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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

DECLARATION OF PATRICK J.
SCHNEIDER IN SUPPORT OF
BALLARD COALITION'S DISPOSITIVE
MOTION

I, Patrick J. Schneider, hereby declare and affirm that:

1. I am one of the attorneys for the Ballard Coalition; I am competent to testify, and I have personal knowledge of the following facts.
2. Attached as Exhibit A is a true and correct copy of the Findings and Decision of the Hearing Examiner in File W-12-002, dated August 27, 2012.
3. Attached as Exhibit B is a true and correct copy of the Findings and Decision of the Hearing Examiner in File W-11-002, dated July 1, 2011.
4. Attached as Exhibit C is a true and correct copy of the Second Order of Remand in King County Superior Court Cause No. 09-2-26586-1 SEA, dated March 2, 2012.
5. Attached as Exhibit D is a true and correct copy of pages 21 – 59 of Volume 2 of the FEIS for the “Burke-Gilman Trail Missing Link Project.” These pages comprise the

1 comment letter on the Draft EIS signed by one of the attorneys for the Ballard Coalition,
2 Josh Brower, and SDOT's responses to these comments.

3 6. Attached as Exhibit E is a true and correct copy of the Motion to Dismiss filed by the
4 City on April 12, 2017 in Superior Court No. 09-2-26586-1 SEA.

5 7. Attached as Exhibit F is a true and correct copy of the Order Denying Motion to Dismiss,
6 in Superior Court No. 09-2-26586-1 SEA, dated May 18, 2017.

7 8. Attached as Exhibit G is a true and correct copy of the Order Denying Respondents'
8 Motion to Dismiss.

9 9. Attached as Exhibit H is a true and correct copy of the FEIS, Executive Summary, page
10 ES-2.

11 I declare under penalty of perjury under the laws of the State of Washington that the
12 foregoing is true and correct.

13 EXECUTED at Seattle, Washington this 17th day of July, 2017.


14 
15 _____
16 Patrick J. Schneider

EXHIBIT A

**FINDINGS AND DECISION OF THE HEARING EXAMINER
FOR THE CITY OF SEATTLE**

In the Matter of the Appeal of

Hearing Examiner File:
W-12-002

BALLARD BUSINESS APPELLANTS

From a Determination of Non-significance issued
by the Director, Seattle Department of Transportation

Introduction

The Director of the Seattle Department of Transportation issued a Reissued Revised Determination of Non-significance for the Burke-Gilman Trail Extension, and the Appellants timely appealed.

The appeal hearing was held on July 18, August 1 and August 2, 2012, before the undersigned Deputy Hearing Examiner. Parties represented at the proceeding were: the Appellants, Ballard Business Appellants, by Joshua Brower, Danielle Granatt, and Patrick Schneider, attorneys at law; the Director, Seattle Department of Transportation (SDOT), by Erin Ferguson, Assistant City Attorney; and the Intervenor Cascade Bicycle Club, by Jeffrey Eustis, attorney at law. The record was held open through August 10, 2012, for submission of written closing statements by the parties. The Appellants and the Intervenor filed closing statements.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated. After considering the evidence in the record and viewing the site, the Examiner enters the following findings of fact, conclusions and decision on this appeal.

Findings of Fact

1. On April 23, 2012, the Seattle Department of Transportation (SDOT) issued a "Reissued Revised Determination of Non-significance" for the Burke-Gilman Trail Extension ("Missing Link") project.
2. This was the third DNS issued by SDOT on the Missing Link project. The first DNS was issued in November of 2008, and was appealed by the Appellants. The Hearing Examiner affirmed the DNS in a decision issued in June of 2009, which was appealed by the Appellants. The King County Superior Court (KCSC) entered an Order on June 7, 2010, which ruled that SDOT had improperly piecemealed its review of the project, and remanded to SDOT for review of the trail segment located along Shilshole Avenue NW between 17th Avenue NW and Vernon Place NW (Shilshole Segment). A

Findings and Decision of the Hearing Examiner

W-12-002

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Revised DNS was issued by SDOT on February 1, 2011. The Appellants appealed the Revised DNS, which was affirmed by the Hearing Examiner on July 1, 2011. The Appellants appealed that decision to KCSC, which remanded the matter to SDOT in a Second Order of Remand dated March 2, 2012.

3. The record developed in the previous appeals before the Hearing Examiner (W-11-002 and W-08-007) has been admitted as part of the record of the current appeal.

4. The Second Order of Remand states in part:

5. Hearing Examiner conclusion of law number 9 is not supported factually in the record and is reversed for the reasons stated in the Court's oral decision, a transcript of which is attached to this Second Order of Remand.

6. This matter is REMANDED to the Seattle Department of Transportation (SDOT) for the limited purpose of more fully designing the Shilshole Segment so that the impacts of the proposal on the adjoining land uses, and any proposed mitigation of those impacts, may be identified."

5. The verbatim transcript of proceedings of February 16, 2012, before the Honorable Jim Rogers, February 16, 2012, includes the following discussion by the Court:

"I conclude with limited issues that SDOT has not sufficiently planned the project in order to even be able to consider whether there would be impacts in certain limited situations...Now this in many cases, the issue here for example, which is a very limited issue, would be simply a design issue as was testified to. But here the record in front of me, which is all I have, indicates that it may have, in fact, great impacts, among impacts supposed to be accounted for in the checklist. Secondly, if in fact there is impact, and I don't even know that there would be, if that decision was made later on it could make the decision potentially unreviewable. Again, the record is very ambiguous on this point. It is simply not fair to defer decisions and to trust the party making the decisions to reach the right outcome, because this defeats the entire policy of the checklist review. Conducting this issue, which again is a very limited issue, I've thought about a flip test which judges sometimes use. If Covich Williams was applying for a project that might severely impact an existing bike trail, would it be sufficient for a SEPA review to allow them to say to trust our future decisions for the impact it might have. And I dare say it would be [inaudible]."

7. In response to the Second Order of Remand, SDOT had its engineering consultant, SVR, prepare a conceptual trail layout for the Shilshole Segment. The Shilshole Segment is now at a design detail level of between 20 and 30 percent. The proposal includes an updated trail layout with typical cross-sections of the trail;

descriptions of the driveway locations and aprons; location of fencing and barriers; typical signage; railroad crossings; and images depicting the trail and fencing as constructed.

8. The trail would be designed with a 13-½ foot travel lane, and would sit an elevation 2-1/2 inches above the traveled right-of-way, essentially providing a 2-1/2 inch high curb. This is lower than the standard City six-inch high curb, but the lower height was chosen by SDOT because of accessibility concerns.

9. Sixteen driveways are shown on the plan with proposed widths, which are intended to match existing driveway widths at the property line. There is an existing area between driveways 4 and 5 that was not considered by SDOT to be in use as a driveway, but rather as a roll-up door that vehicles do not use to access the structure, so this area is not depicted as a driveway. However, Salmon Bay Sand & Gravel has indicated that it does utilize the area as a driveway at times. But aside from this driveway, SDOT has attempted to retain existing driveways rather than consolidating or eliminating them.

10. The design attempts to retain other existing conditions found along the Shilshole Segment. For example, at driveway 15, where the low-clearance trucks are used, the trail would be at existing grade to accommodate the low clearance needed by the trucks that transport boats to the site. At driveway 13, the proposal includes a 40-foot wide driveway width intended to serve the needs of Ballard Mill Marina, which currently marks its required area with tires.

11. Driveways 1 through 14 have a driveway length of 30 feet from the property line to the trail, while at driveways 15 and 16, there is approximately three feet from the property line to the trail.

12. The location of fencing and barriers is indicated on the conceptual layout, and typical sections of fencing and barriers are shown in Ex. C-16. Ex. C22-A,B & C show how the fencing and barriers would appear after the project is completed.

13. The fencing and barriers are intended to define the driveways, control truck movements, particularly truck movements across the trail, provide security for vulnerable trail users, and more predictability for vehicle traffic. The barriers proposed in the plan would be 42 inches high, consistent with WSDOT standards, and SDOT indicates that the locations will allow for required sight distances from the driveways.

14. "AutoTurn" is a computer software program that depicts the turning radii of vehicles, and produces a diagram of the radii onto an autocad base drawing. To develop the conceptual trail layout, SVR engineer Dave Rodgers had his firm run autoTurn analyses to see if the proposed driveways could accommodate the turning movements of large trucks. The analyses assumed that the vehicles would stop at the driveways, could utilize more than half of the driveway, and could drive over the curbs if needed, to

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successfully complete their movements. The diagrams indicated that certain trucks could negotiate the turns, as shown in Ex. C-26. Mr. Rodgers did not run the autoTurn analysis for all vehicles which currently access the businesses along the Shilshole Segment.

15. Mr. Rodgers spoke with an employee of CSR Marine prior to SDOT's issuance of the DNS, because CSR was not in operation here when SDOT had previously conducted interviews with the businesses on the Shilshole Segment, prior to the issuance of its Revised DNS in 2011. Neither Mr. Rodgers nor anyone at SDOT re-interviewed representatives of the other businesses along the Shilshole Segment before the DNS was issued.

16. The City's Traffic Engineer, Mr. Chang, reviewed the updated proposal for the Shilshole Segment, and issued a memorandum dated April 23, 2012 (City's Ex. 17) to Peter Hahn, the Director of SDOT. Mr. Chang concluded that the driveways designed in the project "meet or exceed city design guidelines and will operate safely." The memo ended with the statement that "The proposed trail design meets city design standards and is consistent with practices the City has followed in designing other mixed use trails throughout the City, including adjoining portions of the Burke-Gilman trail. Based on the use of best engineering practices and my experience as an engineer, I do not have concerns with this project."

17. The SEPA/NEPA Coordinator for SDOT, Mark Mazzola, sent a memo dated April 23, 2012, to Peter Hahn, recommending the issuance of the Reissued Revised Determination of Nonsignificance. The Reissued Revised DNS was issued on the same day, April 23, 2012.

18. The existing environment along the Shilshole Segment is described in the record and in the Hearing Examiner's previous decisions. As previously noted, Shilshole Avenue at this location is currently shared by vehicles and bicycles, including large vehicles associated with the businesses along Shilshole; see Ex. CBC-9. Wait times at driveways, under both pre- and post-project conditions, were described in the record in the appeal of the Revised DNS.

19. Currently, some of the large vehicles associated with the businesses routinely use movements which are not permitted by the traffic rules of the road, e.g., utilizing the Shilshole Avenue for stopping and waiting, or blocking the street with large vehicles while unloading. For example, Mr. Jewell of CSR Marine noted that a "lowboy" delivery would block the right-of-way for ten minutes while loading and unloading a boat. Mr. Rodgers testified that he and Mr. Chang had witnessed 18-wheelers making u-turns on Shilshole.

20. SDOT's witnesses expressed the opinion that the Shilshole Segment, like the rest of the proposed trail, would reduce traffic hazards that currently exist, by improving the organization of the right-of-way and providing dedicated routes of travel for cyclists,

pedestrians and motor vehicles. However, Appellants' expert, Victor Bishop, disagreed, and concluded that more traffic hazards were created because of the presence of driveways and street crossings along the Segment, as well as the design of the trail itself, including its so-called "shy distance."

21. "Shy distance" is a term that describes a buffer or clearance area between an obstacle and the edge of the traveled way. There would be no shy distance between the edge of the trail to the fence and barrier bases as shown in the cross sections. The shy distances between the barrier bases and the edge of the road would be one to two feet.

22. The standard lateral clearance distance identified in the City's design manual at Section 4.20.2 is three feet between the closest part of a fixed object and the roadway, and two feet between multiuse trail and the closest part of a fixed object.

23. As noted above, there are 16 or 17 existing driveways/road crossing areas that front on the Shilshole Segment, which extends approximately 1,760 feet. The types of vehicles used at each driveway are identified in Ex. A-254-14, and were described by Mr. Bishop, Mr. Nerdrum and Mr. Jewell. The vehicles include single unit trucks, WB-40 and WB-67 semi-trailers, and specialized trucks (e.g., cement trucks, boat hauling trucks) used by the adjoining businesses as indicated in Ex. A-254-14.

24. The Appellants' expert, Vic Bishop, directed the preparation of autoTurn analyses for all existing driveways using the City's Autocad base drawings. Mr. Bishop relied on information from all of the property owners or business operators along the Shilshole Segment to determine the different truck types which currently use each driveway. The analyses assume a constant vehicle speed of 5 mph. The predicted turning radii are shown at Ex. A-254-1 to A-254-13. Mr. Bishop's tally and descriptions of the "violations" as he termed them, which result from trucks using the designed driveways, are shown in Exs. A-254-13 and A-254-14.

25. The autoTurn diagrams obtained by Mr. Bishop indicate that the predicted turning radii at each driveway will require that the trucks to cross the curb adjacent to the trail or cross the centerline of Shilshole Avenue. In some cases, trucks are predicted to strike the barriers or fences unless they cross the centerline of Shilshole, or drive over the curb. Ex. A-254; Bishop testimony.

26. Some simulations assumed that vehicles utilized one side of the driveway, rather than utilizing the entire driveway; e.g., some of the drawings even depict simultaneous exits and entries. But according to Mr. Bishop, even if the vehicles moved to one side of the driveways, many of the conflicts would remain. Mr. Bishop also determined that the results, i.e., the arc of the turns, would not change if the vehicles traveled at one mph or 5 mph, or if the truck stopped at the driveway.

27. SDOT's witnesses noted at hearing that flaggers could be used to assist larger trucks to negotiate the driveways. This would presumably require the businesses to

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assume responsibility for scheduling and managing the flagger activity. However, it is unclear how likely this is to occur; e.g., up to a third of truck deliveries to CSR Marine simply arrive without advance calls.

28. Mr. Rodgers stated that he had only received Mr. Bishop's diagrams just prior to hearing, and did not have evidence to show that the autoTurn diagrams obtained by Mr. Bishop were "wrong." But Mr. Rodgers noted that he would not in any event describe computer-generated autoTurn results as "wrong." Instead, Mr. Rodgers disagreed with Mr. Bishop's conclusions that trucks would be unable to access the properties along the Shilshole Segment. Mr. Rodgers believed that it would affect the results of the analyses if different speeds were assumed, or if the trucks were stopped at the driveway before making the turn. However, he did not actually run the analyses to see if this would change the predicted outcomes.

29. The appeal contends that SDOT "failed to identify and evaluate the project's impacts on adjoining land uses; and failed to develop mitigation measures to address those impacts" and that SDOT failed to study traffic hazards and that the proposal will create "significant, unmitigated adverse traffic hazards." Notice of Appeal, pp 3-4. Some of the appeal issues were dismissed prior to hearing by the Examiner's July 3, 2012 prehearing order issued on SDOT's Motion to Dismiss/Limit Appeal Issues.

30. SMC 25.05.330 provides that:

An EIS is required for proposals for legislation and other major actions significantly affecting the quality of the environment. The lead agency decides whether an EIS is required in the threshold determination process, as described below.

A. In making a threshold determination, the responsible official shall:

1. Review the environmental checklist, if used:

a. Independently evaluating the responses of any applicant and indicating the result of its evaluation in the DS, in the DNS, or on the checklist, and

b. Conducting its initial review of the environmental checklist and any supporting documents without requiring additional information from the applicant;

2. Determine if the proposal is likely to have a probable significant adverse environmental impact, based on the proposed action, the information in the checklist (Section 25.05.960), and any additional information furnished under Section 25.05.335 (Additional information) and Section 25.05.350 (Mitigated DNS); and

3. Consider mitigation measures which an agency or the applicant will implement as part of the proposal, including any mitigation measures required by the City's development regulations or other existing environmental rules or laws.

B. In making a threshold determination, the responsible official should determine whether:

- 1. All or part of the proposal, alternatives, or impacts have been analyzed in a previously prepared environmental document, which can be adopted or incorporated by reference (see Subchapter VI);*
- 2. Environmental analysis would be more useful or appropriate in the future in which case, the agency shall commit to timely, subsequent environmental review, consistent with Sections 25.05.055 through 25.05.070 and Subchapter VI.*

C. In determining an impact's significance (Section 25.05.794), the responsible official shall take into account that:

- 1. The same proposal may have a significant adverse impact in one location but not in another location;*
- 2. The absolute quantitative effects of a proposal are also important, and may result in a significant adverse impact regardless of the nature of the existing environment;*
- 3. Several marginal impacts when considered together may result in a significant adverse impact;*
- 4. For some proposals, it may be impossible to forecast the environmental impacts with precision, often because some variables cannot be predicted or values cannot be quantified;*
- 5. A proposal may to a significant degree:*
 - a. Adversely affect environmentally critical or special areas, such as loss or destruction of historic, scientific, and cultural resources, parks, prime farmlands, wetlands, wild and scenic rivers, or wilderness,*
 - b. Adversely affect endangered or threatened species or their habitat,*
 - c. Conflict with local, state, or federal laws or requirements for the protection of the environment, and*
 - d. Establish a precedent for future actions with significant effects, involves unique and unknown risks to the environment, or may affect public health or safety.*

D. If after following Section 25.05.080 (incomplete or unavailable information), and Section 25.05.335 (additional information), the lead agency reasonably believes that a proposal may have a significant adverse impact, an EIS is required.

E. A threshold determination shall not balance whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather, shall consider whether a proposal has any probable significant adverse environmental impacts under the rules stated in this section. For example, proposals designed to improve the environment, such as sewage treatment plants or pollution control requirements, may also have significant adverse environmental impacts.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to SMC 25.05.680. The Code directs the Examiner to accord "substantial weight" to the Director's SEPA decisions. A party appealing the Director's decision bears the burden of proving that the decision is "clearly erroneous." *Brown v. Tacoma*, 30 Wn.App 762, 637 P.2d 1005 (1981). The decision is clearly erroneous if the Hearing Examiner, on review of the entire record, is "left with a definite and firm conviction that a mistake has been committed." *Norway Hill Preservation and Protection Ass'n. v. King County Council*, 87 Wn.2d 267, 275, 552 P.2d 674 (1976).

2. The Appellants have argued that SDOT's SEPA review procedures were flawed. The Appellants argue that the 20-30 percent level of design is not sufficient to disclose impacts. The design now shows elevations, driveway widths, pavement treatments, location and description of fencing and barriers along the trail, and description of signage. The level of design presented is adequate for purposes of identifying and evaluating the proposal's impacts.

3. The Appellants argue that SDOT rushed to decision following the Second Order of Remand and failed to speak with adjoining property owners to determine the trail's impacts. The Appellants have not shown that SDOT's SEPA decision is flawed merely because of the time that it took to reach its decision or because it failed to speak with adjoining property owners before issuing the DNS.

4. The appeal alleges that SDOT failed to study traffic impacts and that the proposal will create significant adverse traffic hazards. The Court's Second Order affirmed the Hearing Examiner's conclusions in the 2011 decision that the trail would not have significant adverse impacts on account of incompatibility with other land uses, or on account of traffic hazards. Second Order at page 2, paragraph 4. But the Order and oral decision reserved the issue of whether the impacts of the proposal as fully designed would be significant, since the Court remanded for identification of impacts that were not yet known. *"But here the record in front of me, which is all I have, indicates that it [trail design] may have, in fact, great impacts, among impacts supposed to be accounted for in the checklist."*

5. The Appellants argue that the placement of fences and barriers create "inherent" traffic hazards, on account of the fact that they are obstructions in the roadway. The mere possibility that drivers or trail users could collide with them, or the fact that SVR's expert, Mr. Rodgers, referred to them as possible "hazards" in the sense that they were physical obstructions, is also not sufficient to show a traffic hazard exists.

