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SEATTLE HEARING EXAMINER

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**

NO. W-17-004

NOTICE OF APPEAL

[CORRECTED]¹

The Ballard Coalition, an unincorporated association of labor, business, and industry groups, which includes among its members the Martin Luther King, Jr. County Labor Council of Washington, AFL-CIO (Labor Council), General Teamsters Union Local No. 174 (Teamsters), Salmon Bay Sand & Gravel Company (Salmon Bay), the Ballard Terminal Railroad (BTRR), the Ballard Interbay Northend Manufacturing & Industrial Center (BNMIC), the North Seattle Industrial Association (NSIA), CSR Marine (CSR), and the Seattle Marine Business Coalition (SMBC) (collectively, the “Ballard Coalition”), hereby submits this Notice of Appeal of the May 25, 2017 Final Environmental Impact Statement (FEIS) issued by the Seattle Department of Transportation (SDOT) for the Burke Gilman Trail Missing Link Project (the Project), a copy of which is available at http://www.seattle.gov/transportation/BGT_Ballard.htm and a courtesy copy of Vol. 1 of which is included with the original Notice of Appeal filed with the Hearing Examiner.

¹ The Ballard Coalition is submitting this Corrected Notice of Appeal to change citations to the Seattle Municipal Code, Chapter 25.05, instead of WAC Chapter 197-11, and to correct typographical/gramatical errors.

NOTICE OF APPEAL
[CORRECTED]

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1 The Ballard Coalition is the successor in interest to, and includes many of the members
2 of, the Ballard Business Appellants, which successfully appealed the Determinations of
3 Nonsignificance (DNS) issued by SDOT between 2008 and 2012 for the Project. *See e.g.*, the
4 Findings and Decision of the Hearing Examiner, File W-12-002, issued August 27, 2012
(Hearing Examiner's Prior Decision).

5 **I. INTRODUCTION**

6 SDOT's FEIS for the Project again fails to comply with the policies and requirements of
7 the State Environmental Policy Act (SEPA) and its implementing regulations, and fails to
8 comply with the City of Seattle's (City's) SEPA policies. The FEIS also fails to comply with the
9 Hearing Examiner's Prior Decision and with the March 2, 2012 Order of the King County
Superior Court.

10 The Ballard Coalition respectfully requests that the Hearing Examiner find the FEIS
11 inadequate as a matter of law, and order SDOT to prepare and issue a Draft and Final EIS that
12 complies with the Hearing Examiner's Prior Decision, the Court's Order, and that addresses the
13 many additional deficiencies set forth herein.

14 **A. PARTIES**

15 The members of the Ballard Coalition² are labor organizations, trade and business
16 associations, or entities that own, operate or represent businesses and/or workers in Ballard, or
17 own or lease properties in Ballard located adjacent to or in the vicinity of the Project that will be
18 adversely affected by the Project, including:

19 1. The Martin Luther King, Jr. County Labor Council of Washington, AFL-CIO, is a
20 Washington non-profit corporation, whose address is 2800 First Avenue, Suite 206, Seattle, WA
98121, telephone 206.441.8510;

21 2. The Teamsters are a labor association, whose address is 14675 Interurban Ave.
22 South, Suite 303, Tukwila, WA 98168, telephone 206.441.6060;

23 ² Additional labor, business and industrial groups and associations may join the Coalition on or before the
24 prehearing conference to be held in this matter. In that case, the Coalition will provide an updated list.

1 3. Salmon Bay Sand & Gravel Co. is a Washington corporation, whose address is
2 5228 Shilshole Ave NW, Seattle, WA 98107, telephone 206.784.1234;

3 4. BNMIC is an unregistered non-profit trade association, whose address is 604
4 22nd Ave NW, Seattle, WA 98107-4027;

5 5. NSIA is a Washington non-profit corporation, whose address is 3500 1st Avenue
6 West, Seattle, WA 98107, telephone 206.440.2660;

7 6. Ballard Terminal Railroad, L.L.C. is a Washington company, whose address is
8 4725 Ballard Avenue NW, Seattle WA 98107, telephone 206.782.1447;

9 7. CSR Marine is a Washington corporation, whose address is 4701 Shilshole
10 Avenue NW, Seattle, WA 98107, telephone 206.632.2001; and

11 8. Seattle Marine Business Coalition is a Washington non-profit corporation, whose
12 address is 2201 West Commodore Way, Seattle, WA 98199, telephone 206.285.1707.

