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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

DECLARATION OF JOSHUA C. ALLEN BROWER IN SUPPORT OF THE COALITION'S RESPONSE IN OPPOSITION TO SDOT'S MOTION TO COMPEL

I, Joshua C. Allen Brower, declare and state as follows:

1. I am an attorney for the Ballard Coalition (the "Coalition").

2. I am over the age of 18, am licensed to practice law in the state of Washington, am competent to testify in a court of law, and this declaration is based on my personal knowledge.

3. Attached as **Exhibit A** is a true and correct copy of an email exchange amongst counsel for the parties to this matter dated Wednesday, September 20, 2017.

4. Attached as **Exhibit B** is a true and correct copy of an email exchange amongst counsel for the parties to this matter dated Friday, September 22, 2017.

5. Attached as **Exhibit C** is a true and correct copy of an email exchange amongst counsel for the parties to this matter dated Friday, September 22, 2017.

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6. Attached as **Exhibit D** is a true and correct copy of an email exchange amongst counsel for the parties to this matter between Monday, September 25, to Thursday, September 28, 2017.

I declare under penalty of perjury that the foregoing is true and correct.

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

/s/ Joshua C. Allen Brower  
Joshua C. Allen Brower, WSBA No. 25092

# **Exhibit A**

**From:** Leah Silverthorn <[leah@verislawgroup.com](mailto:leah@verislawgroup.com)> **Date:** Wednesday, September 20, 2017 at 1:23 PM **To:** Erin' 'Ferguson <[Erin.Ferguson@seattle.gov](mailto:Erin.Ferguson@seattle.gov)>, Josh Brower <[josh@verislawgroup.com](mailto:josh@verislawgroup.com)>, Pat Schneider <[pat.schneider@foster.com](mailto:pat.schneider@foster.com)>, Danielle Granatt <[danielle@verislawgroup.com](mailto:danielle@verislawgroup.com)> **Cc:** "tak ([tak@vnf.com](mailto:tak@vnf.com))" <[tak@vnf.com](mailto:tak@vnf.com)>, "Cohen, Matthew" <[matthew.cohen@stoel.com](mailto:matthew.cohen@stoel.com)>, "Cox, Rachel H. ([rachel.cox@stoel.com](mailto:rachel.cox@stoel.com))" <[rachel.cox@stoel.com](mailto:rachel.cox@stoel.com)>, "Dale N. Johnson" <[dnj@vnf.com](mailto:dnj@vnf.com)> **Subject:** RE: Deposition schedule

Erin & Dale,

Consistent with our meet and confer call yesterday, we are still holding Sept. 28<sup>th</sup> for the depositions of Claudia Hirsche and Vic Bishop. As a compromise, we are willing to make a tentative decision on whether or not we will designate Vic and Claudia as testifying experts on or before this Friday. Please understand, however, that because our review of SDOT's production is ongoing, and these additional documents may inform their analysis, neither Vic nor Claudia's opinions have been finalized and are unlikely to be final if you choose to depose them before we finish reviewing SDOT's production.

We have not made a designation with respect to Mr. Knight or Mr. Kuznicki, nor have they completed their analysis, and we do not expect them to before completing our review of SDOT's production. However, should you choose to move forward with these depositions next week as well, Barry Knight is available on the 27<sup>th</sup>. I am still working on confirmation from Scott Kuznicki for his availability that day.

If you'd prefer to depose these individuals after they are formally designated on final witness and exhibit lists, as we proposed yesterday, please let us know. Otherwise, we'll continue to hold those dates and update you on Friday.

Finally, we'd like the City to again consider our request for a modified final witness/exhibit list deadline and hearing dates to allow the parties to complete the discovery to which they are entitled in this matter.

Thanks, Leah

Leah B. Silverthorn  
**Veris Law Group PLLC**  
1809 Seventh Avenue, Suite 1400  
Seattle, WA 98101  
(206) 535-6012 – Direct  
(206) 829-9590 – Main  
(206) 829-9245 – Fax  
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[www.verislawgroup.com](http://www.verislawgroup.com)

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related matter.