6. The Appellants also assert that the proposal would cause significant and adverse traffic hazards. Much of the evidence at hearing focused on the potential impacts of the proposed driveways, fencing and barriers as they affect the movements of the trucks that regularly access and exit the adjoining properties along the Shilshole Segment. The

Appellants' autoTurn simulations, and the analysis of their expert, Mr. Bishop, indicate that trucks would be unable to enter or exit many of the proposed driveways without hitting the fencing and/or barriers, crossing the centerline of Shilshole Avenue, or running over the curb and into the trail. In addition, the delays at driveways, identified in the appeal of the Revised DNS, would be experienced by drivers, likely exacerbating problems with truck movements. The "shy distance" provided by the proposal, while not shown to be an impact on its own, was also not shown to mitigate the impacts of conflicts between truck movements and trail users. The evidence presented thus shows that the proposal would likely have significant adverse impacts in the form of traffic hazards.

7. SDOT's experts Mr. Rodgers and Mr. Chang presented credible testimony based on their engineering knowledge and experience. But there is a dearth of specific evidence in the record rebutting Mr. Bishop's autoTurn analysis and his findings about the impacts on traffic and the trail. Mr. Bishop's opinions were based on detailed and specific examination of the driveways along the Shilshole Segment and their use, and his opinion was persuasive as to the traffic hazards that would be caused along the Shilshole Segment.

8. The iterative nature of the engineering design process does not lend itself well to SEPA's requirements and the remanded nature of this appeal. In the 2011 appeal of the Revised DNS, SDOT argued, and the Examiner agreed, that SDOT had the ability and authority to adjust the trail proposal, including mitigation measures, as it progressed through the design process. But the Second Order of Remand referenced the lack of design detail as a basis for the remand. SDOT has provided more detail concerning the design, and again asserts that it can make additional adjustments going forward that will resolve traffic conflicts. However, on the record as it exists now before the Examiner, the Examiner concludes that the proposal would have significant adverse impacts in the form of traffic hazards along the Shilshole Segment because of conflicts between truck movements and the other vehicle traffic and trail users along the Segment.

9. Therefore, the issuance of the DNS was clearly erroneous, and an Environmental Impact Statement will be required to address the impacts of the Shilshole Segment, rather than the preparation of another DNS.

10. No error was shown with SDOT's decision as to the rest of the trail (i.e., the non-Shilshole Segment portions of the proposal). The entire proposal and the City's SEPA decisions are apparently still pending final judicial review and the final outcomes of that review are not known. But the Examiner's decision to reverse the DNS and require an EIS is limited to the portion of the proposal which is known as the Shilshole Segment.

Decision

The Director's Reissued Revised Determination of Nonsignificance is hereby **REVERSED IN PART AND REMANDED** to the Director for preparation of an EIS on the Shilshole

Findings and Decision of the Hearing Examiner

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Segment portion of the proposal as noted in the conclusions above. The Examiner does not retain jurisdiction over this matter.

Entered this 27th day of August, 2012.



Anne Watanabe
Deputy Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is issued.

The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

APPELLANTS

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DEPARTMENT

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EXHIBIT B

**FINDINGS AND DECISION OF THE HEARING EXAMINER
FOR THE CITY OF SEATTLE**

In the Matter of the Appeal of

Hearing Examiner File:
W-11-002

BALLARD BUSINESS APPELLANTS

From a Determination of Non-significance issued
by the Director of the Seattle Department of Transportation

Introduction

The Director of the Seattle Department of Transportation issued a Determination of Non-significance and the Appellants timely appealed.

The appeal hearing was held on May 23, 24, 25 and June 2, 2011, before the undersigned Deputy Hearing Examiner. Parties represented at the proceeding were: the Appellants, Ballard Business Appellants (and intervenor Ballard Chamber of Commerce), by Joshua Brower and Patrick Schneider, attorneys at law; the Director, Seattle Department of Transportation (SDOT), by Erin Ferguson, Assistant City Attorney; and the intervenor Cascade Bicycle Club, by Jeffrey Eustis, attorney at law. The record was held open through June 17, 2011, for the Examiner's site visit and for submission of written closing statements by the parties.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated. After considering the evidence in the record and viewing the site, the Examiner enters the following findings of fact, conclusions and decision on this appeal.

Findings of Fact

1. On February 1, 2011, the Seattle Department of Transportation (SDOT) issued a Revised Determination of Non-significance (Revised DNS) for SDOT's proposed Burke-Gilman Trail Extension Project.
2. The proposal is a trail project which will complete the "missing link" of approximately 1.5 miles between the existing segments of the Burke-Gilman Trail between 11th Avenue NW and the Ballard Locks on the Ship Canal. The proposed trail would follow the preferred route that was adopted by the City Council through Resolution 30583 in 2003. The preferred route included an "interim" route and a "permanent" route.
3. In November of 2008, SDOT issued a DNS ("original DNS") for the project. Although construction of the trail entirely within the street right-of-way would have been categorically exempt from SEPA review, the project included acquisition of easement

over private property between 26th Avenue NW and 28th Avenue NW for a wider trail. Thus, the project was not exempt, and SEPA review was required. (The record for the earlier appeal, and the Hearing Examiner Findings and Decision, W-08-007, describe the project as analyzed in the 2008 SDOT's original SEPA checklist and original DNS, and describe the planning and legislative history for the trail project.)

4. In performing its initial SEPA review, SDOT reviewed only the "interim" route along Ballard Avenue, and did not review the impacts of that portion of the "permanent" route, a 0.3 mile stretch along Shilshole Avenue between 17th Avenue NW and NW Vernon Place.

5. The Appellants appealed the 2008 DNS to the Hearing Examiner, who affirmed the DNS in a decision dated June 9, 2009. The Appellants appealed the Examiner's decision to King County Superior Court. The Court entered an Order on June 7, 2010 which affirmed certain conclusions of the Examiner, but ruled that SDOT had improperly "piecemealed" its review of the project. The Court remanded the matter to SDOT for environmental review of the "permanent route" along Shilshole Avenue NW between 17th and NW Vernon Place (hereinafter Shilshole Segment). The Order stated that the Court would retain jurisdiction over the matter. Order of Remand, June 7, 2010.

6. In response to the remand order, SDOT prepared a Revised SEPA checklist on February 1, 2011 for the trail project, which included an analysis of the Shilshole Segment. SDOT issued its Revised DNS on February 4, 2011.

7. The 0.3-mile Shilshole Segment would be located along Shilshole Avenue NW between 17th Avenue NW and NW Vernon Place. Construction would take place within the existing street ROW and when necessary, temporary easement areas. Like the other portions of the project, construction activities for this segment would remove existing concrete, asphalt and compact gravel to construct a multi-use pathway. The width of the trail within the Shilshole Segment will be at least 10 feet wide, although the remainder of the trail will have widths ranging from 8-12 feet.

8. The proposal would include improvements such as railroad crossings, and stormwater drainage controls; relocation of underground utilities and reconstruction of existing driveways; and installation of traffic controls, warning signs and signals to direct traffic by vehicles, bicycles and pedestrians. Motor vehicle lanes may be widened along Shilshole Avenue NW between 17th NW and NW Vernon Place. Parking spaces would be demarcated at 24th Avenue NW and along Shilshole Avenue NW.

9. The Shilshole Segment, like the rest of the trail project, would provide a marked, dedicated route for pedestrians and cyclists to connect to the existing portions of the Burke-Gilman trail. Trail users currently utilize streets within the Ballard neighborhood, including Shilshole Avenue, in order to connect with the Burke-Gilman Trail.

10. At the time the Revised Checklist and DNS were prepared, the Shilshole Segment was at ten percent design. At the time of the original checklist and DNS, the studied trail segments were at approximately 60 percent design. A ten percent design is not unusual for SDOT SEPA review of both private and public projects.
11. The Revised Checklist notes that King County is planning a sewer pipe replacement project, the Ballard Siphon project, which will commence in 2011 and last for two and half to three years. The existing sewer pipes cross the canal between the end of 20th Avenue NW in Ballard and the former Marco Shipyard in Magnolia.
12. The original SEPA checklist predicted that up to 140 of 480 on-street parking spaces could be lost on account of the project, not including the Shilshole Segment. As part of its review for the original DNS, SDOT estimated that approximately 2,000 on-street parking spaces would be available within a two-block area along the trail alignment.
13. For its review of the Shilshole Segment, SDOT had its consultants prepare a parking study (Exhibits 102 and C-12) for the Shilshole Segment. Similar to the parking which is available elsewhere along the proposed project ROW, parking spaces on the Shilshole segment are informal, and the exact capacity varies depending on how vehicles are parked. The 2011 study determined the existing parking capacity and occupancy counts along the segment, and used those determinations to estimate the loss of parking capacity that could be expected along the Shilshole Segment. The methodology and assumptions utilized by the authors are explained in the study.
14. Up to 91 of 169 free on-street parking spaces could be lost along this segment of the trail. A parking capacity of 78 spaces would remain, which is less than the mid-day count of 71 parked vehicles observed by the study authors. There are approximately 850 parking spaces within a two-block area along the Shilshole Segment.
15. Some of the spaces along the Shilshole Segment are utilized by employees of nearby businesses, although exact numbers are not known. According to the Revised Checklist, the ROW along Shilshole Avenue NW is heavily parked by patrons of businesses along NW Market Street and Ballard Avenue NW, particularly during evening hours and weekends.
16. According to Beth Miller, Executive Director of the Ballard Chamber of Commerce, businesses in Ballard are extremely concerned about the loss of parking capacity along the Shilshole Segment and the rest of the proposed trail project. The supply of parking in Ballard is already constrained because the Code exempts some new businesses (e.g., on account of location within a historic district or within the Pedestrian Overlay zone) from providing parking. New businesses, e.g., restaurants, continue to open in Ballard without having to provide parking to accommodate all patrons or employees.

Findings and Decision of the Hearing Examiner

W-11-002

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17. Two private parking lots associated with the "Yankee Diner" restaurant and "Hattie's Hat" restaurant, are referenced in SDOT's 2011 parking study. The study notes that the lots are not affected by the construction of the trail along the Shilshole Segment, and that the lots have a capacity of nearly 150 spaces with low utilization rates.

18. The Yankee Diner restaurant is in receivership, and has closed pending redevelopment as a hotel. The existing parking lot cannot be used as commercial parking. The Hattie's Hat lot is now available for use by the restaurant patrons in the evenings and weekends. The parking study notes that even if the two parking lots are excluded from consideration, the parking occupancy in the area is generally less than available existing capacity.

19. SDOT considers free on-street parking to be the lowest priority use of City right-of-way. Mr. Widstrand, the City's Traffic Engineer, has authority to prohibit the parking of vehicles on the streets. Similarly, the Director of SDOT has authority to close any street, thus effectively preventing vehicles from parking on that street.

20. The original checklist and a 2008 transportation memorandum discussed the project's impact on level-of-service (LOS) at nearby locations, noting that LOS was expected to improve with the project.

21. SDOT's transportation consultant prepared a transportation memorandum, dated January 31, 2011, for the Shilshole segment, analyzing the traffic impacts of the segment. The memorandum studied the traffic movements and operational conditions at several driveways along the Shilshole segment, and the intersections of Shilshole Avenue NW/Dock Street and Shilshole Avenue NW/20th Avenue NW. The study compared the 2010 existing conditions of delay with 2030 conditions, both with and without the Shilshole Segment. The study assumed peak hour non-motorized volume of 100 bicyclists per hour at driveway locations in the Shilshole Segment. Although SDOT does not apply LOS standards to driveways, the study applied the LOS standards for unsignalized intersections to the driveways. Table 3 on page 3 of the report incorrectly shows Salmon Bay Sand & Gravel's 2030 am peak hour exiting volume as 20, identical to its 2010 am peak hour exit volume. However, Mr. Lo, the transportation consultant for the study, noted that this error would not affect the conclusions in the study.

22. Driveways along the Shilshole Segment, as is the case along the rest of the trail project area, are utilized by a wide variety of vehicles, including very large trucks and trailers involved with the industrial operations. These operations require that vehicles cross the trail alignment many times during the course of a working day. Some of these large vehicles, e.g., 75-foot tanker trucks, will utilize turning movements in or out of their driveways so as to use portions of the Shilshole Avenue right-of-way to complete their movements. Some of these movements are not permitted uses of the street right-of-way.

23. The Washington State Department of Transportation (WSDOT) Manual contains guidelines which recommend a 20 MPH design speed for bicycle trails, and a minimum

paved width of 10 feet (12 feet is desirable); Chapter 15.15.03. The Manual also references a 127-foot sight-stopping distance (sight distance) for recreational trails. The AASHTO Guide for Development of Bicycle Facilities also references a 127-foot sight distance.

24. SDOT does not apply the sight distance guidelines for intersections to driveways. Instead, SDOT looks to the Code provisions which specifically identify the driver's responsibilities when entering or exiting via a private driveway. The City Traffic Engineer can also require property owners to post signage at driveways, e.g., prohibiting left turns, or other warning devices.

25. SDOT reviewed the driveways along the Shilshole Segment and evaluated the turning movements prior to issuing the Revised DNS. SDOT has had discussions with property owners along the alignment, and intends to have further discussions with property owners about the project, including about improvements which SDOT can fund, e.g., fencing at certain locations or removal of obstructions.

26. In the past 10 years, there have been three bicycle-vehicle collisions within the Shilshole Segment. The record includes several reports concerning traffic accidents involving bicycles. The Montreal study, Exhibit CBC-4, and the Allen report, Exhibit A-89, e.g., are studies evaluating bicycle path design. SDOT's 2009 Traffic Report, Exhibit C-6-a, includes data on reported bicycle collisions in 2009, the location of the collisions, injuries, contributing circumstances and other factors. The CBC also collects self-reported data concerning bicycle accidents; Exhibits CBC 5 and 6.

27. The two-way path design proposed here is known as a "sidepath." Appellants' expert, Mr. Bishop, expressed his opinion at both the hearing on the original DNS and the Revised DNS, that bicycle sidepaths are inherently unsafe. According to Mr. Bishop, the drivers of vehicles exiting driveways would not expect a bicycle to be coming from the right, increasing the chance of a collision. The lay witnesses who operate businesses along the Shilshole Segment likewise expressed great concern about possible collisions or difficulties on account of two-way bicycle traffic crossing their driveways.

28. At both hearings on the original and Revised DNS, SDOT's witnesses expressed opinions disagreeing with Mr. Bishop's assessment of sidepaths. Mr. Widstrand noted that continuity of the trail on either side of the "missing link" was important and enhanced safety. Mr. Widstrand noted that he can require signage, striping, and other warning devices to alert drivers to look both ways, and to alert cyclists. Mr. Widstrand noted that bicyclists currently use Shilshole, sharing that road with trucks and other vehicles. Mr. Widstrand noted that bicyclists may be uncomfortable riding on shared streets and may ride very slowly among faster vehicles, or may cross the street or ride in between parked vehicles, all behaviors which can create conflicts with motor vehicles.

29. Mr. Rogers is a consulting engineer who has been retained by SDOT as a program manager for the missing link project. He also disagreed with Mr. Bishop's assessment

that sidepaths are inherently unsafe. Mr. Rogers noted that connectivity and predictability of the trail (including its consistency with the existing Burke-Gilman trail) were more important factors than the two-way nature of the project. Mr. Rogers expressed the opinion that a two-way path was less risky, as it would organize the traffic and create more predictability as to where the bicycles would be located.

30. There was also testimony from Appellants' expert and from SDOT's expert concerning the LOS reported in the 2011 transportation memorandum. Mr. Bishop asserted that the increased 10-second delay at one of the driveways, even though the driveway LOS would not change, could create a traffic hazard because it would lead to driver impatience and resultant bad driving. But Mr. Lo was of the opinion that a 10-second delay at a driveway would not lead to traffic hazards, and that the difference of 10 seconds was considered too small to be counted in the context of a LOS analysis.

31. The project site is zoned Industrial General 1 Unlimited-65 (IG1 U-65), IG2 U-65, and Industrial Commercial 65. Signed portions of the trail along Ballard Avenue NW are located within Neighborhood Commercial 2-65 and NC3-65, and Commercial 1-65. The Comprehensive Plan designates the preferred route for the missing link as a section of the City's Urban Trail System. The project includes areas within the boundaries of the Ballard/Interbay/North End Manufacturing and Industrial Center (BINMIC) element of the Plan.

32. The Environmental Services Group is a division within SDOT charged with performing SEPA environmental review. Mark Mazzola, a Senior Environmental Analyst with the ESG, reviewed the trail project, including the Shilshole Segment, for compliance with SEPA. Mr. Mazzola developed the original checklist and the revised checklist. The Revised Checklist was signed by Ron Scharf, the project manager; having the project manager sign a DNS is the usual procedure at SDOT. Mr. Scharf provided information about the project to Mr. Mazzola, and reviewed the Revised Checklist before signing it.

33. Mr. Mazzola testified at hearing about the information he reviewed, the issues he considered, and why he arrived at the conclusion that a DNS should be issued. Mr. Mazzola also identified the plans, documents and studies he considered.

34. Mr. Mazzola recommended to SDOT Director Peter Hahn that the Revised DNS be issued. Mr. Hahn agreed with this recommendation, and signed the Revised DNS. Mr. Hahn was not with SDOT at the time the original DNS was issued.

35. Appellants' counsel submitted a letter dated February 24, 2011, on behalf of the Appellants, regarding the Revised Checklist and DNS. The letter was addressed to SDOT Director Hahn and to Mr. Scharf. The letter identified reasons why the authors believed SDOT's analysis was incomplete and inadequate, and asked that the DNS be withdrawn, and that an EIS be prepared. Mr. Hahn did not see this letter.

36. By prehearing orders dated April 15, 2011 and April 29, 2011, certain issues raised in the Notice of Appeal of the Revised DNS were dismissed. The issues remaining in the present appeal before the Examiner are: whether SDOT in reviewing the Shilshole Segment, properly considered impacts on parking, traffic, and traffic hazards, and properly considered the goals and policies of the Comprehensive Plan; and whether the trail project as a whole would likely have probable significant adverse impacts, such that an EIS should have been required. By prehearing order, the Examiner also granted SDOT's motion to limit new evidence to that concerning the Shilshole Segment, although the record developed in the appeal of the original DNS would be considered by the Hearing Examiner in determining whether the project would have probable significant adverse environmental impacts.

SEPA

37. SMC 25.05.330 describes the threshold determination process, and states in part:

An EIS is required for proposals for legislation and other major actions significantly affecting the quality of the environment. The lead agency decides whether an EIS is required in the threshold determination process, as described below.

