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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

Hearing Examiner File

W-17-004

**THE BALLARD COALITION'S  
RESPONSE IN OPPOSITION TO SDOT'S  
MOTION TO COMPEL**

The Coalition respectfully requests the Hearing Examiner deny SDOT's Motion to Compel (the "Motion") because the Coalition has fully complied with and responded to the City's discovery requests, which SDOT knew would happen before it filed this Motion, thereby wasting precious time and resources on the eve of the hearing. The Coalition's request is based on the following facts, all of which are detailed in the emails attached as Exhibits to the Declaration of Joshua Brower ("Brower Decl."):

- On Tuesday, September 19, 2017, counsel for the parties conducted a "meet and confer" to discuss and resolve the City's claims later articulated in its Motion, which include forcing the Coalition to disclose its testifying experts before its experts were done working and before their opinions were final. The Coalition explained it needed until October 6 because the experts' opinions were still being

1 formed as the Coalition waded through the City’s 20,000+ unorganized, un-Bates  
2 stamped documents produced weeks if not months late in batch-dumps in  
3 response to the Coalition’s discovery and public disclosure requests.<sup>1</sup>

- 4 • On Wednesday, September 20, 2017, the Coalition told the City it would confirm  
5 by Friday, September 22, 2017 (two days after the “meet and confer”) which of  
6 the Coalition’s four possible expert witnesses would be testifying witnesses and  
7 offered to let the City take their depositions on dates acceptable to the City—  
8 either before or after the experts were done working.<sup>2</sup>
- 9 • At 3:04 PM on Friday, September 22, 2017, the Coalition performed as promised  
10 and:
  - 11 ○ Confirmed which of its experts would testify at the hearing;
  - 12 ○ Asked the City to work with the Coalition to be as efficient as possible at  
13 hearing by not forcing it to call one of those experts (Mr. Knight) simply  
14 to authentic documents; and
  - 15 ○ Supplemented the Coalition’s Responses to the City’s Discovery to  
16 provide additional information in response to Interrogatory No. 3, which,  
17 is also an issue in the instant Motion.<sup>3</sup>
- 18 • At 3:53 PM, 49 minutes later, the City filed and served its Motion.
- 19 • At 4:17 PM, the Coalition wrote the City and respectfully requested it withdraw  
20 its Motion because the Coalition had already provided some of the information  
21 sought in the instant Motion and committed to providing the remainder, but the  
22

23  
24 <sup>1</sup> The Coalition has repeatedly asked the City and the Cascade Bicycle Club to do the same thing—to confirm the  
identity of their testifying expert witnesses before October 6--and both have refused to do so.

25 <sup>2</sup> Email dated Wednesday, September 20, 2017, attached as Exhibit A to the Brower Decl.

<sup>3</sup> Email dated Friday, September 22, 2017, attached as Exhibit B to the Brower Decl.

1 City refused to withdraw its Motion, forcing the Coalition to waste time and  
2 resources responding.<sup>4</sup>

- 3 • Between Monday, September 25, 2017, and Thursday, September 28, 2017, the  
4 Coalition renewed its request this Motion be withdrawn and produced the entire  
5 files of its three testifying experts, thereby completely responding to the City's  
6 discovery requests at issue in this Motion; the only possible remaining production  
7 relates to the Coalition's fourth expert (Mr. Knight) who the City refuses to  
8 indicate whether or not it will require the Coalition to make him testify to  
9 authentic documents.<sup>5</sup>

10 The Coalition's responses to the City's discovery requests, including its the two  
11 supplemental responses, its confirmation of its testifying expert witnesses, its complete  
12 disclosure of the subjects of their testimony in the Coalition's Preliminary Witness list,<sup>6</sup> and its  
13 production of its experts' files fully comply with the relief requested in the instant Motion.  
14 Respectfully, it should be denied.

15  
16 DATED this 28<sup>th</sup> day of September, 2017.

17 VERIS LAW GROUP PLLC

18 By /s/ Joshua C. Brower

22 \_\_\_\_\_  
23 <sup>4</sup> Email dated Friday, September 22, 2017, attached as Exhibit C to the Brower Decl.

24 <sup>5</sup> An email exchange amongst counsel spanning Monday, September 27 to Thursday, September 28, 2017, is  
25 attached as Exhibit D to Brower Decl.

<sup>6</sup> The City is correct that the Coalition referred to its Preliminary Witness list in responding to its discovery because  
that list contains lengthy descriptions of the expert's possible testimony. By comparison, the City's Witness and  
Exhibit list does not differentiate between fact or expert witnesses and uses a slightly modified version of the same  
stock phrase for each witness to describe his or her testimony.

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21 *Attorneys for Appellant 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:

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Dated at Seattle, Washington, this 28<sup>th</sup> day of September, 2017.

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