**P** Please consider the environment before printing this email.

**From:** Ferguson, Erin [<mailto:Erin.Ferguson@seattle.gov>] **Sent:** Monday, September 18, 2017 1:01 PM **To:** Leah Silverthorn; Josh Brower; Pat Schneider; Danielle Granatt **Cc:** tak ([tak@vnf.com](mailto:tak@vnf.com)); Cohen, Matthew; Cox, Rachel H. ([rachel.cox@stoel.com](mailto:rachel.cox@stoel.com)); Dale N. Johnson **Subject:** RE: Deposition schedule

Leah,

We have not seen notices of deposition for Morgan, Mark M. and Mark J. Can you please confirm the proposed deposition schedule:

September 21<sup>st</sup>, 10-2: Morgan Shook  
September 27<sup>th</sup>, 8-noon: Mark Johnson  
September 27<sup>th</sup>, 1-5: Mark Mazzola

Since the 21<sup>st</sup> is quickly approaching, we can make Morgan available on September 27<sup>th</sup> from 12-4pm, as an alternative to this Thursday, but we would appreciate confirmation by the end of today regarding all three.

We would also appreciate confirmation of the deposition schedule for Victor Bishop, Claudia Hirschey, Barry Knight, and Scott Kuznicki during the following times:

September 25, 8-noon and 1-5  
September 26, 8-noon  
September 28, between 10 and 4

We would prefer to coordinate with you informally to schedule these at a time that works well for everyone involved, but if we do not receive confirmation by tomorrow morning, we will likely proceed with subpoenas for deposition.

We look forward to hearing from you.

Best,  
Erin



**Erin E. Ferguson**  
Assistant City Attorney  
Land Use Section

Seattle City Attorney's Office  
Civil Division  
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Seattle, WA 98104-7097  
Phone: 206-684-8615

FAX: 206-684-8284

[Erin.Ferguson@seattle.gov](mailto:Erin.Ferguson@seattle.gov)

*\*\*\* Please be aware that I am out of the office on Fridays.*

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**From:** Leah Silverthorn [<mailto:leah@verislawgroup.com>]

**Sent:** Thursday, September 14, 2017 3:41 PM

**To:** Ferguson, Erin <[Erin.Ferguson@seattle.gov](mailto:Erin.Ferguson@seattle.gov)>; Josh Brower <[josh@verislawgroup.com](mailto:josh@verislawgroup.com)>; Pat Schneider <[pat.schneider@foster.com](mailto:pat.schneider@foster.com)>; Danielle Granatt <[danielle@verislawgroup.com](mailto:danielle@verislawgroup.com)>

**Cc:** tak ([tak@vnf.com](mailto:tak@vnf.com)) <[tak@vnf.com](mailto:tak@vnf.com)>; Cohen, Matthew <[matthew.cohen@stoel.com](mailto:matthew.cohen@stoel.com)>; Cox, Rachel H. ([rachel.cox@stoel.com](mailto:rachel.cox@stoel.com)) <[rachel.cox@stoel.com](mailto:rachel.cox@stoel.com)>; Dale N. Johnson <[dnj@vnf.com](mailto:dnj@vnf.com)>

**Subject:** RE: Deposition schedule

Erin,

We appreciate your willingness to voluntarily produce Morgan Shook, Mark Johnson, and Mark Mazzola. I was going to suggest a half a day for each, so I think your 4 hour time slot is appropriate, with the understanding that we will continue the deposition and proceed at an additional date or time if the depositions necessitate more than four hours. We will confirm these times and issue notices of depositions for each.

Respectfully, the Ballard Coalition intends to depose the witnesses Danielle listed below, despite the City's objections. The Hearing Examiner did not limit discovery, and the Ballard Coalition has reason to believe that these witnesses possess information that is either relevant, or will lead to the discovery of admissible evidence. The Coalition is entitled to depose both fact witnesses and expert witnesses, and discovery is not limited by the City's Motion to Dismiss. Nor can the City unilaterally decide that some issues raised by the Ballard Coalition in its Petition are discoverable or not. Discovery in this matter is governed by the civil rules and the hearing examiner rules, none of which impose the restrictions you suggest in your email response to Danielle. In any matter, the witnesses for whom you object are directly linked to the EIS and SEPA compliance, examples of which are below:

- As you admit below, Claire, Mark, and Jennifer all contributed to the analysis in the EIS. In addition, all are listed in the EIS as authors. Each possesses information that is directly relevant to the analysis in the EIS;
- Scott Kubly is the director of SDOT, and is listed as the SEPA responsible official in the EIS. His testimony is directly relevant to SEPA compliance;
- Brian Surrat is the director of the Office of Economic Development (OED). The EIS states that SDOT worked "in partnership" with OED in the consideration of alternatives and selection of the preferred alternative for the Missing Link in the EIS process; and

- Ben Perkowski is a land use planner at the Seattle Department of Construction and Inspection, responsible for land use and shoreline development. The EIS specifically references compliance with the Shoreline Master Program (See, e.g. Chpt. 4 of the EIS). The City's Motion to Dismiss does not alter the relevancy standard under the civil rules, and there is no timeline for when the Hearing Examiner will rule on the pending motions, nor whether it will rule prior to hearing.

If the City does not agree to voluntarily produce these witnesses, the Ballard Coalition will have no choice but to subpoena these witnesses for deposition at a time and place of its choosing. Our hope, however, is to work cooperatively with the City to ensure that the discovery is efficient. Please let us know by 5pm on Friday, September 15 whether the City will voluntarily produce Claire Hoffman, Jennifer Hagenow, Scott Kubly, Brian Surrat, and Ben Perkowski for depositions. Otherwise, we will proceed with issuing subpoenas under the civil and hearing examiner rules.

Finally, thank you for providing dates and times for your proposed depositions of our four experts. We'll check with them on their availability and get back to you as soon as possible.

I look forward to your response and to cooperatively completing discovery in this matter.

Thanks,  
Leah

Leah B. Silverthorn  
**Veris Law Group PLLC**  
1809 Seventh Avenue, Suite 1400  
Seattle, WA 98101  
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(206) 829-9590 – Main  
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[Leah@verislawgroup.com](mailto:Leah@verislawgroup.com)  
[www.verislawgroup.com](http://www.verislawgroup.com)

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**From:** Ferguson, Erin [<mailto:Erin.Ferguson@seattle.gov>] **Sent:** Thursday, September 14, 2017 3:19 PM **To:** Leah Silverthorn; Josh Brower; Pat Schneider; Danielle Granatt **Cc:** tak ([tak@vnf.com](mailto:tak@vnf.com)); Cohen, Matthew; Cox, Rachel H. ([rachel.cox@stoel.com](mailto:rachel.cox@stoel.com)); Dale N. Johnson **Subject:** Deposition schedule

As indicated, we are willing to make Mark Mazzola, Mark Johnson, and Morgan Shook available during the dates you provided. Since you did not respond to either of our inquiries regarding the amount of time you anticipate needing for these depositions, we are proposing to set aside 4 hours, with the hope we may not need all that time.

September 21<sup>st</sup>, 10-2: Morgan Shook  
September 27<sup>th</sup>, 8-noon: Mark Johnson  
September 27<sup>th</sup>, 1-5: Mark Mazzola

Similarly, we indicated that we would like to depose your four expert witnesses and proposed scheduling those the week of September 25<sup>th</sup>. Since you didn't respond, we propose setting depositions of Victor Bishop, Claudia Hirschey, Barry Knight, and Scott Kuznicki during the following times:

September 25, 8-noon and 1-5  
September 26, 8-noon  
September 28, between 10 and 4

Please let us know which of your witnesses will be available to be deposed at which time as soon as possible.