A. In making a threshold determination, the responsible official shall:

1. Review the environmental checklist, if used:

a. Independently evaluating the responses of any applicant and indicating the result of its evaluation in the DS, in the DNS, or on the checklist, and

b. Conducting its initial review of the environmental checklist and any supporting documents without requiring additional information from the applicant;

2. Determine if the proposal is likely to have a probable significant adverse environmental impact, based on the proposed action, the information in the checklist (Section 25.05.960), and any additional information furnished under Section 25.05.335 (Additional information) and Section 25.05.350 (Mitigated DNS); and

3. Consider mitigation measures which an agency or the applicant will implement as part of the proposal, including any mitigation measures required by the City's development regulations or other existing environmental rules or laws.

38. SMC 25.05.340.A provides that: *"If the responsible official determines there will be no probable significant adverse environmental impacts from a proposal, the lead agency shall prepare and issue a determination of nonsignificance (DNS [.]")*

39. SMC 25.05.926 provides that: "*When an agency initiates a proposal, it is the lead agency for that proposal. Whenever possible, agency people carrying out SEPA procedures should be different from agency people making the proposal.*"

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to SMC 25.05.680. The Code directs the Examiner to accord "substantial weight" to the Director's SEPA decisions. This is a deferential standard of review, and a party appealing the Director's decision bears the burden of proving that the decision is "clearly erroneous." *Brown v. Tacoma*, 30 Wn.App 762, 637 P.2d 1005 (1981). The decision is clearly erroneous if the Hearing Examiner, on review of the entire record, is "left with a definite and firm conviction that a mistake has been committed." *Norway Hill Preservation and Protection Ass'n. v. King County Council*, 87 Wn.2d 267, 275, 552 P.2d 674 (1976). Nevertheless, the record must demonstrate that environmental factors were considered so as to show prima facie compliance with the procedural requirements of SEPA. *Id* at 276.

2. The Appellants argue that that SDOT did not comply with SEPA's procedural requirements in several respects in its review of the Shilshole Segment. The Appellants allege that SDOT failed to document the project's lack of compliance with WSDOT and AASHTO design guidelines and WSDOT sight distance standards; proposed mitigation measures; the dangers of sidepaths near the industrial driveways; the loss of parking in Ballard; and failed to review and analyze how the project was consistent with the City's Comprehensive Plan goals and policies. The Appellants also assert that SDOT's Responsible SEPA official failed to independently and objectively review the checklist before signing the DNS, and that Mr. Hahn was obligated to reconsider the Revised DNS in light of Appellants' s February 24, 2011 letter.

3. The Revised Checklist and Revised DNS do not mention the WSDOT or AASHTO guidelines. The Appellants assert that state law requires the trail to comply with WSDOT guidelines on account of the state funding for the project. These design guidelines allow for flexibility in design, and provide for project-by-project solutions to design problems, so it appears incorrect to say that the numerical formulas are intended to be standards. But in any case, it has not been shown that the guidelines must be identified and examined as part of the project's SEPA review. SDOT's reviewers were aware of the guidelines, but more importantly, they considered the design of the trail, and the potential impacts related to its design. The Revised Checklist identified impacts and measures that could be taken to address those impacts, e.g. Section B.14.g, regarding delays at driveways, and signage and warning signals at driveways. SDOT was not required to evaluate the project against the WSDOT and AASHTO guidelines as part of its SEPA review.

4. The Appellants also asserted that SDOT failed to document inadequate sight distances, inadequate width, and the dangers of this sidepath. The project's design as a

two-way-path, its width, and its location relative to existing driveways, were all identified as part of SDOT's review, and SDOT actually considered the potential impacts of the proposal. The Appellants have not shown that SDOT was required by SEPA to include in the Revised Checklist or the Revised DNS a written analysis of the potential impacts of sight distances, width or the two-way design.

5. The appeal asserts that the SEPA process was flawed because SDOT failed to review and analyze the project in light of some 30 goals and policies in the City's Comprehensive Plan.

6. The evidence here does not show that SDOT committed a clear error in its analysis of, or conclusions about, the project's consistency with the Comprehensive Plan. Mr. Mazzola considered that the proposed use, the trail, is a transportation facility which is permitted in commercial and industrial zones. He considered that the trail itself is designated by the Plan as a route within the Urban Trails Network, and the designation of the planned route was the result of earlier studies and Council direction. It can be argued that language in individual goals or policies, e.g., BI-P16, could be interpreted to encourage or discourage the location of the trail in its proposed location. But the evidence shows that Mr. Mazzola considered that policy along with other relevant goals and policies in his analysis of the project, and balanced potentially conflicting policies in a manner and to a degree sufficient to satisfy SEPA.

7. The appeal asserts that SDOT lacked information or relied on inaccurate information concerning the project's impact on parking supply. The Appellants alleged various shortcomings in the parking study and argue that Director Hahn should have been advised of these alleged shortcomings before signing the Revised DNS. But SDOT obtained reasonably reliable information about parking capacity, and the proposal's impact on that capacity. SDOT had sufficient information about the project's potential impact on parking at the time it issued the Revised DNS, and it was not necessary for Director Hahn to have reviewed the studies before signing the Revised DNS.

8. The appeal also asserts there was insufficient information concerning traffic hazards and traffic impacts upon which to base the decision. But the record shows SDOT had sufficient information from its traffic consultants and its own staff with expertise, regarding the potential transportation, traffic hazards, and parking impacts of the proposal.

9. The appeal also asserts that the project description is incomplete. It is true that SDOT has not specified or committed to specific safety measures or design tools that will be used on the project, and Appellants' unease with this lack of specificity is understandable. But SEPA also requires that the environmental review be done at the earliest time, and SDOT routinely utilizes a 10 percent design level, as in this case, for purposes of conducting environmental review. The evidence shows that SDOT regularly uses the kind of mitigation measures described at hearing, e.g., signage, warning devices, consolidation of driveways, and other measures. These measures are within SDOT's

authority to require and would address the impacts that have been identified for this project. Under these circumstances, it was not unreasonable for SDOT to wait to identify which mitigation measures it will employ at a specific location. The project was adequately described for purposes of SEPA review.

10. The appeal claims that SDOT failed to perform an independent review of the project. Appellants note that not only is SDOT the project proponent and SEPA decisionmaker, but that the same SDOT staff person, Mr. Mazzola, wrote the Revised Checklist and the Revised DNS. Under SMC 25.05.926, SDOT is the designated lead agency under SEPA for this SDOT project. SMC 25.05.926 also directs that "*whenever possible, agency people carrying out SEPA procedures should be different from agency people making the proposal.*" Mr. Mazzola is employed within a separate division of SDOT which is charged with performing environmental review, and is not responsible for designing or implementing the project. The project manager, Mr. Scharf, did not make recommendations to Mr. Mazzola about the environmental review. While agencies may assign different individuals to perform the preparation of the checklist and the threshold determination, no authority has been cited that would require this to be done, and SDOT's procedure was consistent with SMC 25.05.926. No actual bias on Mr. Mazzola's part was shown in his SEPA review.

11. The Appellants also argued that the procedure was flawed because SDOT's Director, Mr. Hahn, did not conduct his own independent review of the proposal before he signed the Revised DNS. SDOT has delegated its SEPA review responsibilities to its Environmental Services group, which performed the review in this case and then recommended that Director Hahn approve the Revised DNS. It is not disputed that Mr. Hahn did not conduct his own analysis of the impacts, and that he relied on the Environmental Services group to carry out the review. The Appellants argue that, especially in a case where SDOT is the project proponent, the Director should conduct an independent review to ensure objectivity of the review. While such a procedure might be desirable, it is not required by SEPA. Instead, SEPA permits a lead agency to designate a person or section of the agency to undertake its SEPA procedural responsibilities. The Appellants also assert that the Revised DNS should have been withdrawn after they submitted their February 2011 comment letter, but no clear error by SDOT was shown on account of the letter.

12. The Appellants assert that the project will likely have probable significant adverse impacts requiring preparation of an EIS. The appeal alleges significant impacts will occur as a result of the proposal's inadequate sight distance, inadequate width, the sidepath design, and creation of driveway delays.

13. The Appellants cite the 127-foot sight stopping distance figure used in the WSDOT and AASHTO guidelines, which is not met by the proposal. The failure to meet the 127-foot figure was not shown to result in a significant traffic hazard. Instead, the evidence showed that not only could sight distances be increased to meet the guidelines by reconfiguring or consolidating driveways, but that other tools, such as signage or

warnings devices, could be employed by SDOT in order to reduce the same risks that would be addressed by a particular sight distance. As to the project's width, the Shilshole Segment would meet the 10-foot minimum of the WSDOT manual and the evidence did not show there would be probable significant adverse impacts on account of the trail's 8-12 width along the rest of the alignment. The evidence as a whole for the entire trail project did not show that there would be probable significant adverse impacts on account of sight distances or the trail's proposed width.

14. The Appellants argue that the proposed two-way "sidepath" is inherently unsafe and will therefore have significant adverse impacts. There are many factors which can influence whether a bicycle trail poses traffic hazards, but the evidence here does not show that the two-way multi-user configuration of the project would be "inherently unsafe" and therefore cause significant adverse impacts. .

15. Following the appeal of the original DNS, the Hearing Examiner concluded that the project would not have significant adverse traffic impacts or impacts on public services on account of traffic hazards. The evidence shows that the Shilshole Segment would not have adverse impacts on through traffic, and would have little impact on overall average peak hour delays at driveways. Left turn movements at driveways would experience delays ranging from 0 to 20 seconds, but overall driveway delays would be unchanged by the Shilshole Segment. The Appellants point out that an impact must be evaluated in relation to its context and intensity, but relative to the existing and future projected conditions of delay that will occur without the project, and considering the relatively low numbers of left movements as a portion of overall movements, the delays that would be caused by the project would not be significantly adverse under SEPA. The trail proposal's impacts, including the impacts of the Shilshole Segment, would not cause probable significant adverse impacts related to traffic or on account of traffic hazards.

16. Following the appeal of the original DNS, the Hearing Examiner concluded that even if the trail project (not including the Shilshole Segment) resulted in the loss of 190 parking spaces of some 480 spaces in the project area, that loss did not constitute a significant adverse impact.

17. As identified in the Revised DNS, up to an additional 91 parking spaces out of 169 spaces along the Shilshole Segment may be lost on account of the project. Businesses in the vicinity are understandably concerned about the loss of on-street parking for employees and customers. But the predicted loss of parking spaces, including the additional potential losses from the Shilshole Segment, was not shown to constitute a significant adverse impact. Even utilizing Appellants' figures for lost parking, the removal of 281 free informal parking spaces on account of the entire trail project, in light of the remaining parking capacity in the vicinity of the trail, would not cause a significant adverse impact.

18. Appellants also contend that the trail would be incompatible with other land uses to such a degree as to create significant impacts. The Appellants argue that the

Comprehensive Plan requires protection of the maritime and industrial businesses at this location. As noted above, the project's impacts related to parking, traffic, and traffic hazards, were not shown to be significant adverse impacts. The Appellants include long-established Ballard maritime and industrial businesses who predict they will be driven out of business because of conflicts with the trail. But the record does not show that these concerns are based on impacts which are recognized by SEPA. The Appellants have not shown that any incompatibilities between existing or zoned uses could create a significant adverse impact within the meaning of SEPA.

19. SDOT's environmental review complied with SEPA's procedural requirements. The entire trail project was not shown to have probable significant adverse impacts, even though the trail will have some impacts, particularly on businesses adjacent to the trail. The Appellants' theme throughout the proceedings has been that "bikes and trucks don't mix." But as was noted in the Examiner's previous decision, the policy choice to mix the two is not before the Examiner. The question here is whether SDOT's Revised DNS decision was clearly erroneous. The evidence does not show that the SDOT's decision was clearly erroneous, and it should be affirmed.

Decision

The Director's Revised Determination of Nonsignificance is hereby **AFFIRMED**.

Entered this 1st day of July, 2011.



Anne Watanabe
Deputy Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is issued.

The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

APPELLANTS

Ballard Business Appellants
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DEPARTMENT

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Intervenors

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Seattle, WA 98104

Ballard Chamber of Commerce
c/o Joshua Brower and Patrick Schneider (see above)

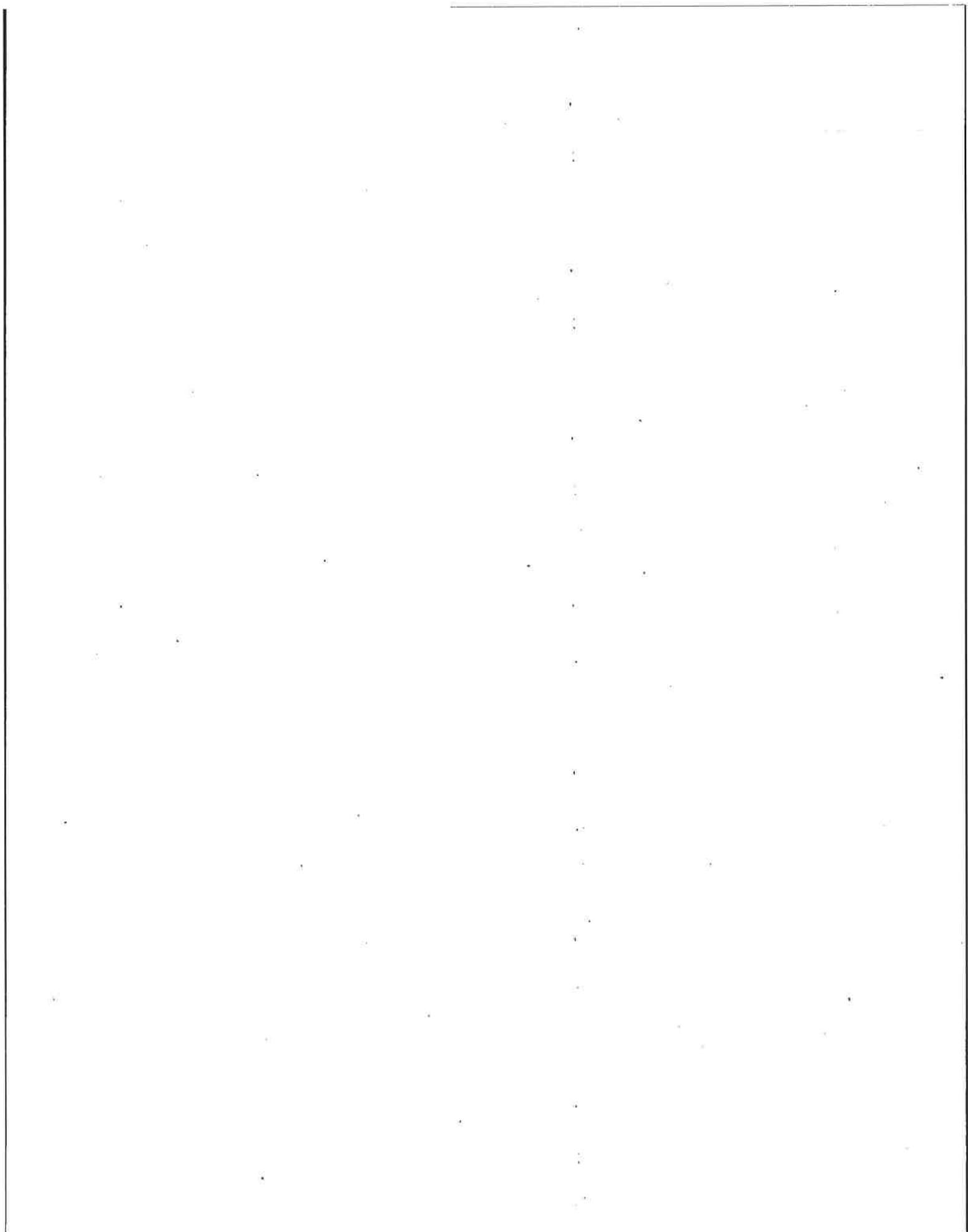


EXHIBIT C

FILED
KING COUNTY WASHINGTON

THE HONORABLE JIM ROGERS

MAR 2 2012

SUPERIOR COURT CLERK
BY DAVID J. SCHEETS
RENTV

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

Salmon Bay Sand and Gravel Co., Ballard
Chamber of Commerce, Seattle Marine
Business Coalition, Ballard Oil Company,
North Seattle Industrial Association, and the
Ballard Interbay Northend Manufacturing &
Industrial Center,

No. 09-2-26586-1 SEA

SECOND ORDER OF REMAND

Plaintiffs/Petitioners,

~~PROPOSED~~ 

vs.

The City of Seattle, the Seattle Department of
Transportation, the Seattle Hearing Examiner,

and

The Cascade Bicycle Club,

Defendants/Respondents.

This matter came before this court for hearing on December 16, 2011 on Plaintiff/Petitioners' challenge to the Seattle Hearing Examiner's decision affirming the Seattle Department of Transportation's (SDOT) revised determination of non-significance (DNS), under the State Environmental Policy Act (SEPA), for SDOT's proposal to complete the "Missing Link" segment of the Burke-Gilman Trail, including the segment along Shilshole Ave. NW, between 17th Ave. NW and NW Vernon Place. Petitioners were represented by Joshua Brower of Veris Law Group, PLLC, and Patrick Schneider of Foster Pepper, PLLC; Respondent City of Seattle was represented by Erin E. Ferguson; and Respondent Cascade Bicycle Club was represented by Jeffrey

1 M. Eustis, of Aramburu & Eustis, LLP. The Court, having heard the arguments of counsel, having
2 considered the administrative record of the proceedings below, and all of the pleadings, briefs and
3 other documents filed herein, now ORDERS:

4 1. Plaintiff/Petitioners' Motion to Strike Cascade Bicycle Club's Hearing Memorandum
5 is denied.

6 2. Plaintiff/Petitioners had the burden of proof to demonstrate that the Hearing
7 Examiner's decision was clearly erroneous and to prove that the impacts of the proposal would
8 be above the level of significance. Respondent City has the burden to prove prima facie
9 compliance with the procedures of SEPA.

10 3. After being asked by Petitioners to reconsider the issue of whether the City should
11 have considered alternatives in light of the Washington Supreme Court's decision in *Feil v.*
12 *Eastern Washington Growth Management Hearings Board*, 172 Wn.2d 367, 259 P.3d 227
13 (2011), this court concludes ~~that~~ footnote 4 of the *Feil* decision is ambiguous ~~and~~ the court
14 reaches the same conclusion as it did in its June 7, 2010 Order of Remand. ~~The~~ proposed
15 pathway is within the City right of way; the City has the right to decide the use of its right of
16 way; this is not a case about "unresolved conflicts concerning alternative uses of available
17 resources" under RCW 43.21C.030(2)(e); and SEPA does not require the consideration of
18 alternatives at the threshold determination stage of SEPA review.

19 4. The Hearing Examiner's conclusions of law number 1 through 8 and 10 through 18
20 are UPHHELD.

21 5. Hearing Examiner conclusion of law number 9 is not supported factually in the record
22 and is reversed for the reasons stated in the Court's oral decision, a transcript of which is
23 attached to this Second Order of Remand.

6. This matter is REMANDED to the Seattle Department of Transportation (SDOT) for the
limited purpose of more fully designing the Shilshole Segment so that the impacts of the proposal
on the adjoining land uses, and any proposed mitigation of those impacts, may be identified.