13 Salmon Bay, Ballard Terminal Railroad, and CSR Marine are businesses located adjacent
14 to or in the vicinity of the Project; are water-dependent or water-adjacent industrial uses, located
15 on industrially zoned land; and have driveways, loading areas, railroad tracks or access that
16 require truck and rail crossings across the Project, and/or require intermodal access including
17 barge, rail, and truck. Each of these businesses would be adversely affected, resulting in
18 immediate, concrete, and specific injury-in-fact if the Project proceeds as set forth in the FEIS.

19 The BINMIC is an unregistered non-profit trade association; NSIA is a business
20 association of marine and industrial businesses and property owners; the SMBC represents the
21 interests of 300 marine industrial land users within the Seattle City limits; the Labor Council is
22 the central body of labor organizations in King County; and the Teamsters are an association
23 representing the interests of workers including, but not limited to, heavy freight drivers, truck
24 drivers, equipment operators, transit operators, and dock workers. For each of these
25 organizations, one or more of its members' interests will be adversely affected, resulting in
26 immediate, concrete, and specific injury-in-fact if the Project proceeds as set forth in the FEIS.

B. BALLARD BUSINESS APPELLANTS' LEGAL REPRESENTATIVES

1 The above named parties are represented in this matter by Joshua C. Allen Brower, Leah
2 B. Silverthorn, and Danielle N. Granatt, Veris Law Group PLLC, Seattle, WA 98101, telephone
3 (206) 829-9590, fax (206) 829-9245, email josh@verislawgroup.com, leah@verislawgroup.com,
4 and danielle@verislawgroup.com; and Patrick J. Schneider, Foster Pepper PLLC, 1111 Third
5 Avenue, Suite 3000, Seattle, WA 98101, telephone (206) 447-2905, fax (206) 749-1915, and
6 email pat.schneider@foster.com.

7 II. ISSUES ON APPEAL

8 A. THE FEIS DISREGARDS PRIOR, BINDING ORDERS OF THE 9 HEARING EXAMINER AND THE SUPERIOR COURT AND PROVIDES 10 EVEN LESS ADEQUATE ENVIRONMENTAL REVIEW OF 11 SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS THAN THE 12 SEPA REVIEW THAT THE HEARING EXAMINER DETERMINED TO 13 BE INADEQUATE IN THE HEARING EXAMINER'S PRIOR DECISION

14 Evaluation of this Project under SEPA began as early as 2008. The Ballard Business
15 Appellants appealed, and in August 2012, after multiple rounds of appeals—before the Hearing
16 Examiner, the King County Superior Court, and the Washington Court of Appeals, Div. I.—the
17 Hearing Examiner ordered SDOT to prepare an EIS on the Shilshole Segment portion of the
18 Project. *See* Hearing Examiner's Prior Decision at 9-10. In 2013, SDOT announced that it
19 planned to prepare an EIS for the entire Project.

20 The Hearing Examiner's Prior Decision concluded that "the proposal would have
21 significant adverse impacts in the form of traffic hazards along the Shilshole Segment because of
22 conflicts between truck movements and the other vehicle traffic and trail users along the
23 Segment." *Id.* The Hearing Examiner's Prior Decision was based upon a 20% - 30% level of
24 Project design. In the FEIS, SDOT admits it based its entire SEPA evaluation for the Project "on
25 designs at approximately 10% level of design for each of the build alternatives." SDOT further
26 admits that the recently announced Preferred Alternative for the Project, which it did not select
until the FEIS, is still at 10% design and includes a segment that was never included in any prior
alternatives or SEPA evaluation.