Thanks,  
Erin



**Erin E. Ferguson**  
Assistant City Attorney  
Land Use Section

Seattle City Attorney's Office  
Civil Division  
701 Fifth Avenue, Suite 2050  
Seattle, WA 98104-7097  
Phone: 206-684-8615  
FAX: 206-684-8284  
[Erin.Ferguson@seattle.gov](mailto:Erin.Ferguson@seattle.gov)

*\*\*\* Please be aware that I am out of the office on Fridays.*

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# **Exhibit B**

**From:** Josh Brower <[josh@verislawgroup.com](mailto:josh@verislawgroup.com)>

**Date:** Friday, September 22, 2017 at 3:04 PM

**To:** Erin' 'Ferguson <[Erin.Ferguson@seattle.gov](mailto:Erin.Ferguson@seattle.gov)>, "Dale N. Johnson" <[dnj@vnf.com](mailto:dnj@vnf.com)>, "tak (tak@vnf.com)" <[tak@vnf.com](mailto:tak@vnf.com)>

**Cc:** "Cohen, Matthew" <[matthew.cohen@stoel.com](mailto:matthew.cohen@stoel.com)>, "Cox, Rachel H. ([rachel.cox@stoel.com](mailto:rachel.cox@stoel.com))" <[rachel.cox@stoel.com](mailto:rachel.cox@stoel.com)>, Pat Schneider <[pat.schneider@foster.com](mailto:pat.schneider@foster.com)>, Danielle Granatt <[danielle@verislawgroup.com](mailto:danielle@verislawgroup.com)>, Leah Silverthorn <[leah@verislawgroup.com](mailto:leah@verislawgroup.com)>, Megan Manion <[megan@verislawgroup.com](mailto:megan@verislawgroup.com)>

**Subject:** Re: Deposition schedule

Erin and Dale, further to our meet and confer and as promised below, Victor Bishop, Claudia Hirschey and Scott Kuznicki will testify as expert witnesses. Barry Knight may testify as an expert if needed; we would like to discuss with you whether he will be needed to do so or whether Mr. Bishop can testify about his work with Mr. Knight? We are trying to be as efficient as possible so we would appreciate your stipulation that Mr. Bishop can testify instead of having to call two witnesses. Of course, we are happy to call them both. The topics of Mr. Knight's testimony is disclosed in our Preliminary Witness list so I won't repeat it here.

Attached is the Coalition's Supplemental Responses to the City's discovery requests, providing supplemental responses to Interrogatory No. 3.

We are working to produce Mr. Bishop's, Ms. Hirschey's and Mr. Kuznicki's files by COB Tuesday; we will let you know Tuesday whether or not we are able to do so.

Please let us know whether you want to take their depositions next week as discussed below and based on the same caveats in Leah's email or whether you want to take them later?

Now that we have disclosed our expert witnesses we would greatly appreciate the City doing the same so we can obtain their files and schedule their depositions.

Regards, Josh

Joshua C. Allen Brower

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**206.829.8233** direct

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# **Exhibit C**

**From:** "Dale N. Johnson" <[dnj@vnf.com](mailto:dnj@vnf.com)>  
**Date:** Friday, September 22, 2017 at 4:31 PM  
**To:** Josh Brower <[josh@verislawgroup.com](mailto:josh@verislawgroup.com)>, Erin' 'Ferguson <[Erin.Ferguson@seattle.gov](mailto:Erin.Ferguson@seattle.gov)>, Tadas Kisielius <[tak@vnf.com](mailto:tak@vnf.com)>  
**Cc:** "Cohen, Matthew" <[matthew.cohen@stoel.com](mailto:matthew.cohen@stoel.com)>, "Cox, Rachel H. ([rachel.cox@stoel.com](mailto:rachel.cox@stoel.com))" <[rachel.cox@stoel.com](mailto:rachel.cox@stoel.com)>, Pat Schneider <[pat.schneider@foster.com](mailto:pat.schneider@foster.com)>, Danielle Granatt <[danielle@verislawgroup.com](mailto:danielle@verislawgroup.com)>, Leah Silverthorn <[leah@verislawgroup.com](mailto:leah@verislawgroup.com)>, Megan Manion <[megan@verislawgroup.com](mailto:megan@verislawgroup.com)>  
**Subject:** RE: Deposition schedule

Josh:

We have obviously had our hands full responding to your motion for continuance and getting the other motions out the door at the same time to allow the Hearing Examiner and the parties to resolve these many issues in a consolidated fashion. We received your supplemental responses just as we were about to file the motion to compel. At first blush it does not appear that you have agreed to make the documents we have requested in requests for production 3 and 4 until October 6, which of course impedes our ability to conduct a thorough examination at deposition. We will be happy to take closer look and get back to you on Monday along with trying to work out deposition dates for the various witnesses.