7. This court retains jurisdiction over this matter, including judicial review of any further
administrative appeals of actions taken in response to this order, and for entry of a final order upon
compliance with this court's Second Order of Remand.

//

last whether the Supreme Court reached the Alternative ISSC

1 8. The oral decision of the court is incorporated herein.

2 DATED this 2 day of March, 2012.

3
4 
5 _____
6 THE HONORABLE JIM ROGERS

7 Presented by:

8 PETER S. HOLMES
9 Seattle City Attorney

10 By s/ Erin E. Ferguson
11 ERIN E. FERGUSON, WSBA #39535
12 The City of Seattle
13 *Attorney for Respondent/Defendant*

Dated: 3/2/2012

14 Notice of presentation waived and approved as to form by:

15 By /s Jeffrey M. Eustis
16 Jeffrey M. Eustis, WSBA #9262
17 Aramburu & Eustis, LLP
18 *Attorney for Respondent Cascade Bicycle Club*

Dated: *authorized 3/1/2012*

19 By /s Patrick J. Schneider
20 Patrick J. Schneider, WSBA #11957
21 Foster Pepper, PLLC
22 *Co-counsel for Petitioners*

Dated: *email authorization 3/2/2012*

23 BROWER LAW, PS

By /s Joshua Brower
Joshua Brower, WSBA #25092
Veris Law Group, PLLC
Co-counsel for Petitioners

Dated: *email authorization 3/1/2012*

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THE HONORABLE JIM ROGERS

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

Salmon Bay Sand and Gravel Co., Ballard)
Chamber of Commerce, Seattle Marine)
Business Coalition, Ballard Oil Company,)
North Seattle Industrial Association, and the)
Ballard Interbay Northend Manufacturing &)
Industrial Center,)

No. 09-2-26586-1 SEA

Plaintiffs/Petitioners,)

vs.)

The City of Seattle, the Seattle Department of)
Transportation, the Seattle Hearing Examiner,)

and)

The Cascade Bicycle Club,)

Defendants/Respondents.)

VERBATIM TRANSCRIPT OF PROCEEDINGS

OF

A HEARING BEFORE THE HONORABLE JIM ROGERS

February 16, 2012

For Petitioners: Patrick Schneider and Joshua Brower

1 For Defendant/Respondent City of Seattle: Erin E. Ferguson
2 For Defendant/Respondent Cascade Bicycle Club: Jeffrey Eustis

3 (Proceedings of February 16, 2012)

4
5 **Judge:** I'll start off by thanking you for your patience while I worked on this case. This is my
6 decision in the, what has been called the "Burke Gilman Trail Missing Link" case, 09-2-26586-1.
7 This decision is on appeal from the Hearing Examiner's Ann Watanabe's decision dated the 1st
8 of July, 2011. I earlier, by 7 June, 2010, upheld and remanded both in part the earlier Hearing
9 Examiner order and then this matter comes before me following that. I recited the standard of
10 review in my earlier order in paragraph 2. It is the City's burden to prove prima facie
11 compliance with SEPA review and then the burden shifts to the petitioners to show that the
12 standard [inaudible] is clearly erroneous. And I will discuss this piece by piece.

13 First of all, should the City have considered alternatives? I have been asked to reconsider
14 my decision in the June 7, 2010 order in light of the recent *Feil* case, which I'm probably
15 mispronouncing, that alternatives need not be considered with my earlier decision under
16 43.21C.030(2)(e). I have read the *Feil* decision. In footnote 4 in that decision states as follows:
17 "The Orchardists raised additional arguments in this court that for reasons explained we need not
18 address on the merits. The Orchardists contend that the county failed to comply with RCW
19 43.21C.030(2)(e), which imposes a duty on the county to consider alternatives for the trail."
20 And it goes on from there. I reach the same conclusion as before that in this particular case,
21 although it is a case-by-case determination, that alternatives need not be considered. First of all,
22 I conclude this footnote is ambiguous because it is preceded by the sentence that the court need
23

1 not consider the merits of the decisions. It's also not clear what the Supreme Court meant by
2 conflicting uses in that particular case because of the truncated discussion unfortunately.

3 And secondly, I conclude as I did in my first decision, this is not a case of conflicting
4 uses. To my reading, that case *Feil* dealt with conflicting property rights. Here as I ruled before,
5 the City owns the proposed pathway. And the only other use of City streets there is not a
6 conflicting use issue in this case and I think it would make the statute meaningless if I was to so
7 find.

8 Secondly, were the factors in the SEPA review adequately considered, documented, and
9 reviewed? Petitioners argue that the documentation by Mr. Mazzola, and this is somewhat
10 colloquial but, was so poorly done that anyone wanting to know what he actually considered in
11 his review would need to review the record in front of the Hearing Examiner and not the
12 checklist. Well, I think they overstate the point seeking to have him document absolutely
13 everything on a form that is dictated. They make the point that certain considerations taken into
14 account by Mr. Mazzola only came out in the record in front of the Hearing Examiner.
15 Nevertheless, I did have the entire record in front of me, as did the Hearing Examiner, and on
16 that for most issues there is substantial evidence upholding the Hearing Examiner's conclusions
17 of law 2 to 8 and she was not clearly erroneous in her conclusions. For example, the errors in
18 the parking survey were clearly put on the record. The Examiner considered them and was not
19 clearly erroneous in concluding that SDOT did consider all of the issues at hand.

20 There is one exception to this. One of the themes of the petitioners has been that bikes
21 and trucks don't mix. And as the Hearing Examiner has said and as I have said, I think that is a
22 policy decision not a SEPA decision. However, one of the issues to be considered is whether the
23 proposed trail which is part of the City's several comprehensive plans, we talked about, there are

1 several different comprehensive plans, will have an impact that is incompatible with existing
2 zone uses on the water, such as Covich Williams which fuels the Alaska fishing fleet and where
3 there is a conflict. There is also the issue that was raised in the facts whether the design of the
4 trail itself could cause a problem with the businesses and put them out of business. SDOT
5 officials stated clearly on the record that that was not their intention to do so. In the future they
6 will deal with design issues. However, I will note the state of the confusion in the record on this
7 issue. On page 256-60 and 490-500, there is indication there were conversations between SDOT
8 and business owners. One of the business owners testified he thinks he will be put out of
9 business after looking at an exhibit. City officials do testify that they will reach decisions that
10 will not close a business. But SDOT witnesses also testify for example at page 58 and 59, that
11 there is no decision as to what steps they will take, it is just a consensus. And frankly, after
12 examination by the Petitioner's lawyers of the City officials, their answers are not clear.

13 Conclusion of law number 9 says in part the appeal asserts that the project description is
14 incomplete. "It is true that SDOT has not specified nor committed to specific safety measures
15 the design tools that will be used in the project and appellant's unease with this lack of
16 specificity is understandable. But SEPA also requires that environmental review be done at the
17 earliest possible time," it actually says earliest time, "and SDOT routinely utilizes a 10% design
18 level as in this case for purposes of conducting environmental review."

19 I conclude with limited issues that SDOT has not sufficiently planned the project in order
20 to even be able to consider whether there would be impacts in certain limited situations. Let me
21 be very clear. SEPA does not dictate the specific degree of project completion for SEPA review.
22 It may be 10%. It may be 60%. It may be a different number entirely. All may be adequate
23 depending on the project. The question is not the level of planning. The question is whether or

1 not there is enough to know whether it can be reviewed under SEPA for its impact. The reason
2 for this is what hasn't been decided can't be reviewed. Now this in many cases, the issue here
3 for example, which is a very limited issue, would be simply a design issue as was testified to.
4 But here the record in front of me, which is all I have, indicates that it may have, in fact, great
5 impacts, among impacts supposed to be accounted for in the checklist. Secondly, if in fact there
6 is impact, and I don't even know that there would be, if that decision was made later on it could
7 make the decision potentially unreviewable. Again, the record is very ambiguous on this point.
8 It is simply not fair to defer decisions and to trust the party making the decisions to reach the
9 right outcome, because this defeats the entire policy of the checklist review. Conducting this
10 issue, which again is a very limited issue, I've thought about a flip test which judges sometimes
11 use. If Covich Williams was applying for a project that might severely impact an existing bike
12 trail, would it be sufficient for a SEPA review to allow them to say to trust our future decisions
13 for the impact it might have. And I dare say it would be [inaudible] appeal.

14 Therefore in conclusion of law no. 9, which states it was not unreasonable to let SDOT
15 wait to identify which mitigation measures it would employ at specific locations that the project
16 was adequately described for purpose of SEPA review, I find is not supported factually in the
17 record.

18 However, to all other issues, I do conclude and as I have upheld the Hearing Examiner,
19 that all other issues were accurately documented and reviewed and I uphold the Hearing
20 Examiner on the other issues. I'm going to rule on other specific issues that I think I can rule on
21 at this time. And so I'll do that now.

22 There is the issue as to whether Mr. Hahn may rely on junior City officials in his review,
23 and I conclude consistent with the City's argument and under SMC 25.05.788 he may rely on

1 other officials, as he relied on Mr. Mazzola in this case. Perhaps Mr. Hahn should have
2 reviewed the letter sent to him by petitioners. I think that would have been the better practice.
3 He did not. This is clear. But Mr. Mazzola did consider the letter. He testified to that. And Mr.
4 Hahn was entitled to rely on Mr. Mazzola's recommendation.

5 I think the Hearing Examiner's conclusion of law number 11 very accurately states both
6 the facts of what happened and her conclusion, which I agree with.

7 Finally, was there evidence leading to the conclusion that an environmental impact
8 statement is required? Well, I'm remanding back for some very limited work on this case. I
9 can't rule upon that in its entirety, but I can rule on a few discreet issues that I don't think impact
10 the other issues.

11 First of all, parking. I uphold the Hearing Examiner on her conclusions on the impacts of
12 parking. While the City did not do its best work in its original parking study, which came out
13 during the Hearing Examiner's hearing. I believe that there is sufficient evidence, in fact there is
14 substantial evidence, considering the number of cars that are parked and the number of places
15 there are and uphold her conclusion and findings that probable impacts do not rise to the level of
16 probable significant adverse environmental impacts and I uphold her on that basis. I did not
17 consider the City's statement that they could simply close the street; I only considered the
18 evidence that there was no evidence that rises to the level of probable significant adverse
19 environmental impact.

20 And on sidepaths, there's been a great deal of testimony; there were reports and having
21 reviewed those, and the testimony, I uphold the Hearing Examiner that the potential impacts of
22 putting in a sidepath does not rise to the level of probable significant adverse environmental
23 impacts and I accept her conclusion on that issue.

1 I know that you have worked on this case for a very long time and I know that on the
2 business side first opposed it the City and bicycle side probably thought it would take forever to
3 get this trail finished and here I am remanding it again; hopefully, on a limited issue.

4 It is obvious for me the hallmark is fairness—fairness of the process to make sure that all
5 issues are adequately considered and can be considered in the SEPA checklist and so I'll remand
6 in that limited fashion and I would ask the parties to prepare a proposed order for me to sign. Do
7 you have any questions about this ruling?

8 **Eustis:** Your Honor, perhaps it should have been clarified in advance – Jeffrey Eustis for the
9 Cascade Bicycle Club. I'm assuming in this Courtroom, there is a video tape running?

10 **Judge:** There is. Well, it's a audio tape. It's the... The clock you see in front of you --

11 **Eustis:** Yes.

12 **Judge:** That indicates that the tape recorder is on.

13 **Eustis:** For purposes of preparing the Order, given that the Court went through a fair amount of
14 detail on the limited issue of remand, we would have available a tape of the audio record.

15 **Judge:** Refer to the Clerk of the Court and they will give you a CD.

16 **Eustis:** Ok, thank you. In the prior order, which I think helped in expediting review, the Court
17 retained jurisdiction. Would the Court be willing to retain jurisdiction once again, at least so the
18 familiarity of one member of the court isn't lost?

19 **Judge:** Yes, that's fine.

20 **Eustis:** Thank you, your honor.

21 **Judge:** Mr. Schneider, Mr. Brower/

22 **Schneider:** Could we have just a moment to confer Your Honor?

23 **Judge:** Sure.

1 **Schneider:** We don't have any questions.

2 **Judge:** I'm surprised about that.

3 **Judge:** Does the City?

4 **Ferguson:** No.

5 **Judge:** Ok then. I would like you to just confer about a time that you'd think you'd have an
6 order ready so that we can put that on our calendar and remind you if we don't have anything.

7 Does that make sense? Talk about how long it might take for preparation of an order, we'll set
8 that, your date is our due date and we'll move forward from there.

9 **Parties:** Thank you, thank you, Your Honor -----

10 **Judge:** You can walk back there. We're going to have a jury trial starting and we can go ahead
11 and if you can confer now and you can just walk back and tell Ms. Gillum before you leave.

12 Thank you.

13 ALL RISE.

14

(End of transcription of hearing)

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CERTIFICATE

1
2 I, Debra Hernandez, do hereby certify under penalty of perjury, under the laws of
3 the State of Washington:

4 That the foregoing transcript is true and correct and was transcribed by me to the
5 best of my ability.

6 That I am a legal assistant employed by the Seattle City Attorney's office and did,
7 at the request of the Assistant City Attorney, Erin Ferguson, transcribe the audible
8 testimony of February 16, 2012.

9 I certify that this transcript is a true and correct record of all the audible portions of
10 the taped testimony, including questions and answers, and all objections, motions and
11 exceptions of counsel made at the time of the foregoing proceedings. Areas of the tape(s)
12 or CD(s) that were not decipherable for any reason are noted as (INAUDIBLE).

13 Dated this 23rd day of February, 2012.

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Debra Hernandez

EXHIBIT D

Letter No. 9



JOSEPH C. BROWER
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August 1, 2016

Via Email (mark.mazzola@seattle.gov, scott.kubly@seattle.gov,
BGT_MissingLink_Info@seattle.gov) and Hand Delivery

Scott Kubly, Director
c/o Mark Mazzola, Environmental Manager
Seattle Department of Transportation
P.O. Box 34996
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Re: *Draft Environmental Impact Statement, Burke-Gilman Trail Missing Link Project*
BBA Comment Letter

Dear Messrs. Kubly and Mazzola:

We represent the Ballard Business Appellants (the “BBA”)¹ regarding the above-referenced matter. Please accept these comments regarding the Draft Environmental Impact Statement (“DEIS”) for the Burke-Gilman Missing Link Project. To aid SDOT in responding to the BBA’s comments, we separate this letter into a number of sections including an Executive Summary, Topical Comments and a detailed Comment Matrix, each of which contains specific comments that must be answered pursuant to WAC 197-11-560 and SMC 25.06.560.

Executive Summary

A. The DEIS Fails To Discuss the City’s Race and Social Justice Initiative or Apply the Racial Equality Toolkit.

The City of Seattle’s Race and Social Justice Initiative (RSJI) requires City departments, including SDOT, to apply a racial equity lens to all of its work, programs and projects. This includes ensuring equitable use of project funds to create and develop equitable infrastructure throughout Seattle. To do so, SDOT is supposed to use and apply the City’s Racial Equality Toolkit “early” to ensure its projects, including the Missing Link, are aligned with “departmental racial equality goals and desired outcomes.” Despite these requirements, the DEIS lacks any discussion or apparent application of RSJI or the Racial Equality Toolkit.

¹ The BBA includes Salmon Bay Sand & Gravel, Inc., Seattle Marine Business Coalition, Ballard Oil Company, North Seattle Industrial Association, and the Ballard Interbay Northside Manufacturing & Industrial Center. We are not submitting comments on behalf of the Ballard Chamber of Commerce, which is submitting comments under separate cover.

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09 - 001 The Draft EIS does not discuss the City’s Race and Social Justice Initiative (RSJI) because it is not within the scope of the State Environmental Policy Act. SDOT applies RSJI to its bicycle planning efforts outside the context of SEPA and has applied, and will continue to apply, the RSJI toolkit to the implementation of the specific Missing Link Project. The “early” application of the RSJI toolkit occurred with the equity analysis included in the Bike Master Plan (BMP) (see the response to comment 18-001). Specific to the Missing Link, the outreach team will develop an Inclusive Outreach and Public Engagement plan for this phase of the project. The plan will include a demographic analysis of the project area as well as an analysis of how racial and economic equity can be improved with the Missing Link Project.

SDOT disagrees with the assertion that the Seattle Bike Master Plan 2016-2020 Implementation Plan (March, 2016) includes only one project in communities of color (for information on how the Seattle Bike Master Plan identifies communities of color, and projects planned for those areas, please see the response to comment 18-001). While the Missing Link project itself is not located in one of the seven census tracts identified, it is one of many projects put forth in the 2016-2020 Implementation Plan.

Further, the project would serve not only the residents of the project study area since the objective of the Missing Link project is to complete the last leg of the Burke-Gilman Trail, a regional trail facility that otherwise runs continuously between Golden Gardens Park and the City of Bothell where it connects with the Sammamish River Trail. The Burke-Gilman Trail currently serves a large portion of Seattle and the region as a highly used nonmotorized transportation and recreational facility.

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SDOT's apparent failure to apply the RSJI is continuing its pattern of inequitable infrastructure development throughout Seattle. SDOT has historically focused its attention and funding on projects that serve largely white communities while ignoring communities of color. This disparate focus and funding is borne out by SDOT's Seattle Bicycle Master Plan 2016-2020, which includes five (5) major projects, all but one of which are located outside of communities of color. For the Missing Link, SDOT plans to spend tens of millions of dollars to complete yet another project north of the Ship Canal in an already well-served community. SDOT needs to explain its failure to apply and comply with the RSJI.

SDOT's failure to apply the RSJI to the Missing Link also runs contrary to national equitable bicycle policy propagated by the National Association of City Transportation Officials (NACTO). In July 2016, NACTO published a report titled "NACTO Bike Share Equity Practitioners' Paper #3" wherein it stated:

[S]afety gains are particularly important for low-income people and people of color. These groups make up an increasingly large part of the cycling population but often lack protected bike lanes in their neighborhoods. They disproportionately bear the burden of fatalities and injuries from dangerous drivers and poorly designed streets. An analysis from the League of American Bicyclists found that Black and Hispanic cyclists had a fatality rate 30% and 23% higher than white cyclists....Ensuring that people have transportation options that are efficient, convenient, and safe is fundamental to efforts to reduce income inequality in the United States today.

NACTO Bike Share Equity Practitioners' Paper #3, page 2. SDOT's continued preoccupation with completing the Missing Link at the expense of providing equitable bicycle facilities throughout the City—and especially in communities of color—runs contrary to NACTO policy and the City's RSJI. Also, SDOT's myopic focus undermines the City's efforts to address housing affordability in Seattle.

Comments:

1. Please explain how and when SDOT applied the RSJI to the Missing Link Project?
2. If SDOT did not, or has not, please explain why it has not and when SDOT plans to apply the RSJI and Toolkit to the Missing Link?
3. If SDOT plans to do so at a later date, please explain how the delayed application of RSJI complies with the Racial Equity Toolkit's requirement it be applied "early" and how it will be reflected in the Final EIS?
4. If SDOT does not plan to apply the RSJI or the Toolkit, please explain in the Final EIS why SDOT is not doing so and how this project is exempt from the RSJI?
5. Please explain how completing the Missing Link will serve communities of color and other traditionally underserved communities in Seattle?
6. Please explain how completing the Missing Link complies with NACTO's equity policies stated above?
7. Please explain how completing the Missing Link will address bicycle safety in Seattle's communities of color and other traditionally underserved communities in Seattle?