1 In its Second Order of Remand issued March 2, 2012, in Cause No. 09-2-26586-1 SEA
2 (consolidated), the King County Superior Court determined that a 10% level of design was not
3 sufficient to identify the adverse impacts of the Project under SEPA. The Court remanded the
4 matter to SDOT “for the limited purpose of more fully designing the Shilshole Segment so that
5 the impacts of the proposal on the adjoining land uses, and any proposed mitigation of those
6 impacts, may be identified.” The Superior Court retained jurisdiction over this matter, and
7 another Department of the Superior Court retains such jurisdiction today, having recently
8 rejected the City’s attempt to dismiss appeal pending under consolidated Cause No. 09-2-26586-
9 1 SEA.

9 The FEIS not only has been prepared in violation of the Superior Court’s Second Order
10 of Remand, the FEIS does not acknowledge or disclose the Project’s probable significant adverse
11 impacts that the Hearing Examiner, in her Prior Decision, determined to exist based upon
12 SDOT’s 20% - 30% level of design. Instead of disclosing these probable significant adverse
13 environmental impacts, the FEIS vaguely asserts that adverse impacts that it does not identify
14 with specificity will be mitigated when the Project is more fully designed in the future. The
15 FEIS thus affirmatively conceals rather than discloses the Project’s significant adverse
16 environmental impacts that the Hearing Examiner’s Prior Decision has already determined to
17 exist.

17 In sum, the FEIS does not comply with the Hearing Examiner’s Prior Decision or with
18 the Court’s Second Order of Remand. The FEIS conceals rather than discloses the Project’s
19 probable significant adverse environmental impacts that the Hearing Examiner has already
20 determined will result from those portions of SDOT’s Preferred Alternative that are similar to, if
21 not exactly the same as, the prior routes analyzed in SDOT’s previous SEPA reviews, all of
22 which have been found to be deficient. The FEIS thus violates the very purpose of SEPA, which
23 is to inform decision-makers, and violates multiple provisions of the SEPA Rules, including, but
24 not limited to, SMC 25.05.400 and .440.

24 In addition, by concealing rather than disclosing the Project’s probable significant
25 adverse environmental impacts that the Hearing Examiner has already identified, the FEIS

1 demonstrates that it violates the very purpose of an EIS, as set forth in SMC 25.05.400.B: The
2 FEIS does not “provide an impartial discussion of significant environmental impacts” and does
3 not “inform decision-makers and the public of reasonable alternatives.” The FEIS violates this
4 requirement because:

- 5 • SDOT continues to be both the project proponent/advocate and the SEPA lead
6 agency;
- 7 • SDOT improperly failed to properly evaluate and analyze design alternatives, such as
8 protected bicycle facilities or cycle tracks, along with locational alternatives for the
9 Project, even though this issue was properly raised during Project Scoping and even
10 though the City promised it would do so; and
- 11 • SDOT improperly and over-narrowly defined the “Project Objective,” *see e.g.*
12 Section 1.2 and remainder of FEIS, to be the completion of a “multi-use trail,”
13 thereby predetermining the outcome.

14 **B. SDOT IMPROPERLY DESCRIBED THE PROPOSAL AS A PREFERRED
15 SOLUTION, NOT AN OBJECTIVE, CONTRARY TO SEPA’S
16 REQUIREMENTS**

17 Under SEPA, “[p]roposals should be described in ways that encourage considering and
18 comparing alternatives. Agencies are encouraged to describe public or nonproject proposals in
19 terms of objectives rather than preferred solutions.” SMC 25.05.060.C.1.c. SDOT describes its
20 Project objective in the FEIS as the creation of a multi-use trail through the study area, but this
21 “objective” is in fact a preferred solution that precludes the analysis of reasonable alternatives,
22 *e.g.*, the creation of protected bicycle lanes, including a cycle track facility on Leary Avenue.
23 The FEIS thus violates SMC 25.05.060 and the many provisions of the SEPA rules, including
24 SMC 25.05.400 and 440, that require an EIS to study reasonable alternatives, including
25 alternative *designs* not just locational alternatives, to achieve the Project objective.
26

1 **C. SDOT FAILED TO PROVIDE PUBLIC NOTICE OF OR**
2 **APPROPRIATELY EVALUATE A NEW SEGMENT OF THE**
3 **PREFERRED ALTERNATIVE—IT IS IMPROPERLY PIECEMEALING**
4 **THE PROJECT, AGAIN.**