Thanks

Dale

**Dale Johnson**  
206-623-9372

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**From:** Josh Brower [<mailto:josh@verislawgroup.com>]  
**Sent:** Friday, September 22, 2017 4:17 PM  
**To:** Ferguson, Erin; Dale N. Johnson; Tadas Kisielius  
**Cc:** Cohen, Matthew; Cox, Rachel H. ([rachel.cox@stoel.com](mailto:rachel.cox@stoel.com)); Pat Schneider; Danielle Granatt; Leah Silverthorn; Megan Manion  
**Subject:** Re: Deposition schedule

Tadas, first, welcome back.

All,

In light of our emails below, we respectfully request the City withdraw its Motion to Compel. In its Motion, the City is seeking exactly what we told you we would do (declare who are our testifying experts, which we did just as we promised and on the deadline we agreed to during our meet and confer) and seeking exactly what we promised we would give you (their files). We cannot change the fact that our experts are still working. We have given the City the choice to depose them next week on the dates Erin requested or later—your choice. We have also supplemented our Responses.

The City will have all of the information it is seeking before our Response is due. Making us respond is a waste of time.

Best regards, Josh

Joshua C. Allen Brower  
**Veris Law Group PLLC**  
1809 Seventh Avenue, Suite 1400  
Seattle, WA 98101  
**206.829.8233** direct  
**206.829.9590** office  
[josh@verislawgroup.com](mailto:josh@verislawgroup.com)  
[www.verislawgroup.com](http://www.verislawgroup.com)

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# **Exhibit D**

**From:** Josh Brower <[josh@verislawgroup.com](mailto:josh@verislawgroup.com)>

**Date:** Thursday, September 28, 2017 at 10:11 AM

**To:** "Dale N. Johnson" <[dnj@vnf.com](mailto:dnj@vnf.com)>, Erin' 'Ferguson <[Erin.Ferguson@seattle.gov](mailto:Erin.Ferguson@seattle.gov)>, Tadas Kisielius <[tak@vnf.com](mailto:tak@vnf.com)>

**Cc:** "Cohen, Matthew" <[matthew.cohen@stoel.com](mailto:matthew.cohen@stoel.com)>, "Cox, Rachel H. (rachel.cox@stoel.com)" <[rachel.cox@stoel.com](mailto:rachel.cox@stoel.com)>, Pat Schneider <[pat.schneider@foster.com](mailto:pat.schneider@foster.com)>, Danielle Granatt <[danielle@verislawgroup.com](mailto:danielle@verislawgroup.com)>, Leah Silverthorn <[leah@verislawgroup.com](mailto:leah@verislawgroup.com)>, Megan Manion <[megan@verislawgroup.com](mailto:megan@verislawgroup.com)>

**Subject:** Re: Deposition schedule

Dale, Erin and Tadas, further to my email chain from yesterday, I am sending you 10 emails this morning to deliver Ms. Hirschey's file in response to the City's RFPs 3 and 4. With this, the Coalition has fully responded to the City's discovery regarding Ms. Hirschey.

We are working to produce Mr. Kuznicki's file this morning, which contains numerous CAD-based drawings. CAD-based files are very large and hard to transmit and we are having technical difficulties converting some of his documents/figures into transferable pdfs. While these documents are different from the City's CAD-based files, which, pursuant to our agreement you confirmed we need not send you, this portion of Mr. Kuznicki's file is largely redundant to the documents produced in Mr. Bishop's file. **Since they are largely redundant, do you still want us to send them to you?**

I highlighted our question because a disturbing pattern seems to be developing with the City: We ask a reasonable question regarding discovery/hearing preparation and you ignore it and do not respond. We have now asked repeatedly about Mr. Knight and, to date, you have not had the courtesy to respond. Please do and please respond regarding Mr. Kuznicki.

Lacking a response to either question, we will conclude: 1) you do not want Mr. Knight's file, 2) will not require us to call him at hearing, 3) will not object to Mr. Bishop testifying regarding his work with Mr. Knight, and 4) you do not want Mr. Kuznicki's redundant file material.

