In Opposition To Motion To Continue (“Ferguson Declaration”).

19 ³ *Id.*, RFP No. 21.

20 ⁴ *See*, e.g., Interrogatory No. 5 and RFP No. 5 from the Coalition to Cascade:
21 “Identify[and produce] all documents, data, studies, maps, surveys, plans and other written
22 information that, between January 1, 2012 to the present, Cascade has prepared, gathered, or was
23 prepared at Cascade’s request or direction related to the Missing Link.” Interrogatory No. 5 and
24 RFP No. 5, Petitioners’ First Set of Interrogatories and Requests For Production to the Cascade
25 Bicycle Club, Ex. A to Declaration of Matthew Cohen In Opposition To Ballard Coalition
26 Motion To Continue Hearing (“Cohen Declaration”).

⁵ *See*, e.g., RFP No. 15 from the Coalition to Cascade: “Produce all documents that relate
to communications between you or any member or representative of Cascade and Seattle City
Councilmember Mike O’Brien’s Office related to the Missing Link from January 2011 to the
present.” Ex. A to Cohen Declaration.

1 to the Environmental Impacts of the Missing Link”⁶ should not be surprised to receive a plethora
2 of documents. The Coalition contends that it needs all this paper to prepare for hearing, but that
3 contention is not credible. The Coalition appeals the adequacy of an EIS. The case turns on
4 whether the 300 page EIS contains a “reasonably thorough” discussion of the significant
5 environmental impacts of the project. *Cascade Bicycle Club v. Puget Sound Regional Council*,
6 175 Wn.App. 494, 509, 306 P.3d 1031, 1037 (2013); *Gebbers v. Okanogan County Public*
7 *Utility District No. 1*, 144 Wn.App. 371, 387, 183 P.3d 324, 332 (2008). The issues in the case
8 are technical, and the Coalition does not need extensive discovery to present its case. The FEIS
9 speaks for itself, and the Coalition has retained experts to opine about its purported flaws.

11 Cascade presents this detail not to complain about the burdens imposed by the Coalition’s
12 discovery, but rather to hone in on its purpose. The Coalition’s real agenda in launching the
13 discovery blitz became clear when SDOT counsel advised Coalition counsel that SDOT would
14 produce documents in installments to expedite the Coalition’s access to the material. Erin
15 Ferguson email to Josh Brower of July 31, Ex. D to Ferguson Declaration. At this point (less
16 than 30 days after SDOT received the Coalition’s discovery requests) the Coalition had received
17 only 290 documents from the City. Josh Brower email to Erin Ferguson of August 8, Ex. F to
18 Ferguson Declaration at page 4. Yet the Coalition responded:

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21 Unless we receive the City’s responses this week we will file a motion to compel and for
22 sanctions, *including asking to reschedule the hearing until the City complies with the*
23 *discovery requests.*

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25 *Id.* at page 5 (emphasis added).

26 _____
⁶ RFP No. 21, Ex. A to Ferguson Declaration.

1 Cascade received a similar response when it requested the Coalition's consent to an
2 eleven day extension (from August 10 to August 21) to answer discovery requests. The
3 Coalition conditioned its consent on all parties jointly filing a motion to suspend the deadline to
4 disclose witnesses and exhibits. Josh Brower email to Matthew Cohen of August 3, Ex. B to
5 Cohen Declaration. By the beginning of August -- *before* the Coalition saw the amount of
6 documents it now deems to be overwhelming -- the Coalition was already maneuvering to
7 continue the hearing date.
8

9 The intent behind these threats was transparent to all parties. On August 11 Cascade
10 counsel e-mailed Coalition counsel: "Josh, your aggressive responses to the efforts of both
11 SDOT and Cascade to answer the Ballard Coalition's discovery requests raise questions about
12 whether the real goal of your efforts is to set up a motion to defer the schedule for resolution of
13 the Coalition's appeal." E-mail of August 11 from Matthew Cohen to Josh Brower, Ex. C to
14 Cohen Declaration.
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16 In short, the Coalition unleashed an avalanche of discovery to set up a plea to postpone
17 the hearing. Delay is, of course, the definition of success for the Coalition. For every day that
18 the City's plans to compete the Missing Link are postponed Coalition members may use the City
19 right-of-way as an employee parking lot.⁷
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23 ⁷ See Ex. D to Cohen Declaration (Google Maps street view image of Salmon Bay Sand
24 & Gravel showing vehicles parked on the City right-of-way). See also Ex. E to Cohen
25 Declaration (message from CSR Marine employee to state legislator: "Now I know this is a
26 public right of way and that the land isn't ours, but the whole business has been built on the idea
of us having access to that land for our vehicles. To lose it would be a huge blow to our
operation . . .").

1 For the Cascade Bicycle Club, however, timely resolution of this appeal and completion
2 of the Missing Link are matters of strategic importance. Delays prejudice Cascade in two key
3 ways. Most important, Cascade members need a safe route to commute through Ballard.
4 According to the FEIS, the Seattle Fire Department reported more than one incident response *per*
5 *month* in the Project Area over a three year period, and the Fire Department acknowledged that
6 this estimate likely understates the real incidence of accidents and injuries.⁸ The risks of the
7 existing conditions confronting cyclists and pedestrians in Ballard outweigh the Coalition's
8 desire to stall this appeal.

10 Second, Cascade intervened in this appeal to defend the FEIS and to hasten the day when
11 its members can traverse Ballard safely. Based on the schedule established by the Pre-Hearing
12 Order, Cascade expected that this appeal would be similar in scope and burden to the Coalition's
13 three previous Missing Link appeals. Contemplating the Coalition's Preliminary Witness List, it
14 is now predictable that the Coalition will seek not just to continue the hearing but to lengthen it.
15 Cascade answered the Coalition's discovery, and has participated actively in briefing dispositive
16 motions. But Cascade lacks the resources to fight a protracted war over the adequacy of an EIS.
17 The Coalition's siege campaign will drown out the voices of those who use the Burke Gilman
18 Trail. Were continuation of the hearing necessary to enable the Coalition to challenge the
19 adequacy of the EIS, Cascade's resource constraints might be less compelling. Here, the scope
20 of the appeal is narrow, and the Coalition launched a fishing expedition to solicit the largest
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25 ⁸ FEIS at 7-22, available on SDOT's website at: [http://www.seattle.gov/transportation/
26 BGT_Ballard.htm](http://www.seattle.gov/transportation/BGT_Ballard.htm).

1 possible document production. In the context of this appeal the Hearing Examiner need not push
2 Cascade to the side for a manufactured scheduling crisis.

3 For these reasons Cascade urges the Hearing Examiner to deny the Coalition's motion to
4 continue the hearing.

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6 Dated this 25th day of September, 2017.

7 STOEL RIVES LLP

8 

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CERTIFICATE OF SERVICE

I certify that on this date of September 25, 2017, I electronically filed a copy of the foregoing document with the Seattle Hearing Examiner using its e-filing system. I also certify that on this date I caused to be served a true and correct copy of the foregoing on the following persons in the manner listed below:

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9 I certify under penalty of perjury under the laws of the state of Washington that the
10 foregoing is true and correct.

11 DATED: September 25, 2017 at Seattle, Washington.

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