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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  
MOTION TO COMPEL DISCLOSURE OF  
BALLARD COALITION WITNESSES &  
EXHIBITS**

The Second Prehearing Order entered on October 3 set this appeal for a five day  
evidentiary hearing, with time divided equally between Appellants and Respondents. *Id.* at 2;  
Audio of Second Prehearing Conference at 1:22:37: “I’m giving you two and a half days to do  
it, do your case.”<sup>1</sup> The Order directed the parties to file final witness and exhibit lists by  
November 6. Second Prehearing Order at 2. In response to concerns expressed by the City and  
Cascade about the Coalition’s enormous preliminary witness list the Hearing Examiner directed  
the Coalition to “*narrow it down . . .*” *Id.* at 40:38-41:16. Later in the prehearing conference the  
Examiner reinforced this point:

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<sup>1</sup> The full audio recording of the September 29 prehearing conference is available at  
<https://web6.seattle.gov/Examiner/case/W-17-004>

1 Mr. Cohen: The next version of these [witness] lists needs to be tailored to the length  
2 of the hearing that you set, Your Honor.

3 Examiner: And I still have your issue on that on my list to address . . . and I haven't  
4 yet.

5 Mr. Cohen: We can't do another 34, another list with 34 witnesses.

6 Examiner: I hope I said that, if I didn't already. I think Mr. Brower understood and  
7 promised not to.<sup>2</sup>

8 The 21 page "Final Disclosure" of Witnesses and Exhibits filed by the Ballard Coalition  
9 on November 6 shows contempt for the letter and spirit of these instructions. It lists 34 named  
10 potential witnesses, with other witnesses to be named later, and thousands of pages of exhibits.  
11 The Coalition has made no attempt to "narrow it down," i.e. to conform its witness or exhibit  
12 lists to the five day window set for this appeal.

13 The Coalition's refusal to follow the rules and schedule established for this appeal  
14 prejudices the Respondents in at least two important ways. It frustrates the ability of the  
15 Respondents to prepare for hearing by withholding disclosure of the witnesses and exhibits that  
16 Appellants actually intend to present and it lays the foundation for the inevitable motion by the  
17 Ballard Coalition to postpone or continue the hearing to accommodate the duplicative and  
18 largely irrelevant "evidence" that the Coalition has no hope of presenting in a five day  
19 evidentiary hearing.

20  
21 The time for hiding the ball is over. Cascade asks the Hearing Examiner to enforce the  
22 basic ground rules of this proceeding by directing the Coalition to file, *no later than November*  
23 *21*, a Final Witness and Exhibit List that discloses the witnesses and exhibits that the Coalition  
24

25 \_\_\_\_\_  
26 <sup>2</sup> Audio of Second Prehearing Conference at 1:16:42-1:17:12.

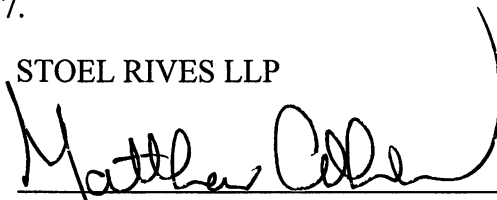
1 actually intends to present in the roughly two days that the schedule allows for their case in  
2 chief.<sup>3</sup>

3 This late disclosure will not eliminate the prejudice the Respondents have sustained as a  
4 result of the Coalition’s obfuscation campaign. But six days’ notice of the Appellants’ case is  
5 better than none at all.  
6

7 For these reasons Cascade urges the Hearing Examiner to direct the Coalition to serve  
8 and file, by November 21, a Final Witness and Exhibit List that discloses the witnesses and  
9 exhibits the Appellants intend to offer in the time established by the Prehearing Order for their  
10 evidentiary presentation.