Regards, Josh

Joshua C. Allen Brower

**Veris Law Group PLLC**

1809 Seventh Avenue, Suite 1400

Seattle, WA 98101

**206.829.8233** direct

**206.829.9590** office

[josh@verislawgroup.com](mailto:josh@verislawgroup.com)

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**From:** Josh Brower <[josh@verislawgroup.com](mailto:josh@verislawgroup.com)>  
**Date:** Wednesday, September 27, 2017 at 5:27 PM  
**To:** "Dale N. Johnson" <[dnj@vnf.com](mailto:dnj@vnf.com)>, Erin' 'Ferguson <[Erin.Ferguson@seattle.gov](mailto:Erin.Ferguson@seattle.gov)>, Tadas Kisielius <[tak@vnf.com](mailto:tak@vnf.com)>  
**Cc:** "Cohen, Matthew" <[matthew.cohen@stoel.com](mailto:matthew.cohen@stoel.com)>, "Cox, Rachel H. ([rachel.cox@stoel.com](mailto:rachel.cox@stoel.com))" <[rachel.cox@stoel.com](mailto:rachel.cox@stoel.com)>, Pat Schneider <[pat.schneider@foster.com](mailto:pat.schneider@foster.com)>, Danielle Granatt <[danielle@verislawgroup.com](mailto:danielle@verislawgroup.com)>, Leah Silverthorn <[leah@verislawgroup.com](mailto:leah@verislawgroup.com)>, Megan Manion <[megan@verislawgroup.com](mailto:megan@verislawgroup.com)>  
**Subject:** Re: Deposition schedule

VB E.pdf

Joshua C. Allen Brower  
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[www.verislawgroup.com](http://www.verislawgroup.com)

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**From:** Josh Brower <[josh@verislawgroup.com](mailto:josh@verislawgroup.com)>  
**Date:** Wednesday, September 27, 2017 at 5:22 PM  
**To:** "Dale N. Johnson" <[dnj@vnf.com](mailto:dnj@vnf.com)>, Erin' 'Ferguson <[Erin.Ferguson@seattle.gov](mailto:Erin.Ferguson@seattle.gov)>, Tadas Kisielius <[tak@vnf.com](mailto:tak@vnf.com)>  
**Cc:** "Cohen, Matthew" <[matthew.cohen@stoel.com](mailto:matthew.cohen@stoel.com)>, "Cox, Rachel H. ([rachel.cox@stoel.com](mailto:rachel.cox@stoel.com))" <[rachel.cox@stoel.com](mailto:rachel.cox@stoel.com)>, Pat Schneider <[pat.schneider@foster.com](mailto:pat.schneider@foster.com)>, Danielle Granatt <[danielle@verislawgroup.com](mailto:danielle@verislawgroup.com)>, Leah Silverthorn <[leah@verislawgroup.com](mailto:leah@verislawgroup.com)>, Megan Manion <[megan@verislawgroup.com](mailto:megan@verislawgroup.com)>  
**Subject:** Re: Deposition schedule



Dale, Erin and Tadas, attached is the first (VB A.pdf) of five pdfs (VB A.pdf to VN E.pdf) we are sending to deliver Mr. Bishop's file. The documents are responsive to the City's RFPs 3 and 4 and include communications responsive to your requests.

Out of the approximately 483 documents in Mr. Bishop's file, we withheld one (1) based on work-product and redacted that portion of approximately 6 other documents that also contain this work-product material. The Coalition has now completely responded to the City's discovery requests vis-à-vis Mr. Bishop.

We were unable to deliver the documents by COB yesterday because of the volume and need to review, organize and Bates stamp these documents.

We are working to deliver Ms. Hirschey's file today, if possible. Together, Mr. Bishop's and Ms. Hirschey's files contain over 1,000 documents.