09-003

09-004

09 - 002 Please refer to the responses to comment 09-001 and 18-001.

SDOT agrees with NACTO's assertion that safety gains are important for low-income people and people of color. The Burke-Gilman Trail Missing Link project would improve safety for all users traveling through the study area, compared to the existing condition. The project would not serve only the residents of the project study area since the purpose of the Missing Link project is to complete the last leg of the Burke-Gilman Trail, a regional trail facility that otherwise runs continuously between Golden Gardens Park and the City of Bothell where it connects with the Sammamish River Trail. The Burke-Gilman Trail currently serves a large portion of Seattle and the region as a highly used nonmotorized transportation and recreational facility.

Please also refer to the response to Comment 09-005 regarding the project and housing affordability.

09 - 003 Please see the response to your comment 09-001.

09 - 004 Please refer to response to Comment 09-002 for information on how the Missing Link will serve communities of color and other traditionally underserved communities in Seattle, and for information on how the Missing Link complies with NACTO's equity policies.

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09-006 **8. Please explain how completing the Missing Link addresses housing affordability in Seattle's communities of color and other traditionally underserved communities in Seattle?**

B. The City Could Build 13-16 Miles of Protected Bicycle Facilities Throughout Seattle for the Same Cost as Building 1.5 Miles of Recreational Trail in Already-well Served Ballard.

The Missing Link is a ridiculously expensive project and the City could build between 13-16 miles of protected bicycle facilities for the same amount of money. SDOT's original budget to complete the Missing Link estimated it would cost approximately \$14 million to \$17 Million in 2008-2012 dollars. Construction costs in today's dollars will be closer to \$18 million to \$22 million or more.

That cost does not even include the money SDOT is spending preparing the DEIS and Final EIS. In 2013, Mayor McGinn estimated it would cost approximately \$300,000 to complete the EIS. SDOT has already spent well over \$1 million on the Draft EIS. Completing the Final EIS could add another \$1 million to this cost.

Together, the construction and SEPA costs will run between \$20 million to \$25 million to complete 1.5 miles of recreational trail. SDOT has already earmarked approximately \$9 million of the Move Seattle Levy for this project—that amount is nearly 10% of the *entire* bicycle infrastructure budget in Move Seattle. The City could better use these funds to construct miles and miles of protected bicycle facilities as it is doing everywhere else in Seattle.

SDOT builds protected bicycle facilities throughout Seattle for approximately \$1.3 million to \$1.6 million per mile. SDOT completed the protected bicycle facility on 2nd Avenue for approximately \$1.3 million and the Westlake Cycle Track, which is a far more complicated project, for \$1.6 million. At these rates, instead of spending \$20 million to \$25 million dollars to build 1.5 miles of recreational trail in already well-served area, SDOT could build 13-16 miles of protected bicycle facilities throughout Seattle, especially in traditionally underserved communities and communities of color.

Comment:

- 09-007 **9. How much is the budget for the EIS?**
- 09-008 **10. How much will it cost to complete the Final EIS?**
- 09-009 **11. Why is SDOT spending so much money to construct a recreational trail when it could build miles and miles of bicycle infrastructure with this money?**
- 09-010 **12. Has SDOT prepared a cost-benefit analysis for the Missing Link pursuant to SMC 25.05.450?**
- 09-010 **13. If not, why not?**
- 09-010 **14. What is SDOT's current cost estimate for the Shilshole South Alternative?**
- 09-010 **15. What is the basis for that estimate?**
- 09-010 **16. What is SDOT's cost estimate to construct the Shilshole North alternative?**
- 09-010 **17. What is the basis for that estimate?**
- 09-010 **18. What is SDOT's cost estimate to construct the Ballard Avenue alternative?**

09 - 005 The issue of housing affordability in Seattle's communities of color and other traditionally underserved communities in Seattle is beyond the scope of this project, the objective of which is to complete the Burke-Gilman Trail by creating a safe, direct, and defined multi-use trail for persons of all abilities, for a variety of transportation and recreational activities, and to maintain truck and freight facilities and access that support industrial and water-dependent land uses within the shoreline district and BINMIC. However, the Economic Considerations Report does include an analysis of the project's potential impacts to property values in the study area (Section 4.2.2).

For information on how the City of Seattle is working to address issues of housing affordability, please refer to the Housing Affordability and Livability Agenda (HALA) website at <http://www.seattle.gov/hala>.

09 - 006 The purpose of the environmental review process is to evaluate the potential impacts of completing the Burke-Gilman Trail Missing Link and not to evaluate whether project funds should be spent elsewhere. The cost to complete the Burke-Gilman Trail has not yet been determined, and is outside the scope of this EIS.

The completion of the Burke-Gilman Trail through Ballard has been a priority for the City since the 1990s. As described in Section 1.2, there are currently a number of barriers for people walking, biking, or rolling between the existing trail ends. The objective of the project is to create a safe, direct, and defined multi-use path for people of all abilities for a variety of transportation and recreational activities, and to maintain truck and freight facilities and access that support industrial and water-dependent land uses within the shoreline district and BINMIC.

09 - 007 The budget for the EIS and the cost to complete the Final EIS are outside the scope of and not pertinent to the environmental review for completing the Burke-Gilman Trail Missing Link. EIS costs have been affected by the requests for additional, detailed information, by the development and evaluation of four alternatives, and by SDOT's commitment to provide thorough objective responses to comments throughout the process.

09 - 008 The purpose of the environmental review process is to evaluate the potential impacts of completing the Burke-Gilman Trail Missing Link and not to evaluate whether project funds should be spent elsewhere.

09 - 009 As provided by SMC 25.05.450, a cost-benefit study is not required by SEPA. SDOT has not prepared a cost-benefit analysis for the BGT Missing Link. For purposes of complying with SEPA, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important environmental and community considerations.

09 - 010 SDOT did not develop cost estimates for the build alternatives, which, as previously stated, are outside of the scope of SEPA and not relevant to the evaluation of environmental and community impacts considered in the EIS. Overall project cost will be considered by the City as part of its decision-making process. A baseline cost estimate will be developed for the Preferred Alternative once the project's design phase is underway.

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- 09-010 **19. What is the basis for that estimate?**
- 09-011 **20. What is SDOT's cost estimate to construct the Leary alternative?**
- 09-012 **21. What is the basis for that estimate?**

C. SDOT Broke Its Promise to Study Both Design and Locational Alternatives in the EIS.

In 2013, Mayor McGinn and SDOT promised the Ballard community that the EIS would include both *design* and *locational* alternatives, including the Ballard Cycle Track Proposal.² The Ballard community demanded this promise because protected bicycle facilities—what SDOT is building throughout Seattle—are far safer compared to SDOT's current sidewalk design to complete the Missing Link. SDOT broke its promise by failing to include any *design* alternatives in the DEIS and spent just *two* sentences in the DEIS explaining why it did not include protected bicycle facilities—see Page 1-28 of the DEIS.

Comments:

- 09-012 **22. What is the basis for SDOT's policy decision to break its promise to the Ballard community and not include design alternative in the DEIS?**
- 09-013 **23. Since all of SDOT's Alternatives include a sidewalk next to the recreational trail, how come SDOT would not consider protected bicycle facilities with a similar adjacent sidewalk?**
- 09-014 **24. Explain how a sidewalk next to a protected bicycle facility would not provide "safe accommodations for pedestrians and other nonmotorized users?"**
- 09-015 **25. How would using a combination of protected bicycle facilities and adjacent sidewalks to complete the Missing Link be any different—better, worse, more safe, less safe—than the Westlake Cycle Track project?**
- 09-016 **26. Please explain why SDOT used a combination of a protected bicycle facility next to a sidewalk for other non-motorized users in Westlake but refuses to consider such a combination for the Missing Link?**

D. The Draft EIS Does Not Comply With the Hearing Examiner's 2012 Order and Judge Rogers Order.

The Draft EIS is materially insufficient and fatally flawed because SDOT failed to sufficiently design each alternative route so it could properly assess potential significant adverse environmental impacts as Ordered by the Hearing Examiner in 2012 and Judge Rogers in 2011. In Washington, the adequacy of an EIS is determined under the "rule of reason." See *Weyerhaeuser*, 124 Wn.2d 26, 41 (1994), citing *Barrie v. Kitsap Co.*, 93 Wn.2d 843, 854 (1980). "To be adequate, an EIS must present decisionmakers with a 'reasonably thorough discussion of the significant aspects of the probable environmental consequences' of the agency's decision." See *Kiewit Const. Grp. Inc. v. Clark Co.*, 83 Wn.App. 133, 140 (1996), citing *Klickitat Co. Citizens Against Imported Waste v. Klickitat Co.*, 122 Wn.2d 619, 633 (1993); see also *Weyerhaeuser*, 124 Wn.2d at 38. Further, an EIS "must provide sufficient information to allow officials to make a reasoned choice among alternatives." See *Kiewit Const.* 83 Wn. App. at 140.

² <http://www.ballardcycletracks.com/PDF/CycleTracksPresentation.pdf>

09 - 011 When developing an environmental impact statement, SEPA requires that project proponents evaluate alternative alternatives that accomplish the project objectives. The project objective has always been and remains completion of the Burke-Gilman Trail, which is a multi-use trail that accommodates pedestrians, bicycles, skaters, and other non-motorized forms of travel on a single trail.

When deciding upon alternatives to fully evaluate in the Draft EIS, SDOT determined that a cycle track or protected bike lane would not meet the project objectives, as these types of facilities are only meant for bicycles. Although some portions of each alternative may retain a sidewalk parallel to the trail, in order to maintain consistency with other existing portions of the Burke-Gilman Trail, the trail is multi-use throughout in all alternatives considered. Please see Section 1.9 of the FEIS for further discussion about the alternatives that were not carried forward.

09 - 012 As noted in Section 1.2 of the FEIS, the purpose of the project is to complete a multi-use trail. While protected bicycle lanes may fulfill the transportation needs through the area for cyclists, sidewalks do not fulfill the same purpose for pedestrians and other nonmotorized users. Sidewalks do not fulfill the same purpose as a multi-use trail for pedestrians and other nonmotorized users. Sidewalks are intended for entering and exiting businesses, tend to be more of a location for people gathering and mingling, may contain sidewalk seating, signage, and landscaping.

The Missing Link has existing established multi-use trail segments on either end, whereas the Westlake Cycle Track was intended only as a cycle track to facilitate bicycle ingress and egress to and through the Westlake area.

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The Draft EIS woefully fails to provide sufficient information regarding each Alternative route to allow decisionmakers to make a reasoned selection between the Alternatives described therein because:

- SDOT failed to *actually design* the Alternatives so it has no accurate or sufficient data to determine whether the trail will "operate safely" as it claims;
- SDOT failed to interview any businesses owners adjacent to the trail to determine their operation needs and to determine which vehicles actually enter/exist these properties and thus SDOT cannot opine the trail will "operate safely;"
- SDOT failed to conduct an Auto-turn analysis based on information regarding business and vehicle operations and thus, again SDOT cannot opine the trail will "operate safely."

All of these issues are discussed in greater detail in the Comment Matrix, which is attached as Attachment I. Copies of the Hearing Examiner's Order and Judge Roger's Order are attached hereto as Exhibits A and B, respectively.

In her Order, the City's Hearing Examiner required SDOT prepare an EIS in order to more fully design[] the [Missing Link] so that the impacts of the proposal on adjoining land uses, and any proposed mitigation of those impacts, may be identified." Quoting from Judge Roger's Order, the Examiner said:

"It is simply not fair to defer decisions and to trust the party making the decisions to reach the right outcome, because this defeats the entire policy of [SEPA] review."

Exhibit A, Page 2, Item 5. But that is exactly what SDOT is doing in the EIS.

SDOT has not designed any of the Alternatives sufficiently for it to properly evaluate potential significant adverse impacts, including, without limit, significant adverse traffic hazards and land use impacts. Instead, SDOT repeatedly states that it can make the Missing Link "safe" because trail users and roadway users will follow the "Rules of the Road." Essentially, SDOT is asking the City's decisionmakers and public to trust SDOT's internal decision-making in selecting and designing the preferred Alternative, which, according to Judge Rogers and the Hearing Examiner, defeats the entire policy of SEPA review. SDOT needs to withdraw the Draft EIS and issue a Supplemental Draft EIS with this information and a preferred Alternative to the decisionmakers and public can make a properly informed choice.

Comments:

27. How does SDOT's level of trail and alternative design comply with the Hearing Examiner's Order?
28. How does SDOT's level of trail and alternative design comply with Judge Roger's Order?
29. What is the level (percentage) of design for the Shilshole South Alternative?
30. What is the basis for that estimate?
31. What is the level (percentage) of design for the Shilshole North alternative?

09 - 013 SDOT disagrees with the commenter's characterization of the prior Hearing Examiner and Court orders, which were made in the context of the adequacy of determinations of non-significance that are no longer valid and are no longer being relied upon. Also, SEPA does not demand a particular substantive result, particularly related to aspects of a project such as general "safety" that are not elements of the environment required to be evaluated. Although SDOT designs all facilities to operate safely and that is a primary goal of the project, SEPA does not demand that result.

The EIS appropriately relies on designs at approximately 10% level of design for each of the build alternatives, which SDOT determined was sufficient to evaluate any potential significant adverse environmental impacts. SEPA requires that "The basic features and analysis of the proposal, alternatives, and impacts shall be discussed in the EIS and shall be generally understood without turning to other documents; however, an EIS is not required to include all information conceivably relevant to a proposal..." (WAC 197-11-402(6)). SEPA encourages EISs to be prepared early in the process (WAC 197-11-406 and WAC 197-11-055). Here, the level of design for alternatives allowed an evaluation of the features of the alternatives, with conservative assumptions to ensure that impacts were adequately identified and fully considered. The level of design was in enough detail for comparative purposes, and to determine whether design features could be employed to mitigate potential impacts. The potential traffic hazard impacts described by the Hearing Examiner were identified and a variety of possible design options were developed and could be employed to create a safely operating trail. Additional discussion of design and safety considerations are included in the FEIS in Section 1.7.1, Roadway Design and Safety Considerations.

The Transportation Discipline Report, Technical Appendix B, contains a summary of the business owner interviews. Appendix A of the FEIS contains the AutoTURN analysis.

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- 09-013 32. *What is the basis for that estimate?*
- 09-013 33. *What is the level (percentage) of design for the Ballard Avenue alternative?*
- 09-014 34. *What is the basis for that estimate?*
- 09-014 35. *What is the level (percentage) of design for the Leary alternative?*
- 09-014 36. *Did SDOT prepare a traffic hazard analysis?*
- 09-014 37. *If it did, please identify it.*
- 09-015 38. *If not, please explain why not?*
- 09-015 39. *Did SDOT prepare an Auto-Turn analysis for each driveway for each Alternative based on the actual vehicles that use each driveway as part of this traffic hazard analysis in the Draft EIS?*
- 09-016 40. *If not, why not?*
- 09-016 41. *Did SDOT interview adjacent businesses and property owners/operators along each Alternative to determine actual operations as part of this traffic hazard analysis and/or land use impact analysis in the Draft EIS?*
- 09-016 42. *If not, why not?*

SDOT must withdraw the Draft EIS and prepare and issue a Supplement Draft EIS that includes sufficient trail designs for each Alternative so it can properly evaluate potential significant adverse impacts, including, without limit, traffic hazard and land use impacts for each Alternative.

09-017

E. Errors and Omissions

SDOT's Draft EIS contains significant and fatal errors and omissions. It must be withdrawn and a Supplement Draft EIS be prepared and issued. In addition to the items noted in the Comment Matrix below, the Draft EIS contains the following errors and omissions:

Comments:

On Page. 1.4 in the Scoping Section, SDOT states:

"Safety is not itself an element of the environment to be reviewed under SEPA. In addition, the analysis in an EIS is conducted at an early stage of project development, such that it is not possible to examine all safety issues that could be resolved through detailed design."

SDOT's statement, however, contradicts the Hearing Examiner's Order, which states:

"...the Examiner concludes that the proposal would have significant adverse impacts in the form of traffic hazards...because of conflicts between truck movements and other vehicle traffic and trail users..."

43. Please explain how the DEIS sufficiently addresses and resolves significant traffic hazards impacts between trucks, vehicles and trail users?

09 - 014 The EIS identifies potential conflicts between trail users and vehicles, such as at driveways and intersections, which are common to all alternatives. For each alternative evaluated in the DEIS and FEIS, Section 7.3 discusses potential traffic hazards specific to that alternative, under the heading "Safety". It also identifies means to reduce or eliminate conflicts between modes. The Final EIS includes additional information on design and safety considerations in Section 1.7.1.

09 - 015 During the development of the alternatives to be evaluated in the Draft EIS, an AutoTURN analysis was completed for a representative sample of driveways along the alignments. The purpose of the analysis was to determine the appropriate driveway width needed to accommodate the range of vehicles that would use those driveways. Inadequate driveway width could result in temporary restriction of traffic flow as larger vehicles have to swing into opposing traffic lanes, and can result in delays because such movements can require waiting for an opening in traffic in both directions. It should be noted that large trucks regularly block traffic on streets on a temporary basis throughout the study area at present, and these types of interruptions are not considered significant impacts. For the Draft EIS, the types of vehicles that were assumed to use the driveways were consistent with the type of land use in the area. For driveways where an AutoTURN analysis was not completed, widths were assumed to be consistent with those developed for driveways that were analyzed using AutoTURN. This level of analysis is adequate to understand the potential magnitude of impact associated with each of the alignments. Appendix A of the FEIS contains AutoTURN analyses. Additional AutoTURN analyses may be conducted as the project progresses through design, if needed.

09 - 016 Phone interviews were conducted with property owners along the Preferred, Shilshole South, and Shilshole North Alternatives as part of the FEIS. Information about vehicle movements (backing into/out of driveways); busy times of the day, week, and year; and vehicle types was collected during the interviews. Results of the interviews were incorporated into Section 4.2.2.3 of Technical Appendix B (Volume 3) and Section 7.2.3 of the Final EIS. Interview notes are included in Appendix B of the Transportation Discipline Report (Technical Appendix B of the FEIS). Additionally, SDOT will continue to coordinate with adjacent businesses, property owners, and interested stakeholders as the design process continues.

09 - 017 As described in response to prior comments, SEPA encourages the preparation of an EIS at the earliest possible point in the planning and decision-making process, when the principal features of a proposal and its environmental impacts can be reasonably identified. See WAC 197-11-055. Here, the level of design for each alternative is sufficient to evaluate the potential impacts, including traffic hazard and land use impacts. These potential impacts are discussed throughout the EIS. Please see Section 1.8 of the FEIS for further detail regarding potential traffic hazards associated with the alternatives. There is no basis for the preparation of a supplemental EIS. See WAC 197-11-405(4).