5 The FEIS includes virtually no additional information in the description of each
6 Alternative, with the exception of what SDOT incorrectly characterizes as “one minor route
7 connection” in its Preferred Alternative, which in fact is an entirely new segment of the route
8 that was never analyzed prior to the release of the FEIS. SEPA requires that the lead agency
9 provide public notice of environmental review of a Project and that the public have the
10 opportunity to comment on such Project. SMC 25.05.510 & 25.05.535. *See also* WAC 197-11-
11 060 (requiring that the agency “make certain that the proposal that is the subject of
12 environmental review is properly defined.”) This new segment was *not in any way included in*
13 *the draft environmental impact statement*, thus has never been analyzed or presented to the
14 public for consideration or public comment as part of the Project.

15 **D. SDOT FAILED TO ADEQUATELY STUDY TRAFFIC HAZARDS AND**
16 **SAFETY**

17 SEPA requires SDOT to evaluate the Project’s safety and traffic hazards sufficient for a
18 decisionmaker to evaluate alternatives. *See, e.g.* SMC 25.05.060.D; SMC 25.05.060; and SMC
19 25.05.444. The Project will create significant, unmitigated adverse traffic hazards. The
20 Preferred Alternative will cross numerous industrial driveways (approximately 55) and roadways
21 along its nearly mile-and-a-half stretch—*or one driveway/roadway every 144 feet* – in the
22 middle of a heavily populated urban area where numerous businesses, that provide thousands of
23 family-and union-wage jobs, are either directly adjacent to or in the immediate vicinity of the
24 Project. The Project will be a recreational attraction for children and families but will have
25 limited site distances and inherent safety issues. The Project will bring vulnerable users into
26 direct conflict with industrial and maritime traffic and activities. The Project is in almost
27 constant conflict with heavy trucks, a railroad, forklift traffic, maritime and industrial traffic and
28 activities, loading docks, commercial parking, and busy arterial streets along its entire alignment.

1 It is very likely a trail user will get hurt or killed. SDOT's failures to evaluate safety and traffic
2 hazards include, but are not limited to, the following:

3 • SDOT's AutoTURN analysis is incomplete and fails to adequately evaluate traffic
4 hazards and safety;

5 • SDOT's AutoTURN analysis is incomplete because it is not based on an
6 evaluation of the actual trucks/vehicles that use existing driveways;

7 • SDOT's traffic and safety evaluation relies on incomplete information about the
8 nature and extent of the businesses and uses along the Project and is not based on any developed
9 or accepted methodology;

10 • The FEIS improperly relies on future studies and outreach that have yet to occur
11 and are undefined;

12 • The FEIS is incomplete and inadequate because SDOT is using an on-going
13 process occurring after the FEIS was issued, its Design Advisory Committee (DAC), to a)
14 conduct public outreach to impacted and affected businesses and property owners along the
15 Preferred Alternative routes to obtain information that should have been included in the Draft
16 and FEIS; b) further design the Preferred Alternative to 30%, 60%, 90% and 100%, which
17 further design should have been performed before and included in the Draft and FEIS; and c)
18 evaluate whether a multi-use trail such as the Preferred Alternative can be designed to operate
19 safely in the selected location, which evaluation and information should have been included in
20 the Draft and FEIS;

21 • The FEIS fails to adequately evaluate and/or confirm the Project's consistency
22 with the: a) Washington state department of transportation (WSDOT) design manual (WSDOT
23 Manual); b) SDOT's own right-of-way improvements manual (ROW Improvement Manual); c)
24 WSDOT's city and county design standards for all Alternatives or design standards; d) the
25 design standards contained in the AASHTO "guide for the development of bicycle facilities"; e)
26 the design standards contained in the National Association of City Transportation Officials
(NACTO) urban bikeway design guide; or f) the Federal Highway Administration (collectively,
Design Standards).

• The Project as currently designed violates the Design Standards because the FEIS
fails to confirm consistency with Design Standards, including, without limit, multi-user trail
location, trail width, design speed; sight distances; crossing designs, intersection designs, and
other standards articulated in and contained within the Design Standards;

1 • SDOT does not adequately apply and conform the Project to the Design
2 Standards, which in turn causes, among other things, traffic hazards, obstacles, shy-distance
3 violations, increased conflicts between motorized and non-motorized users, and dangerous sight
4 distance concerns;

4 • The FEIS’s failure to evaluate all traffic hazards and safety considerations renders
5 it inadequate and constitutes impermissible piecemealing.