11 Dated this 10th day of November, 2017.

12  
13 STOEL RIVES LLP

14 

15 Matthew Cohen, WSBA #11232  
16 Rachel H. Cox, WSBA #45020  
17 600 University Street, Suite 3600  
18 Seattle, WA 98101  
19 Phone: (206) 386-7569  
20 Fax: (206) 386-7500  
21 Email: [matthew.cohen@stoel.com](mailto:matthew.cohen@stoel.com)  
22 Email: [rachel.cox@stoel.com](mailto:rachel.cox@stoel.com)

23 Attorneys for Intervenor Cascade Bicycle Club

24  
25  
26 <sup>3</sup> The schedule sets five days for the hearing, divided equally between Appellants and Respondents. But each side’s time must include cross examination of the opposing party’s witnesses. As a practical matter, the parties must reserve whatever portion of their time they deem necessary for cross examination. Cascade supports the City’s suggestion that the Examiner employ a “chess clock” or similar device to track the parties’ use of their time. SDOT Second Motion In Limine at 4.

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3 **CERTIFICATE OF SERVICE**

4 I certify that on this date of November 10, 2017, I electronically filed a copy of the  
5 foregoing document with the Seattle Hearing Examiner using its e-filing system. I also certify  
6 that on this date I caused to be served a true and correct copy of the foregoing on the following  
7 persons in the manner listed below:

8 Joshua C. Brower  
9 Danielle N. Granatt  
10 Leah B. Silverthorn  
11 Veris Law Group PLLC  
12 1809 Seventh Ave., Suite 1400  
13 Seattle, WA 98101  
14 Tel: 206-829-9590  
15 Fax: 206-829-9245

- Via U.S. 1st Class Mail
- Via E-mail  
[josh@verislawgroup.com](mailto:josh@verislawgroup.com)  
[danielle@verislawgroup.com](mailto:danielle@verislawgroup.com)  
[leah@verislawgroup.com](mailto:leah@verislawgroup.com)  
[megan@verislawgroup.com](mailto:megan@verislawgroup.com)
- Via Fax
- Via Overnight Delivery

16 Attorneys for Plaintiff/Petitioner  
17 The Appellant Coalition

18 Patrick J. Schneider  
19 Foster Pepper PLLC  
20 1111 3rd Ave., Suite 3000  
21 Seattle, WA 98101-3292  
22 Tel: 206-447-2905  
23 Fax: 206-749-1915

- Via U.S. 1st Class Mail
- Via E-mail  
[pat.schneider@foster.com](mailto:pat.schneider@foster.com)  
[brenda.bole@foster.com](mailto:brenda.bole@foster.com)
- Via Fax
- Via Overnight Delivery

24 Attorneys for Plaintiff/Petitioner  
25 The Appellant Coalition

26 Erin E. Ferguson  
Asst. Seattle City Attorney  
Land Use Section - Civil Division  
Office of the Seattle City Attorney  
701 Fifth Ave., Suite 2050  
Seattle, WA 98104-7097  
Tel: 206-684-8615

- Via U.S. 1st Class Mail
- Via E-mail  
[erin.ferguson@seattle.gov](mailto:erin.ferguson@seattle.gov)  
[alicia.reise@seattle.gov](mailto:alicia.reise@seattle.gov)
- Via Fax
- Via Overnight Delivery

Attorney for Defendant  
City of Seattle Department of Transportation

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Tadas A. Kisielius  
Dale Johnson  
Clara Park  
719 Second Avenue, Suite 1150  
Seattle, WA 98104  
Tel: 206-623-9372

Attorneys for Defendant  
City of Seattle

- Via U.S. 1st Class Mail
- Via E-mail  
[tak@vnf.com](mailto:tak@vnf.com)  
[dnj@vnf.com](mailto:dnj@vnf.com)  
[cpark@vnf.com](mailto:cpark@vnf.com)  
[map@vnf.com](mailto:map@vnf.com)
- Via Fax
- Via Overnight Delivery

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

DATED: November 10, 2017 at Seattle, Washington.

  
 \_\_\_\_\_  
 Sharman D. Loomis, Practice Assistant  
 STOEL RIVES LLP

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