09 - 018 As described in response to prior comments, SDOT disagrees with the commenter's characterization of the prior Hearing Examiner and Court orders, which were made in the context of the adequacy of determinations of non-significance that are no longer valid and are no longer being relied upon. Also, SEPA does not demand a particular substantive result, particularly related to aspects of a project such as general "safety" that are not elements of the environment required to be evaluated. So although SDOT designs all facilities to operate safely and that is a primary goal of the project, SEPA does not demand that result.

That said, potential traffic hazard impacts, including any potential conflicts between vehicles and trail users, are analyzed and disclosed in FEIS Section 7.3. Section 1.7.1, Roadway Design and Safety Considerations also lists methods that can and would be employed to reduce the risk of such conflicts. Although the final design has not been determined, the analysis considers the range of potential impacts that could result from the project along each alignment and identifies potential mitigation measures.

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The Land Use Discipline Report is fatally flawed because it failed to include and consider impacts on the following existing businesses and uses:

- Ballard Transfer;
- Leib Marine;
- Pacific Fisherman;
- Snow and Co.;
- Ballard Oil;
- Gardner Boat Repair;
- Pipes Marine Repair;
- Stabbert Shipyard;
- McGuiness Marine;
- Sher Marine/retail sales;
- Sea and Shore Construction; and
- Jacobsen Marine Terminal.

09-019

09 - 019 These businesses were inadvertently left out of the Land Use Discipline Report as a result of a mapping error. Please see Section 4.3 of the FEIS for corrected tables, and Technical Appendix A (Volume 3) for an Update and Errata of the Land Use Discipline Report. This corrected information was considered as part of the impact evaluation process, however, the omissions did not change the determination of impact significance.

Individual business owners were interviewed as a part of the transportation analysis for the FEIS, and a summary of the interviews is contained in Technical Appendix B. Concerns regarding potential operational impacts were considered and are addressed in Chapter 4, Chapter 7, Chapter 8, and in Technical Appendix B (Volume 3) of the FEIS.

09 - 020 Consistent with Seattle's SEPA policy on Land Use (SMC 25.05.675.J.1.b), impacts relating to transportation and parking are addressed under Transportation and Parking chapters respectively in the FEIS. These impacts are discussed in the Land Use chapter because they were considered in the economic analysis that the Land Use Chapter relies upon. Please see the FEIS Chapter 7 and Technical Appendix B, which have been updated to address the safety of trucks backing across the trail. As in any right-of-way, trucks that are backing must obey the rules of the road, including flaggers, where required, to warn oncoming traffic and direct truck movements. It is noted that illegal movements also cause hazards.

09-020

Sight distance concerns are described in Chapter 7 of the Final EIS and Chapter 5 of Technical Appendix B (Transportation Discipline Report); Section 4.7.1 of the FEIS discusses design and safety considerations in further detail.

09-021

44. Please explain why the DEIS failed to include a discussion of potential impacts to the numerous business listed above?

45. Please explain why the DEIS failed consider that many of companies at these locations have to back out of their driveways?

46. Please explain how SDOT can ensure the trail will operate safely with trucks backing across it at these locations?

47. Please provide the detailed traffic hazard analysis—including sight distance analysis—to support SDOT's conclusions. If SDOT did not prepare a detailed engineering analysis, please explain why not?

48. Please explain why the DEIS did not include a detailed discussion and analysis of potential land use impacts to these businesses?

49. Please provide the detailed land use impact analysis related to these existing businesses SDOT failed to include in the DEIS showing the potential land use impacts to these businesses. If SDOT does not have this information, please explain why it will not revise the EIS to include it?

50. Please explain how these water-dependent businesses can either continue operating at their current location or be "relocated" as SDOT states in the DEIS if there are significant adverse land use impacts from the trail?

51. Please explain how SDOT's land use analysis is adequate and sufficient for a decisionmaker to make an informed decision if the DEIS failed to include any information about these existing water-dependent businesses?

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09 - 021 The DEIS listed land uses on the same side of the street as the trail for all alternatives, because these were the most directly affected. Uses along both sides of NW 54th should have been included because that right-of-way is so constricted. The FEIS has been revised with an expanded range of affected properties, including the uses referenced (see Comment 09-019).

A revised Technical Appendix A, Update and Errata to the Land Use Discipline Report, is included in Volume 3 of the FEIS which includes the businesses on both sides of the currently unimproved portion NW 54th St. The Preferred Alternative does not travel along this portion of NW 54th St.

The Draft EIS did not state that the project is expected to cause "relocation" of any uses, because impacts to businesses are not expected to be significant. The Draft EIS referred to businesses needing to relocate loading operations that are occurring in City right-of-way.

The FEIS analysis includes water-dependent and water related uses, and evaluates how businesses would be affected based on loading and driveways operations within the public right-of-way, which SDOT considers adequate for determining the significance of land use impacts. As described in the DEIS, none of the driveways would experience delays significant enough to be likely to cause businesses to substantially change their operations to the point of business failure, and are not expected to result in changes in land use. Instead, these uses are expected to adapt to the changes caused by implementation of the Missing Link. See Section 4.3.2 in the FEIS. As required by SEPA, the EIS describes the potential for significant adverse impacts, and measures that can be employed to reduce or avoid impacts in the design and operation of the trail.

09 - 022 Chapter 4, Land Use, in the FEIS corrects the land use analysis, including supporting figures and charts. This includes correcting the land area of business uses along the alternative routes. Technical Appendix A (Volume 3) provides an Errata for the Land Use Discipline Report and updated tables. The determination of impact significance has not been altered by the inclusion of the corrected data.

52. The comparison of the Shilshole North versus the Shilshole South Alternative on Page 5-5 of the Land Use Discipline Report is inaccurate because SDOT ignored and failed to include the above businesses in the EIS. Please correct this error.

09-022

53. The pie chart, Figure 5-2 on page 5-8 of the Land Use Discipline Report, is similarly flawed because SDOT failed to include the actual businesses and thus did not accurately calculate square footage based on the correct linear footage of business uses along these routes. Please correct this error.

09-023

54. SDOT's driveway-to-driveway comparisons in the Land Use Discipline Report are incorrect because SDOT failed to understand and account for actual uses of each driveway. For example 56th street and Market street driveway count includes single-family and unused driveways and gives them equal weight to industrial driveways that have for example 300+ heavy truck crossings per day. It is impossible for a reader—much less the decision maker—to make an informed decision based on accurate information because SDOT assigned equal weight for residential driveways with one or two cars to industrial driveways with hundreds of crossings and/or large truck crossings. Please correct this error.

09-024

55. Table 4-3 in the Land Use Discipline Report is similarly flawed because SDOT failed to include existing businesses (e.g., Stabbert, etc.) and failed to understand and evaluate that trucks existing these businesses must back across the proposed trail. Please correct or explain this incorrect information?

09-025

56. SDOT failed to adequately explain why the large number of vehicles using Shilshole will not create traffic hazards with an increased number of trail users—As the Hearing Examiner and Judge Rogers said—"It is simply not fair to defer decisions and to trust the party making the decisions to reach the right outcome, because this defeats the entire policy of [SEPA] review." Please provide a detailed traffic hazard and land use analysis to support this statement in the DEIS or explain why it is not necessary?

09-026

57. Please explain how trail users will safely cross from Shilshole to Market Street based on the current level of trail design?

09-027

58. Please correct the DEIS to accurately reflect the history of the Missing Link. Figure 1-1 on page 1-2 should include a reference to the 1996 "Manning Resolution" No. 29474, which located the Missing Link along Leary Avenue to Market Street as part of the City's approval of a 30-year franchise for the Ballard Terminal Railroad.

09-028

59. Please explain how location and operation of the Missing Link on Shilshole Avenue NW—either south or north—will not adversely impact operation of the Ballard Terminal Railroad pursuant to its 30-year franchise?

09 - 023 The driveway analysis includes information about driveways to characterize potential impacts, such as vehicle classification and special vehicle maneuvers. SDOT has updated the Roadway Design and Safety Considerations section included in Section 1.7.1 of the FEIS, which assesses the potential impacts between different types of users, and identifies appropriate mitigation measures. Please see Chapter 7 of the FEIS and Technical Appendix B (Volume 3) for updated information, such as vehicle classification and special vehicle maneuvers at driveways. Please also see response to Comment 09-016.

09 - 024 SDOT did consider driveways and access to businesses in the Transportation analysis. For the Final EIS, additional information is included regarding vehicle types and movements, including backing across the trail. Backing across the trail is not a land use impact, however. It may require a change in operations such as a flagger to warn oncoming traffic, but this is not expected to affect business viability, as these conditions are regularly dealt with by businesses throughout the region. Please see the updated driveway vehicle operations analysis included in the FEIS Chapter 7 and Technical Appendix B (Volume 3) as well as FEIS Section 1.7.1, for discussion of design and safety considerations.

Please also see response to comment 09-016.

09 - 025 As described in response to prior comments, SDOT disagrees with the commenter's characterization of the prior Hearing Examiner and Court orders, which were made in the context of the adequacy of determinations of non-significance that have since been invalidated and are no longer being relied upon. SEPA requires the disclosure of potential impacts, but does not demand a particular substantive result.

Section 7.2 of the FEIS and Chapter 4 of the Technical Appendix B (Transportation Discipline Report) describe that nonmotorized users currently travel along various streets in the study area, including Shilshole Ave NW. As discussed under Potential Impacts in Section 7.3 of the Draft EIS, traffic and nonmotorized volumes in the study area are expected to increase between 2015 and 2040. Section 7.3.1 of the Draft EIS also describes that with anticipated growth in vehicle and nonmotorized volumes, there would be impacts if no dedicated facilities were provided in the study area. Generally, dedicated facilities are safer than areas lacking dedicated facilities. Therefore, Burke Gilman Trail users at present are exposed to traffic hazards in the area of the Missing Link. Providing a dedicated facility would improve nonmotorized comfort and safety in the study area, and organize conflict points. The EIS discusses areas such as driveways and intersections where potential conflicts could occur. The final design will include a number of safety considerations to minimize potential conflicts associated with an increase of users. These are described in Section 1.7.1, Roadway Design and Safety Considerations, of the Final EIS.

09 - 026 Although the comment is not clear about which alternative this was referring to, in this intersection and all signalized intersections crossed by the trail, trail users will be directed through the intersection on a marked crosswalk. Refer to Section 1.7.1 and Chapter 7 of the FEIS, and Technical Appendix B (Volume 3) for further discussion of potential intersection designs to address the crossing at this intersection.

09 - 027 Resolution No. 29474 was ultimately rejected by the business and cycling community, prompting Resolution 30408, which directed a new study that led to Resolution No. 30583, which described the Shilshole South route. Figure 1-1 has not been revised.

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09 - 028 As described in the Draft EIS, SDOT would need to relocate the tracks between 11th Ave NW and NW Dock St during construction. Track relocation is governed by the operating agreement that the BTR has with the City, and no further mitigation or special compensation is required. SDOT will coordinate closely with representatives from the BTR to minimize any potential impacts during track location.

The Ballard Terminal Railroad (BTR) would be able to continue its operations under any of the alternatives studied in the Draft EIS. Similar to existing conditions, trail users would have to cross the tracks, but this would not hinder operations, given the slow speeds at which the train runs, and the fact that most train activity takes place at night when there are no cars parked on the tracks and few trail users expected. Similarly, the location of the Preferred Alternative along Shilshole Ave NW and NW 45th St would allow continued operation of the BTR.

09 - 029 The purpose of the project is to complete an existing facility, not create a new one. The existing Burke-Gilman Trail is a multi-use regional trail. The primary objective of the Missing Link is consistent with the primary objective of the entire trail, specifically to fill in the missing 1.4-mile section to provide a safe, direct, and defined multi-use trail for persons of all abilities, for a variety of transportation and recreational activities. The Missing Link also strives to maintain truck and freight facilities and access that support industrial and water-dependent land uses within the shoreline district and BINMIC. Additionally, the completion of the Burke Gilman Trail as a multi-use trail is supported by a number of policies and plans: the Seattle Bike Master Plan, PSRC's Vision 2040, the City of Seattle Comprehensive Plan, the City of Seattle Parks and Recreation 2011 Development Plan, all of which are outlined and discussed in the Land Use Discipline Report and discussed in Chapter 4, Land Use, of the FEIS.

09-029 60. Please explain why the "primary objective" of the proposed project on Page 1-3 is narrowly defined to create a "multi-use trail" instead of protected facilities for bicyclists and other non-motorized users?

09-030 61. Please explain the statement on Page 1-4 that it is "not possible to examine all safety issues that could be resolved through a detailed design"?

09-031 62. Why didn't SDOT prepare the detailed design necessary to examine safety issues?

09-032 63. Please explain the statement on Page 4-14 that the "improvements may not support and could even discourage new and expanded industrial uses."

09-033 64. How would the "improvements" discourage new and expanded industrial uses?

09-033 65. What land use and traffic impacts would these new "improvements" have on existing, new or expanded industrial uses?

09-033 66. Please explain whether such impacts are significant or can be mitigated?

09-034 67. If they can be mitigated, please provide detailed mitigation information?

09-034 68. Please explain the statement on Page 4-14 that the "study area has the capacity to absorb parking displaced by each Build Alternative"?

09-034 69. How and where will displaced parking be "absorbed"?

09-035 70. How will existing businesses be impacted by the displaced parking?

09-035 71. How will existing land uses be impacted by the displaced parking?

09-035 72. Please explain the statement on Page 4-14 by providing an analysis of how businesses will adapt to "minor delays, loss of parking and changes to loading areas along..." the Build Alternatives?

09-036 73. How will existing land uses be impacted by the "minor delays, loss of parking and changes to loading areas along..." the Build Alternatives?

09-036 74. Please explain and provide the basis for the statement on Page 4-16 wherein SDOT concludes that impacts from the Build Alternatives "are not expected to cause any businesses to fail"?

09-037 75. Did SDOT interview any existing businesses in reaching the conclusion in Page 4-16 that the trail will not cause any businesses to fail? If so, please list them? If not, please explain why not?

09-038 76. Did SDOT determine how the existing businesses access their properties in reaching the conclusion on Page 4-16 that the trail will not cause any businesses to fail?

09 - 030 SEPA provides that "The basic features and analysis of the proposal, alternatives, and impacts shall be discussed in the EIS and shall be generally understood without turning to other documents; however, an EIS is not required to include all information conceivably relevant to a proposal." (WAC 197-11-402(6)). SDOT has disclosed the potential impacts of the alternatives with and without various design elements to mitigate potential impacts in Section 1.8 and Section 7.3 of the FEIS. The EIS used conservative assumptions to ensure that potential impacts were identified and evaluated at the current level of design.

09 - 031 SDOT disagrees with the characterization that the design presented is not sufficiently detailed. SEPA requires analysis and disclosure of potential impacts, which the EIS provides. Virtually every aspect of a trail design has a safety component to it, but that does not make every component a probable significant adverse environmental impact under SEPA. The EIS describes potential traffic hazards, delays that could be caused by trail users and vehicle operators navigating such hazards, and measures that can be used to improve design of the trail, roads, and driveways.

09 - 032 As noted in Section 4.3.2 of the DEIS, the trail infrastructure could support existing and expanding residential and commercial uses near the trail. As discussed in the Economic Considerations Report (Technical Appendix E of the DEIS), Ballard is experiencing service-based and residential growth in the region. The perception of the trail as an increase in competitive pressures, whether founded or not, could affect industrial business decisions regarding expansion or moving into the area. However, because current policies protect industrial zoning in the BINMIC area, such perceptions would be speculative.

09 - 033 Refer to the response to Comment 9-032. It would be speculative to evaluate impacts of the project on uses that are not present or planned. The statement that "improvements may not support and could even discourage new and expanded industrial uses" was intended to acknowledge that perceptions can affect behavior such as where businesses are willing to locate or expand. Significant changes in land use due to such perceptions resulting from completion of the Missing Link are not expected.

Regarding traffic impacts, there is no reason to think that impacts on new or expanded uses would be different than those that would be expected for existing uses as described in the DEIS and this FEIS.

Avoidance, Minimization and Mitigation Measures for Land Use and Transportation Impacts are found in Section 4.4 and Section 7.4, respectively, of the Final EIS. Although significant impacts to land use as a result of the Missing Link project are not expected, maintaining existing policies and regulations regarding non-industrial uses would preserve lands within BINMIC for such uses.

09 - 034 The total parking supply in the study area is 3,816 spaces. The Preferred Alternative would remove approximately 344 parking spaces, about 9% of the total on- and off-street parking supply. On a weekday, a minimum of 1,009 on-street spaces and 213 off-street spaces were unused and available in the study area during each time period inventoried. On a weekday, the highest hourly on-street utilization was 67% and the highest hourly off-street utilization was 71%. On a weekend, a minimum of 848 on-street spaces and 483 off-street spaces were unused and available in the study area during each time period inventoried. On a weekend, the highest hourly on-street utilization was 73% and the highest hourly off-street utilization was 49%.

The changes in parking may cause employees or customers to park farther away compared to 2017 existing conditions but is not anticipated to significantly adversely impact businesses. Parking removal would be spread out along the Build Alternatives. As described in Chapter 8 of the FEIS, Policy T42 states that it is the City's general policy to replace short-term parking only when the project results in a concentrated and substantial amount of on-street parking loss.

09 - 035 The EIS is required to disclose probable adverse significant impacts, therefore, it does not discuss every minor adaptation that businesses or others affected by a project might need to make. Adaptations regarding traffic delays and loading are discussed in the Transportation Chapter (Chapter 7), and adaptations regarding parking are addressed in the Parking Chapter (Chapter 8). The analysis of transportation impacts is contained in FEIS Chapter 7 and Technical Appendix B (Volume 3), and impacts to land use are described in FEIS Chapter 4. Parking impacts are described in FEIS Chapter 8 and Technical Appendix C (Volume 3).

09 - 036 As described in the EIS, the effects on businesses include localized and intermittent driveway delays, changes to loading access, and reduced on-street parking availability. While recognized as having some economic cost and inconvenience, businesses are anticipated to be able to adapt to these challenges, similar to adapting to intermittent construction-related delays, increased traffic, and other factors associated with increased development in the area. Please see the Economic Considerations Report (Technical Appendix E of the DEIS).

09 - 037 No interviews were conducted of local businesses for the economic analysis. The analysis was based on previously collected employment and operation information, past studies, observations of the effects of similar trail projects, and consideration of the results of the driveway analysis prepared for the Draft EIS, and other information.

Although economic considerations are not an element of the environment required to be evaluated in an EIS under SEPA, City code does require economic issues to be included in an EIS unless eliminated in the scoping process. SDOT chose to include additional analysis of the potential economic impacts of the Project in the EIS to assist in decision-making, since it was identified as an issue of concern. SDOT continues to work with adjacent business owners as it advances the project. SDOT is aware of the concerns businesses have over the placement of the trail and has committed to work with individual business and property owners to address them during trail design.

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09 - 038 SDOT did consider access to businesses in the Transportation analysis. The updated driveway vehicle operations analysis included in the Final EIS Chapter 7 and Technical Appendix B (Volume 3) includes information on vehicle classification at driveways as well as special vehicle maneuvers, such as vehicles backing into or out of driveways. Please also see response to comment 09-016.

SDOT will continue to coordinate with adjacent businesses, property owners, and interested stakeholders as the design process continues.