6 **E. SDOT FAILED TO ADEQUATELY CONSIDER THE PROJECT’S**
7 **CONSISTENCY WITH APPLICABLE LAND USE REGULATIONS**

8 The Project as currently designed is incompatible with the City’s 2035 Comprehensive
9 Plan, adopted in November of 2016 (the Comprehensive Plan). The City of Seattle’s SEPA
10 statutes and regulations are codified at SMC 25.05 et seq. SMC 25.05.444.B.2.a requires that the
11 EIS evaluate “Land Use”, which is defined as the Project’s “*relation to existing land use plan.*”
(emphasis added), i.e. the Comprehensive Plan.

12 This portion of Ballard—from 11th NW to the Ballard Locks-- is a critical corridor and an
13 integral part of the maritime and industrial business community in Seattle. A significant portion
14 of the Preferred Alternative is designated a “Major Truck Street” in the Comprehensive Plan,
15 prioritized for heavy freight movement. Likewise, the City’s land use Policies and Goals in its
16 Comprehensive Plan give special priority to water-dependent uses in this area; and these
17 maritime and industrial uses receive the highest priority and protection from non-compatible and
18 competing uses. Routing a recreational trail such as the Project through the heart of the
19 maritime/industrial area ignores these Goals and Policies and will significantly and adversely
20 impact the built-environmental and the Ballard Coalition. At a minimum, SDOT is required to
21 conduct a balancing analysis to determine whether the Project is compatible with these Goals and
22 Policies in the Comprehensive Plan, which it failed to do in the FEIS.

21 The FEIS does not adequately disclose or discuss the Project’s inconsistencies with
22 the goals and policies in the Comprehensive Plan and its attendant neighborhood plans including,
23 but are not limited to, the following goals and policies:

24 AL-P32:

BI-G1:

BI-G2:

1	BI-G4:	GS 1.17:	T-5.9:
2	BI-G5:	GS 1.18:	LU-10.2:
3			
4	BI-G6:	GS 1.20:	LU-10.3:
5	BI-G8:	GS 1.21:	LU-10.11:
6			
7	BI-G10:	ED-G2:	LU-10.16:
8	BI-G11:	TG-1:	LU-10.26:
9			
10	BI-P2:	TG-6:	LU-10.27:
11	BI-P3:	T-6.1:	T 2.5:
12			
13	BI-P5:	T-6.4:	LU-G10:
14	BI-P5:	T-6.5:	SA-P40:
15			
16	BI-P11:	T-6.8:	SA-P1:
17	BI-P14:	T-8.2:	SA-G8:
18			SA-G18:
19	BI-P15:	T-5.3:	SA-G33:
20			
21	BI-P21:	T-5.7:	SA-P76:

22 In addition, the FEIS failed to include and consider, or dismissed with no evaluation,
23 actual impacts on certain existing and future businesses, freight, rail, and other uses, and
24 locations and configurations. The FEIS failed to obtain and rely on adequate, correct and
25 complete information regarding actual business activities and other operations that will be

1 affected by the Project, and in fact admits the Draft EIS contained numerous material errors and
2 omissions regarding existing land uses and businesses that will be impacted and affected by the
3 Project. The FEIS is thus insufficient to analyze appropriate SEPA elements of the environment.

4 The FEIS also does not adequately disclose or discuss the Project's inconsistencies with
5 the goals and policies in the following plans and policies:

- 6 • The Crown Hill/Ballard Neighborhood Plan, which does not apply to the Project
7 Area;
- 8 • Ballard-Interbay Northend Manufacturing and Industrial Center (BINMIC)
9 Neighborhood Plan, which specifically states the Project should not be located in the
10 BINMIC area;
- 11 • The City of Seattle Ballard Urban Design and Transportation Framework Final
12 Report (City of Seattle, 2016a);
- 13 • The Seattle Move Ballard Draft Plan (SDOT, 2016b);
- 14 • The City of Seattle Freight Master Plan (SDOT, 2016a); and
- 15 • The Shoreline Master Program Code (SMC 23.60A).