Regards, Josh

Joshua C. Allen Brower  
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**From:** Josh Brower <[josh@verislawgroup.com](mailto:josh@verislawgroup.com)>

**Date:** Monday, September 25, 2017 at 4:41 PM

**To:** "Dale N. Johnson" <[dnj@vnf.com](mailto:dnj@vnf.com)>, Erin' 'Ferguson <[Erin.Ferguson@seattle.gov](mailto:Erin.Ferguson@seattle.gov)>, Tadas Kisielius <[tak@vnf.com](mailto:tak@vnf.com)>

**Cc:** "Cohen, Matthew" <[matthew.cohen@stoel.com](mailto:matthew.cohen@stoel.com)>, "Cox, Rachel H. ([rachel.cox@stoel.com](mailto:rachel.cox@stoel.com))" <[rachel.cox@stoel.com](mailto:rachel.cox@stoel.com)>, Pat Schneider <[pat.schneider@foster.com](mailto:pat.schneider@foster.com)>, Danielle Granatt <[danielle@verislawgroup.com](mailto:danielle@verislawgroup.com)>, Leah Silverthorn <[leah@verislawgroup.com](mailto:leah@verislawgroup.com)>, Megan Manion <[megan@verislawgroup.com](mailto:megan@verislawgroup.com)>

**Subject:** Re: Deposition schedule

Dale, as we stated last Friday (see email below), the Coalition:

- Has now fully answered Interrogatory No. 3, which the City claimed was missing information (we are not “restating” the objections originally timely served—just supplementing the Coalition’s responses on the same document which includes them to avoid confusion);
- Identified its testify experts, which the City and CBC are still refusing to do until October 6 and for which the City and CBC have not given us its experts’ files nor told us when we would receive those files;
- Is working diligently to produce Mr. Bishop’s file and Ms. Hirschey’s file by COB tomorrow.

We are producing these files because the City stated it wanted to depose Mr. Bishop and Ms. Hirschey this week.

Has the City decided whether or not it wants to depose Mr. Kuznicki or Mr. Knight? We do not want to waste time gathering and producing files if you do not intend to depose these witnesses.

Regarding Mr. Knight, please also respond to our question below as to whether the City will insist we call him as a witness—we are trying to be as efficient as possible at hearing.

Based on the above, we renew our request the City withdraw its Motion to Compel.

Pursuant to your email below, it is our understanding the City no longer wants to take any depositions this week so we have released our witnesses’ calendars.

Regards, Josh

Joshua C. Allen Brower  
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**From:** "Dale N. Johnson" <dnj@vnf.com>

**Date:** Monday, September 25, 2017 at 4:06 PM

**To:** Josh Brower <josh@verislawgroup.com>, Erin' 'Ferguson <Erin.Ferguson@seattle.gov>, Tadas Kisielius <tak@vnf.com>

**Cc:** "Cohen, Matthew" <matthew.cohen@stoel.com>, "Cox, Rachel H. (rachel.cox@stoel.com)" <rachel.cox@stoel.com>, Pat Schneider <pat.schneider@foster.com>, Danielle Granatt <danielle@verislawgroup.com>, Leah Silverthorn <leah@verislawgroup.com>, Megan Manion <megan@verislawgroup.com>

**Subject:** RE: Deposition schedule

Counsel:

This is a follow-up to our exchange Friday afternoon regarding the Coalition's request that SDOT withdraw its Motion to Compel. We have had an opportunity to more thoroughly review the Coalition's Supplemental Responses and Second Supplemental Responses to SDOT's discovery requests. As I noted on Friday, these supplemental responses restate the Coalition's objections to requests for production 3 and 4 and potentially defer responses until October 6 (or October 8<sup>th</sup>). Without the documents sought by these requests it is not possible for SDOT to adequately prepare for or conduct thorough depositions. Accordingly, SDOT will not withdraw its Motion to Compel.

Moreover, in light of the Prehearing Conference now set for Friday, it will be most productive to await the outcome of that conference before scheduling further depositions. It is our understanding that there are presently no depositions scheduled in this matter for the remainder of this week. We look forward to working with you to schedule remaining depositions following receipt of the Hearing Examiner's orders and/or guidance on Friday. We anticipate that the Coalition will also cooperate with us to identify times for the depositions we have requested based on the outcome of the prehearing conference. For planning purposes, we would like to explore scheduling our depositions for October 9<sup>th</sup> or 10<sup>th</sup> if those times work for you. We can take this up again after the conference of Friday.

Thanks

Dale

**Dale Johnson**  
206-623-9372

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