Also, please refer to the DEIS Technical Appendix E, Economic Considerations Report, for analysis of impacts to businesses in the study area.

09 - 039 Conclusions regarding the potential economic effects of the project are based on the Economic Considerations Report (Technical Appendix E of the DEIS). That report concluded that no business is likely to fail because the impacts expected, while potentially inconvenient, would not be severe enough to significantly affect the viability of the businesses. Please see the report for information on how the analysis was conducted. Although economic considerations are not an element of the environment required to be evaluated in an EIS under SEPA, City code does require economic issues to be included in an EIS unless eliminated in the scoping process. SDOT chose to include additional analysis of the potential economic impacts of the Project in the EIS to assist in decision-making, since it was identified as an issue of concern.

With regard to contacting individual businesses, please see responses to Comments 09-016 and 09-037.

09-038 *fail? If so, please provide that analysis. If not, please explain why SDOT did not obtain this information and whether it would be useful in reaching this conclusion?*

77. *Please explain the basis—including listing the facts and information that support it—for SDOT's statement on Page 4-16 that the "vitality of the BINMIC would not be significantly adversely impacted under any Build Alternative"?*

78. *What studies did SDOT conduct to support or reach this conclusion?*

79. *What businesses did SDOT interview to support or reach this conclusion?*

80. *Please explain how this statement can be accurate when SDOT failed to include the businesses listed above in its analysis in the DEIS?*

81. *Please explain how "[p]otential conflicts between industrial and trail users would increase under all Build Alternatives but could be reduced through engineering and design" as stated on Page 4-17 of the DEIS?*

82. *What conflicts would increase?*

83. *What engineering and design techniques would be used?*

84. *Are those engineering and design techniques currently designed? If not, why not?*

85. *When will those engineering and design techniques be designed?*

86. *When will the public and decisionmakers get an opportunity to review and evaluate those engineering and design techniques pursuant to SEPA? If they will not, why not?*

87. *Please explain why the Missing Link is exempt from review and permitting under the Shoreline Management Act and the City's Shoreline Master Program?*

88. *Please provide a list of the "41 driveways" along the Shilshole South Alternative listed on Page 4-18.*

89. *Please explain the basis for the statement on Page 4-18 that vehicles having to cross the trail in this location would experience delays but they would not be "significant"?*

90. *What is the basis for this statement and conclusion? Did SDOT interview any business owners to support this statement?*

91. *Does SDOT have a list of the vehicles that access each more driveways along the Shilshole North Alternative?*

09 - 040 Chapter 7 of the DEIS and FEIS describe the potential conflicts between trail users and industrial operations. Section 1.7.1 of the FEIS describes what techniques would be used to address these conflicts. Designs of the major elements of the alternatives are provided in the DEIS and FEIS. Design is ongoing, with current efforts focused on the Preferred Alternative described in the FEIS. The EIS provides analysis of all aspects of the project that could have significant adverse impacts. There will be additional opportunity for public input beyond the SEPA process; see Section 1.11 Next Steps in the FEIS. SDOT will continue to coordinate with adjacent businesses, property owners, and interested stakeholders as the design process continues.

09 - 041 The DEIS does not state that the Missing Link would be exempt from review and permitting under the Shoreline Management Act and the City's Shoreline Master Program. Page 4-11 of the Draft EIS includes discussion of the Shoreline Management Act and the City of Seattle's Shoreline Master Program, which states that a permit may be required for land uses that are with 200 feet of the ordinary high water mark. The Seattle Department of Planning and Development (now the Seattle Department of Construction and Inspections) previously reviewed the project and determined it to be exempt from the requirement for a Shoreline Substantial Development Permit. Regardless of whether a Shoreline Substantial Development Permit is required, any project within the shoreline area is required to be consistent with the policies of the Shoreline Management Act.

09 - 042 Driveway locations are shown on DEIS Figures 1-3 through 1-6 and on Figure 1-3 in the FEIS. Driveway locations were field reviewed during the design process. A list of driveway locations and owners was not necessary to determine the potential for significant impacts as part of the transportation analysis, so a list of individual driveways was not developed as part of the EIS process. Please see the revised Transportation and Land Use Sections of the FEIS for more information.

09 - 043 For the EIS, SDOT relied on the Economic Analysis (DEIS Technical Appendix E) to reach the conclusion that the effects of the project would not be severe enough to cause changes in land use in the project area, and therefore would not be significant adverse land use impacts.

Delays at driveways are not considered to be significant because they would occur sporadically throughout the day and for short periods of time. Drivers may find this inconvenient, but it would not block or substantially alter access. Additionally, there is no City standard for maintaining delay at driveways. Please see Chapter 7 of Final EIS or Technical Appendix B (Volume 3) for updated information on driveway delays for vehicles and the methodology used to measure impacts.

Also, please see the response to comment 09-016.

09 - 044 Additional information, including vehicle classification and turning movements, was collected for additional driveways along each alternative and has been included in the Final EIS Chapter 7 and Technical Appendix B (Volume 3). The transportation analysis considered the types of vehicles at driveways and within each corridor. The traffic data provides adequate information to characterize the impacts, which are included in Chapter 5 of Technical Appendix B and Chapter 7 of the FEIS. Mitigation strategies to address impacts have also been included in the FEIS.

09 - 045 Please see responses to Comments 09-037 and 09-039 regarding the information used to develop this analysis. The project is not expected to increase operating costs to the level that it would cause the permanent loss of land uses that are identified as preferred for the project area under adopted land use policies, and it is therefore not expected to have significant adverse impacts on land use.

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- 09-045 *92. Please explain and provide the basis for any statement that increased costs to businesses adjacent to the Shilshole North Alternative would not cause "significant impacts"?*
- 09-046 *93. Did SDOT interview any of these businesses to support this conclusion? If not, why not?*
- 09-047 *94. What information did SDOT rely on to support this conclusion?*
- 09-048 *95. Please explain and provide the basis for the statement on Page 4-22 that losing approximately 227 parking spaces on Shilshole Avenue will not negatively impact existing land uses in this area?*
- 09-049 *96. Please provide a list of the "50 loading zones and driveways" along the Shilshole South Alternative listed on Page 4-22.*
- 09-050 *97. Please explain the basis for any statement that vehicles having to cross the trail in this location would experience delays but they would not be "significant"?*
- 09-051 *98. What is the basis for this statement and conclusion? Did SDOT interview any business owners to support this statement?*
- 09-052 *99. Does SDOT have a list of the vehicles that access each of the 58 or more loading areas and driveways along this Alternative?*
- 09-053 *100. Please explain and provide the basis for the statement on Page 4-22 that there will be "no significant land use impacts" "because no permanent land use changes are anticipated"?*
- 09-054 *101. Did SDOT interview any of these businesses to support this conclusion? If not, why not?*
- 09-055 *102. What information did SDOT rely on to support this conclusion?*
- 09-056 *103. Please explain and provide the basis for the statement on Page 4-22 that losing approximately 227 parking spaces on Shilshole Avenue will not negatively impact existing land uses in this area?*
- 09-057 *104. Please explain how SDOT intends to make a two-directional multi-user trail on one side of the street safe in light of the statement on Page 7-16 that "many collisions occur[] when a vehicle was traveling in an opposite direction to a cyclist...?"*
- 09-058 *105. Does SDOT have any published studies, reports or information showing multi-user sidepaths, such as being designed for the Missing Link, are safer compared to protected bicycle facilities? If so, what are they?*

- 09 - 046 The DEIS does not state that 227 spaces would be lost on Shilshole Ave NW, but throughout the entire length of the Shilshole North alignment. As explained in the DEIS, the conclusion that land use would not be adversely affected is based on the Economic Analysis (DEIS Technical Appendix E). The parking analysis is fully described in the Parking Discipline Report (Technical Appendix C, Volume 3). Please also see the response to Comment 09-034 regarding specific parking impacts.
- 09 - 047 The driveways and loading zones along each of the alignments, including the Shilshole South Alternative, were identified and counted using design drawings and field work. Maps of the loading areas included are shown in the DEIS and FEIS Parking Discipline Reports, Figure 4-4 (Volume 3). A separate list of loading zones and driveways was not necessary to determine potentially significant adverse impacts as part of the transportation or parking analysis, so one was not developed as part of the EIS process.
- 09 - 048 Please refer to the responses to Comments 09-043 and 09-044.
- 09 - 049 Please refer to the response to Comment 09-046.
- 09 - 050 The collisions described on page 7-16 of the DEIS occurred where there were no bicycle facilities, with the exception of an incident along NW 45th. As described, the collisions typically occurred when either the vehicle or the bicyclist was turning. Some steps can be taken to reduce the chance of accidents, such as installing a stoplight as proposed on 17th Ave NW under all alternatives on Shilshole. Even in signalized intersections, bicyclists and motorists can have collisions when their paths cross and one party or both are not paying close attention. As described in the project objective (Section 1.2), the Missing Link would be a dedicated, separated trail facility that would improve safety conditions by providing separation between vehicles and trail users. Potential traffic hazards are identified in Section 1.8 of the FEIS.

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09 - 051 SEPA does not require SDOT to establish that one type of facility is safer than another. However, safety is a critical component of the project, and SDOT follows City standards as well as AASHTO and NACTO guidelines for bicycle and trail facilities.

The facility type was chosen because it best meets the project's objective to complete the Burke-Gilman Trail by creating a safe, direct, and defined multi-use trail for persons of all abilities, for a variety of transportation and recreational activities, and by maintaining truck and freight facilities and access that support industrial and water-dependent land uses within the shoreline district and BINMIC.

09 - 052 In addition to the AASHTO and NACTO guidelines described in comment 09-051 above, please see Chapter 8 References in the Transportation Discipline Report (Technical Appendix B, Volume 3) for a full list of reference materials.

SDOT designs its projects according to the guidelines referenced above, as well as City standards and guidelines, such as the City of Seattle's Standard Plans for Municipal Construction and Right-of-Way Improvements Manual, which have been developed through research and adaptation of national publications. As a result, SDOT does not prepare any studies or reports specific to individual project design.

106. Please list all studies, reference materials or other documents/information that support's SDOT's statement on Page 7-26 that a "dedicated bicycle facility would improve" safety?

09-052

107. Did SDOT conduct any studies or prepare any reports to support this statement and conclusion? If so, what studies or reports? If not, why not?

108. Please explain how "the final trail design would include safety features to reduce [sight distance] conflicts between trail users and vehicles as stated on Page 7-31 of the DEIS?"

09-053

109. Specifically, what "final design" measures will do so?

110. When will those "final design" measures be designed?

111. When will the decisionmakers and public be given an opportunity to review them under SEPA? If not, why not?

112. How will SDOT resolve the numerous existing sight distance conflicts along all of the Build Alternatives?

09-054

113. When will the decisionmakers and public be given an opportunity to review SDOT's proposals to resolve those sight distance conflicts under SEPA? If they will not be given the opportunity to do so, why not?

114. Please explain who will decide "the final placement of the trail...during final design" as stated on Page 7-31 of the DEIS?

09-055

115. When will that decision be made and who will make it?

116. When will the decisionmakers and public be given an opportunity to review that final trail placement/design under SEPA? If not, why not?

117. How will SDOT decide and ensure that "driveways would be wide enough to safely accommodate industrial and commercial traffic" as stated on Page 7-32 of the DEIS?

09-056

118. Who will make that determination and when?

119. When will the decisionmakers and public be given an opportunity to review that determination under SEPA? If not, why not?

120. Please explain in detail and provide the basis for the conclusion for the statement on Page 7-36 that "[u]nder SMC 11.58.230, driveways along the Shilshole North Alternative alignment would operate safely"?

09-057

121. What information did SDOT rely upon in reaching this conclusion?

09 - 053 Any alternative that is selected will undergo additional design after the SEPA process is complete. For example, please see Section 1.6.1 of the FEIS, which describes the Preferred Alternative. The Preferred Alternative addresses sight distance concerns along the south side of Shilshole Ave NW by shifting the trail northward as compared to the Shilshole South Alternative, closer to the roadway and away from buildings and structures that abut property lines.

Additional safety features to warn trail users of cross traffic could include pavement markings, pavement type, and other warning devices such as flashers or even crossing arms, among other things, as described in Section 1.7.1 of the Final EIS. Safety features are recommended by AASHTO and NACTO guidelines and will continue to be assessed through the final design process anticipated to take place from mid-2017 to early 2018.

SEPA provides the public with the opportunity to provide input on the impacts associated with each of the Build Alternatives. Once impacts have been disclosed, SEPA does not require additional opportunities to review specific design features. However, SDOT has committed to working with individual property and business owners and interested stakeholders, including the general public, throughout the design process.

09 - 054 The comment does not mention which specific sight distance issue it is addressing. SEPA requires the disclosure of potential impacts, not the elimination of them. Specific sight distance issues were acknowledged as a potential impact of the project in the DEIS. There is additional information provided in Section 7.3 of the FEIS. There will be opportunity for public input on final design beyond the SEPA process. Please refer to the response to Comment 09-053.

09 - 055 FEIS Section 1.11 describes the expected process after publication of the FEIS. SEPA provides for a comment period on the DEIS but does not require a comment period on the FEIS. SEPA does not require that additional public review be provided during a project design process or after a design has been finalized; however, as described in Section 1.11, SDOT will provide additional opportunities for input to the process during design.

09 - 056 As part of design development, every driveway and intersection design will be detailed. For intersections and driveways that must accommodate industrial and commercial traffic, SDOT will continue coordinating with individual property and business owners. Tools such as AutoTURN will be used as appropriate to determine driveway width and intersection design.

SDOT has committed to working with adjacent business and property owners, key stakeholders, and the general public throughout the design process. SDOT will use professional judgment in the final design decisions. See response to Comment 09-055 regarding SEPA review after the FEIS.

09 - 057 To clarify, what the statement meant was that, if vehicle operators obey the regulation cited (SMC 11.58.230), trail users could cross driveways and alleys on the Shilshole North Alternative safely, because the vehicles would have to stop first and observe whether any trail users were approaching before proceeding. SDOT knows from experience operating hundreds of miles of roadways for over a century that not all vehicle operators abide by the laws at all times, and acknowledges illegal vehicle operation does create a potential hazard for trail users. There are also measures such as signage and trail markings that can help make trail users aware of vehicles emerging from driveways or alleys.

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122. *Please explain how the loss of parking would not cause land use impacts and/or economic impacts to adjacent properties as stated on Page ES-2 of the Economic Considerations Report?*

09-058

09 - 058 Loss of parking is discussed in detail in Chapter 8, Parking. The Economic Consideration Report (Technical Appendix E of the DEIS) does not state that loss of parking would not cause economic impacts, it acknowledges that there could be economic costs imposed on nearby businesses. The City employs various methods of regulating parking on city streets in order to support access to adjacent businesses and residents. Restrictions and metered parking could be implemented, if needed, to address parking needs for business customers. In addition, off-street parking spaces are available within the study area. These sorts of adaptations are common in an urban environment that is changing, and businesses typically are able to adjust operations accordingly.

The attached Comment Matrix includes additional comments requiring response pursuant to WAC 197-11-560 and SMC 25.06.560.

Conclusion

For the reasons articulated above, we request SDOT withdraw the Draft EIS and issue a Supplement Draft EIS that adequately and properly evaluates potential significant environmental impacts from the Missing Link. Thank you for your courtesy, response, and consideration of these comments.

Sincerely,

VERIS LAW GROUP PLLC

JOSHUA C. BROWER

Enclosures

cc: Mayor Murexy
Lisa Herbold, Seattle City Council Member
Bruce Harrell, Seattle City Council Member
Kahama Sawant, Seattle City Council Member
Rob Johnson, Seattle City Council Member
Debra Juarez, Seattle City Council Member
Mike O'Brien, Seattle City Council Member
Sally Bagshaw, Seattle City Council Member
Tim Burgess, Seattle City Council Member
Lorena Gonzalez, Seattle City Council Member
Brian Surratt, Director, Seattle City Office of Economic Development
Clients
Ballard Chamber of Commerce

Attachment A

Comment No.	Comment Text	Response
09-059	SDOT disagrees with the commenter's characterization of the prior Hearing Examiner and Court orders, which were made in the context of the adequacy of determinations of non-significance that are no longer valid and are no longer being relied upon. The standard for establishing the adequacy of a DNS is very different from the standard for an EIS. Also, SEPA does not demand a particular substantive result, particularly related to aspects of a project such as general "safety" that are not elements of the environment required to be evaluated. So although SDOT designs all facilities to operate safely and that is a primary goal of the project, SEPA does not demand that result. Moreover, SEPA encourages the preparation of an EIS at the earliest possible point in the planning and decision-making process, when the principal features of a proposal and its environmental impacts can be reasonably identified. See WAC 197-11-055. The FEIS appropriately discloses all the relevant potential impacts and mitigation measures; a final design is not required.	<p>The Final EIS includes a number of potential design treatments that could be considered during final design, including barriers, fencing, buffers, or pavement markings. A detailed sight distance and AutoTURN analysis would be completed for individual driveways during final design; several driveways were evaluated during the FEIS to provide information on driveway widths (see Appendix A of the FEIS).</p> <p>The comments listed do not specify what situations are not adequately addressed in the designs presented in the DEIS so it is not possible to respond with any greater detail.</p> <p>09 - 060 Please see the responses to comment 09-013.</p>
09-060	Further, the design of the Shilshole South Alternative has been refined since the design that was considered in the appeal referred to in the comment. Although the alignment used for this alternative is generally the same, design treatments envisioned do not generally include Jersey barriers, and additional design options have been developed for driveway and intersection treatments, such as mountable curbs to allow for truck wheel swing.	
09-061	The Final EIS includes a number of potential design treatments that could be considered during final design, including barriers, fencing, buffers, or pavement markings. A detailed sight distance and AutoTURN analysis would be completed for individual driveways during final design; several driveways were evaluated during the FEIS to provide information on driveway widths (see Appendix A of the FEIS).	
09-062	The comments listed do not specify what situations are not adequately addressed in the designs presented in the DEIS so it is not possible to respond with any greater detail.	
09-063	Please see the responses to comment 09-013.	

09 - 061 Please see the response to comment 09-013.

09 - 062 It is not necessary or required for design to be at 20% in order to understand the potential for significant impacts from the alternatives. All roadway cross sections, traffic channelization, driveways, and intersections can be identified, typical uses of driveways and intersections can be evaluated, and the potential impacts of placing a trail in the context of those roadways, intersections, and driveways can be assessed. The EIS does so and provides a worst case assessment of impacts, identifying potential conflicts between trail users and vehicles. In addition, the EIS identifies means of reducing potential conflicts, providing decision-makers with an appropriate understanding of both the potential severity of the impacts and with an array of options to address them under any of the alternatives, as contemplated by SEPA.