16 **F. SDOT FAILED TO ADEQUATELY STUDY PARKING IMPACTS**

17 SDOT failed to adequately obtain information and analyze parking impacts from the
18 Project, including but not limited to its use of unsupported inferences and assumptions, its flawed
19 and insufficient Traffic Study, and a failure to evaluate actual conditions and uses of parking in
20 the vicinity of the Project. The FEIS makes incorrect and unsupported assumptions and
21 conclusions regarding the impact of removing parking within the Project area. The Coalition
22 will be adversely impacted by the Project's elimination of parking spaces.

23 **G. SDOT FAILED TO ADEQUATELY EVALUATE CUMULATIVE
24 IMPACTS**

25 SDOT failed to accurately, adequately, or reasonably describe and consider the
26 cumulative effects of the Project as required by SEPA. SEPA acknowledges that a project or
action may create undue impacts when combined with the cumulative effects of prior or

1 simultaneous developments and requires a reasonable assessment of certain factors in
2 determining whether the project or action may be conditioned or denied to lessen or eliminate its
3 cumulative effects on the environment. *See* SMC 25.05.670; *see also* SMC 25.05.792. SDOT
4 woefully failed to adequately or reasonably assess the cumulative impacts that may result from
5 the Project, including but not limited to, the cumulative impact caused by the Project in
6 conjunction with other planned or anticipated projects in the vicinity of the Project, including,
7 without limit, Seattle Public Utilities' Combined Sewer Outflow (CSO) project. SPU is under a
8 Consent Decree to complete the CSO project by 2025. A portion of the CSO project will be
9 located exactly where SDOT plans to construct nearly one-third (1/3) of the Preferred
10 Alternative. SDOT will either have to wait until after SPU constructs the CSO project or, if
11 SDOT goes first, SPU will tear out nearly one-third of the Project and SDOT will have to rebuild
12 and replace it. None of this is disclosed or discussed in the FEIS.

13 **H. SDOT FAILED TO STUDY THE PROJECT'S IMPACT ON THE** 14 **SHORELINE ENVIRONMENT**

15 At least two portions of the Preferred Alternative are located within the City's designated
16 Shoreline Environment. Despite this, the FEIS claims that the Project is exempt from obtaining
17 a Shoreline Substantial Development permit because ""reconfiguring the existing right-of-way
18 for the Missing Link would be allowed within the shoreline district under the SMP." SDOT is
19 violating SEPA by: a) falsely asserting that it is proposing to repair and replace an existing
20 development instead of building a brand new multi-user trail/Project where one has not
21 previously existed; b) failing to analyze or disclose the true effect of the Project on the Shoreline
22 Environment or conformity to the City's Shoreline Master Program; c) failing to properly and
23 adequately disclose and analyze the Project's relationship to and conformity to the City's
24 Shoreline Master Plan and Program, all as required by SEPA. *See e.g.*, SMC 25.05.444. SDOT
25 is misrepresenting the scope and nature of the Project within the Shoreline Environment, and
26 thus its SEPA analysis is fatally flawed and inadequate because the FEIS violates SEPA's
policies and requirements, and its implementing policies regulations, including the City's
Shoreline policies.

1 **VI. RESERVATION OF RIGHTS**

2 The Ballard Coalition reserve the right to amend this Notice of Appeal to state additional
3 challenges to the adequacy of the FEIS relating to the impacts and mitigation of the Project and
4 reasonable alternatives to the Project.

5 **VI. RELIEF REQUESTED**

6 The Ballard Coalition respectfully requests that the Hearing Examiner find and determine
7 the FEIS to be inadequate and order SDOT to prepare a new draft and final EIS that properly and
8 completely analyzes the probable significant adverse environmental impacts of the Project and
9 that addresses the many deficiencies set forth herein.

10 DATED this 8th day of June 2017.

11 VERIS LAW GROUP PLLC and
12 FOSTER PEPPER PLLC

13 

14 Patrick J. Schneider, WSBA No. 11957
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18 Attorneys for the Ballard Coalition

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25 NOTICE OF APPEAL
26 [CORRECTED]