Comment No.	EIS Response	Commenter Name
	<p>The EIS does not offer any concrete design or planning regarding the Alternative 1 actual design for the segment.</p> <p>Design concepts (referred to in the Draft EIS) are only for reference and not included in an Alternative 1.</p> <p>Page ES-16</p>	<p>Mrs. Kelly and Harold August 1, 2016</p>
	<p>SDOT has not sufficiently planned or designed this proposed Alternative 1 to comply with the FBY Code.</p> <p>SDOT has not sufficiently planned or designed any of the Build Alternatives to determine whether there would be impacts in certain situations. Again, the EIS does not attempt to answer this question. Again, the EIS does not attempt to answer this question.</p> <p>SDOT has not sufficiently planned or designed any of the Build Alternatives to determine whether there would be impacts in certain situations. Again, the EIS does not attempt to answer this question.</p> <p>SDOT has not sufficiently planned or designed any of the Build Alternatives to determine whether there would be impacts in certain situations. Again, the EIS does not attempt to answer this question.</p>	<p>See Exhibit A, HR Order, Page 2, Item 5.</p> <p>"It is simply not fair to defer decisions and to pass the buck to future decision makers because that defers the entire policy of the checklist."</p> <p>Page 10</p>
	<p>SDOT has not sufficiently planned or designed any of the Build Alternatives to determine whether there would be impacts in certain situations. Again, the EIS does not attempt to answer this question.</p> <p>SDOT has not sufficiently planned or designed any of the Build Alternatives to determine whether there would be impacts in certain situations. Again, the EIS does not attempt to answer this question.</p> <p>SDOT has not sufficiently planned or designed any of the Build Alternatives to determine whether there would be impacts in certain situations. Again, the EIS does not attempt to answer this question.</p> <p>SDOT has not sufficiently planned or designed any of the Build Alternatives to determine whether there would be impacts in certain situations. Again, the EIS does not attempt to answer this question.</p>	<p>See Exhibit A, HR Order, Page 2, Item 7.</p> <p>"The Shiloh Segment is now at design detail level of between 20 and 30 percent."</p>
	<p>SDOT has not sufficiently planned or designed any of the Build Alternatives to determine whether there would be impacts in certain situations. Again, the EIS does not attempt to answer this question.</p> <p>SDOT has not sufficiently planned or designed any of the Build Alternatives to determine whether there would be impacts in certain situations. Again, the EIS does not attempt to answer this question.</p> <p>SDOT has not sufficiently planned or designed any of the Build Alternatives to determine whether there would be impacts in certain situations. Again, the EIS does not attempt to answer this question.</p> <p>SDOT has not sufficiently planned or designed any of the Build Alternatives to determine whether there would be impacts in certain situations. Again, the EIS does not attempt to answer this question.</p>	<p>See Exhibit A, HR Order, Page 3, Item 8.</p> <p>"The trail would be designed with a 1.1/2 foot level of cut, and would sit on a 2-1/2 foot above the level of the roadway, resulting in a 1-1/2 foot high curb. This is lower than the standard City of Link high curb. The lower height was chosen by SDOT because of accessibility concerns."</p>
	<p>SDOT has not sufficiently planned or designed any of the Build Alternatives to determine whether there would be impacts in certain situations. Again, the EIS does not attempt to answer this question.</p> <p>SDOT has not sufficiently planned or designed any of the Build Alternatives to determine whether there would be impacts in certain situations. Again, the EIS does not attempt to answer this question.</p> <p>SDOT has not sufficiently planned or designed any of the Build Alternatives to determine whether there would be impacts in certain situations. Again, the EIS does not attempt to answer this question.</p> <p>SDOT has not sufficiently planned or designed any of the Build Alternatives to determine whether there would be impacts in certain situations. Again, the EIS does not attempt to answer this question.</p>	<p>See Exhibit A, HR Order, Page 3, Item 8.</p> <p>"Curb extensions or curb bulbs may be used at intersections where parallel parking and bus stops are located along the streets."</p>

Burke-Gilman Trail Missing Link Project - Draft Environmental Impact Statement (June 2016)

Comment Matrix

Mrs. Kelly and Harold August 1, 2016

09 - 063 Regarding the relevance of the Hearing Examiner decision to the scope of this EIS, see response to Comment 9-013.

Safety is an important component of the project. SDOT has been following applicable design guidance during the development of this trail including City of Seattle codes, and AASHTO and NACTO guidelines. Roadway modifications, intersection treatments, driveway design, and parking lot changes that could be incorporated in the final design phase of the project to provide separation and address safety, access, nonmotorized users, and vehicle types are described in Section 1.7.1, Roadway Design and Safety Considerations. The design of the alternatives is to a sufficient level to inform decision-makers by describing and identifying locations where there could be impacts. See response to Comment 09-062. It is not necessary to identify the height of every curb in order to understand the potential impacts of the alternatives.

Additional information, including interview notes with businesses and vehicle classification at driveways, is included in the Final EIS and the Transportation Discipline Report (Technical Appendix B of the FEIS, Volume 3).

SDOT has committed to working with adjacent business and property owners, key stakeholders, and the general public throughout the design process.

The comments listed do not specify what situations are not adequately addressed in the designs presented in the DEIS so it is not possible to respond with any greater detail.

09 - 064 See Response to Comments 09-017 and 09-063.

Trail width can vary. The comments do not identify any specific issues with varying trail width, so it is not possible to respond with any greater detail.

Comment No.	EIS Statement	Response
09-064	<p>09-064 See Response to Comments 09-017 and 09-063.</p>	<p>The trail width would vary throughout the corridor due to existing conditions and of the planning process. SDOT's analysis remains incomplete and inadequate. It appears that this Build Alternative is more impacted than it was in the CNS Stage.</p> <p>Page 1-6: Subhale Alternative</p> <p>"The trail width would vary throughout the corridor due to existing conditions and of the planning process. SDOT's analysis remains incomplete and inadequate. It appears that this Build Alternative is more impacted than it was in the CNS Stage."</p>
09-063	<p>09-063 Regarding the relevance of the Hearing Examiner decision to the scope of this EIS, see response to Comment 9-013.</p>	<p>Safety is an important component of the project. SDOT has been following applicable design guidance during the development of this trail including City of Seattle codes, and AASHTO and NACTO guidelines. Roadway modifications, intersection treatments, driveway design, and parking lot changes that could be incorporated in the final design phase of the project to provide separation and address safety, access, nonmotorized users, and vehicle types are described in Section 1.7.1, Roadway Design and Safety Considerations. The design of the alternatives is to a sufficient level to inform decision-makers by describing and identifying locations where there could be impacts. See response to Comment 09-062. It is not necessary to identify the height of every curb in order to understand the potential impacts of the alternatives.</p> <p>Additional information, including interview notes with businesses and vehicle classification at driveways, is included in the Final EIS and the Transportation Discipline Report (Technical Appendix B of the FEIS, Volume 3).</p> <p>SDOT has committed to working with adjacent business and property owners, key stakeholders, and the general public throughout the design process.</p> <p>The comments listed do not specify what situations are not adequately addressed in the designs presented in the DEIS so it is not possible to respond with any greater detail.</p>
09-062	<p>09-062 Regarding the relevance of the Hearing Examiner decision to the scope of this EIS, see response to Comment 9-013.</p>	<p>Safety is an important component of the project. SDOT has been following applicable design guidance during the development of this trail including City of Seattle codes, and AASHTO and NACTO guidelines. Roadway modifications, intersection treatments, driveway design, and parking lot changes that could be incorporated in the final design phase of the project to provide separation and address safety, access, nonmotorized users, and vehicle types are described in Section 1.7.1, Roadway Design and Safety Considerations. The design of the alternatives is to a sufficient level to inform decision-makers by describing and identifying locations where there could be impacts. See response to Comment 09-062. It is not necessary to identify the height of every curb in order to understand the potential impacts of the alternatives.</p> <p>Additional information, including interview notes with businesses and vehicle classification at driveways, is included in the Final EIS and the Transportation Discipline Report (Technical Appendix B of the FEIS, Volume 3).</p> <p>SDOT has committed to working with adjacent business and property owners, key stakeholders, and the general public throughout the design process.</p> <p>The comments listed do not specify what situations are not adequately addressed in the designs presented in the DEIS so it is not possible to respond with any greater detail.</p>

Comments	Response
<p>Comments:</p> <p>09 - 065 The number of driveways and intersections crossed by each alternative has been updated in Chapters 5 and 7 of the FEIS. The EIS acknowledges that any driveway or intersection would present potential conflicts between trail users and vehicles. All driveways are depicted. Driveways with uniquely challenging issues, such as unusual geometry, high volume of large trucks, or other features, are listed in Appendix B of the Transportation Discipline Report (Technical Appendix B, Volume 3).</p> <p>It is not necessary to have final design for all intersections and driveways in order to identify probable significant impacts.</p> <p>The comment does not identify any specific impacts that were missing from the analysis in the DEIS, so it is not possible to respond in greater detail.</p> <p>09 - 066 Regarding the relevance of the Hearing Examiner decision to the scope of this EIS, see response to Comment 9-013.</p> <p>The DEIS identifies the alignment for all alternatives, including all street intersections. Potential impacts that could occur with or without fences, barriers, or buffers are identified, with additional information provided in the FEIS Section 7.3. Approximate locations and width of buffers are included in all designs in the DEIS, and for the Preferred Alternative in the FEIS. Fences and barriers could be used to reduce potential hazards for trail users and would be avoided in instances where they would pose a conflict or traffic hazard.</p> <p>The comments do not identify any locations where fencing, barriers, or buffers are likely to cause significant adverse impacts, so it is not clear in what way the DEIS is considered inadequate.</p>	<p>Response:</p> <p>The location of fencing and barriers is indicated on the conceptual layout, and typical sections of fencing and barriers are shown in Ex. C-16. Ex. C-22, A, B, & C show how the fencing and barriers would appear after the project is completed." See Exhibit A, EIS Overlay, Page 3, Item 12.</p> <p>09-065</p> <p>09-066</p>
<p>Comments:</p> <p>09 - 065 The number of driveways and intersections crossed by each alternative has been updated in Chapters 5 and 7 of the FEIS. The EIS acknowledges that any driveway or intersection would present potential conflicts between trail users and vehicles. All driveways are depicted. Driveways with uniquely challenging issues, such as unusual geometry, high volume of large trucks, or other features, are listed in Appendix B of the Transportation Discipline Report (Technical Appendix B, Volume 3).</p> <p>It is not necessary to have final design for all intersections and driveways in order to identify probable significant impacts.</p> <p>The comment does not identify any specific impacts that were missing from the analysis in the DEIS, so it is not possible to respond in greater detail.</p> <p>09 - 066 Regarding the relevance of the Hearing Examiner decision to the scope of this EIS, see response to Comment 9-013.</p> <p>The DEIS identifies the alignment for all alternatives, including all street intersections. Potential impacts that could occur with or without fences, barriers, or buffers are identified, with additional information provided in the FEIS Section 7.3. Approximate locations and width of buffers are included in all designs in the DEIS, and for the Preferred Alternative in the FEIS. Fences and barriers could be used to reduce potential hazards for trail users and would be avoided in instances where they would pose a conflict or traffic hazard.</p> <p>The comments do not identify any locations where fencing, barriers, or buffers are likely to cause significant adverse impacts, so it is not clear in what way the DEIS is considered inadequate.</p>	<p>Response:</p> <p>The location of fencing and barriers is indicated on the conceptual layout, and typical sections of fencing and barriers are shown in Ex. C-16. Ex. C-22, A, B, & C show how the fencing and barriers would appear after the project is completed." See Exhibit A, EIS Overlay, Page 3, Item 12.</p> <p>09-065</p> <p>09-066</p>

09 - 067 See Response to Comment 09-065.

Section 7.3 of the Draft and Final EIS describes impacts associated with the trail, including the number of driveway crossings under each Alternative, sight distance concerns, and safety concerns. Safety features used to reduce conflicts between trail users and vehicles at driveway crossings could include pavement markings, raised crosswalks, barriers, fencing, or buffers, and are described in Section 1.7.1 of both the Draft and Final EIS. Specific treatments to address driveway crossings with the trail as well as potential sight distance concerns will be considered at individual locations during final design.

The methodology published by Chicagoland Bicycle Federation in 1997 was not used to determine impacts for nonmotorized users. Please see Chapter 3 of Technical Appendix B (Volume 3) for a description of the methodology used to determine impacts.

Also, refer to the responses to Comments 09-017, and 09-063.

Comment No.	EIS Statement	Response
09-065	<p>Alternative 2</p> <p>Barrier</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's barrier here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p> <p>Leaky</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's Leaky here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p> <p>Leaky</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's Leaky here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p> <p>Leaky</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's Leaky here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p>	<p>Barrier</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's barrier here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p> <p>Leaky</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's Leaky here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p> <p>Leaky</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's Leaky here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p> <p>Leaky</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's Leaky here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p>
09-066	<p>Alternative 3</p> <p>Barrier</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's barrier here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p> <p>Leaky</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's Leaky here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p> <p>Leaky</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's Leaky here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p> <p>Leaky</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's Leaky here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p>	<p>Barrier</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's barrier here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p> <p>Leaky</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's Leaky here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p> <p>Leaky</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's Leaky here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p> <p>Leaky</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's Leaky here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p>
09-067	<p>Alternative 4</p> <p>Barrier</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's barrier here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p> <p>Leaky</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's Leaky here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p> <p>Leaky</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's Leaky here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p> <p>Leaky</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's Leaky here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p>	<p>Barrier</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's barrier here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p> <p>Leaky</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's Leaky here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p> <p>Leaky</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's Leaky here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p> <p>Leaky</p> <p>The Draft EIS does not include an aerial dump of this proposed Alternative's Leaky here in Figures 1-7 through 1-11 where potential concept that could be incorporated. Details for specific locations will be determined during the final design phase.</p>

Masters, Kobyly and Marzella
August 1, 2016

Comment No.	EIS Statement	Response
<p>09 - 068</p> <p>1) Determine which vehicles use each driveway, and determine whether an Alternative will operate safely.</p> <p>2) Provide an Alternative that analyzes the driveway and the public use of the driveway.</p> <p>CM NO. 431</p> <p>CM NO. 432</p> <p>CM NO. 433</p>	<p>“The motion analysis SDOF conducted was also included in the Draft EIS and it is unclear whether SDOF conducted the motion analysis for all Alternatives and potential combinations and for all proposed driveways, loading docks, and intersections loaded adjacent to each Alternative.”</p> <p>CM NO. 431</p> <p>CM NO. 432</p> <p>CM NO. 433</p>	<p>“To develop the conceptual trail layout, SVE engineer [Name] had the firm and I reviewed the proposed driveway and the analysis to see if the proposed driveway could accommodate the turning movements of large trucks (...).”</p> <p>Mr. Rogers did not run the motion analysis for all vehicles which currently access the business along the Shiloh Segment.”</p> <p>See Exhibit A, EIS Order, Page 3 - 4, Item 14.</p>
<p>09 - 067</p> <p>1) Provide an Alternative that analyzes the driveway and the public use of the driveway.</p> <p>CM NO. 431</p> <p>CM NO. 432</p> <p>CM NO. 433</p>	<p>“Turning movement counts collected in April 2014 and September 2015 at study area intersections also recorded for Chapter 7 of the Draft EIS. SDOF conducted turning movement counts for the turning left of the Burke Gilman Trail in April and September 2014.”</p> <p>Page 7-11:</p> <p>“Turning movement counts collected in April 2014 and September 2015 at study area intersections also recorded for Chapter 7 of the Draft EIS. SDOF conducted turning movement counts for the turning left of the Burke Gilman Trail in April and September 2014.”</p> <p>Page 7-11:</p> <p>“Turning movement counts collected in April 2014 and September 2015 at study area intersections also recorded for Chapter 7 of the Draft EIS. SDOF conducted turning movement counts for the turning left of the Burke Gilman Trail in April and September 2014.”</p>	<p>“Turning movement counts collected in April 2014 and September 2015 at study area intersections also recorded for Chapter 7 of the Draft EIS. SDOF conducted turning movement counts for the turning left of the Burke Gilman Trail in April and September 2014.”</p> <p>Page 7-11:</p> <p>“Turning movement counts collected in April 2014 and September 2015 at study area intersections also recorded for Chapter 7 of the Draft EIS. SDOF conducted turning movement counts for the turning left of the Burke Gilman Trail in April and September 2014.”</p>

09 - 068 Please see response to comment 09-015. Section 1.7.1, Roadway Design and Safety Considerations describes the potential interaction between different types of users and design treatments, such as barriers and buffers. A sample of driveways provides a range of the potential impacts, and individual evaluations of specific driveways is not required for SEPA.

There is flexibility in the widths of the driveway aprons that can be provided to allow motor vehicles to cross the trail to access businesses and private property. SDOF will coordinate with individual property and business owners throughout the design process to make sure that industrial and commercial traffic will be accommodated. The Final EIS analysis discloses where impacts could occur to driveway access and operations, which are summarized in Chapter 7 of the Final EIS and Section 5 of the Technical Appendix B, and includes mitigation measures to address impacts.

Commenter Name	Comment Text	Response Text
<p>Commenter Name: Memex, Kubly and Masole August 1, 2016</p>	<p>Alternative North Page 2-6: "Although it is not feasible to monitor impacts on operations at all driveway along the full range of typical impacts that could be experienced by all driveway in the study area..."</p>	<p>Alternative North Page 2-6: "Although it is not feasible to monitor impacts on operations at all driveway along the full range of typical impacts that could be experienced by all driveway in the study area..."</p>
<p>Commenter Name: Blue-Gilman Trail Missing Link Project – Draft Environmental Impact Statement (June 2016)</p>	<p>Alternative South Page 2-6: "Although it is not feasible to monitor impacts on operations at all driveway along the full range of typical impacts that could be experienced by all driveway in the study area..."</p>	<p>Alternative South Page 2-6: "Although it is not feasible to monitor impacts on operations at all driveway along the full range of typical impacts that could be experienced by all driveway in the study area..."</p>
<p>Commenter Name: Blue-Gilman Trail Missing Link Project – Draft Environmental Impact Statement (June 2016)</p>	<p>Alternative North Page 2-6: "Although it is not feasible to monitor impacts on operations at all driveway along the full range of typical impacts that could be experienced by all driveway in the study area..."</p>	<p>Alternative North Page 2-6: "Although it is not feasible to monitor impacts on operations at all driveway along the full range of typical impacts that could be experienced by all driveway in the study area..."</p>

06-0608

09 - 069 Phone interviews were conducted with property owners along the Preferred, Shilshole South, and Shilshole North Alternatives as part of the Final EIS to provide additional information on driveway operations. Information about vehicle movements (backing into/out of driveways); busy times of the day, week, and year; and vehicle types was collected during the interviews. Results of the interviews were incorporated into Section 4.2.2.3 of Technical Appendix B (Volume 3) and Section 7.2.3 of the Final EIS. Interview notes are included in Appendix B of the Transportation Discipline Report (Volume 3). Additionally, SDOT will continue to coordinate with the stakeholder group and adjacent property owners as the design process continues.

For information on how the Build Alternatives would impact property access and driveways, see Chapter 5 of Technical Appendix B (Volume 3) and Chapter 7 of the Final EIS.

Comment No.	ESR Statement	Response
09-069	<p>Comment No. 09-069</p> <p>ESR Statement: "In coordination with businesses, driveway access points to reduce the number of conflict locations. However, the final design of the trail would include safety features to reduce conflict between trail users and vehicles."</p> <p>Page 7-49:</p> <p>"In coordination with businesses, driveway access points to reduce the number of conflict locations. However, the final design of the trail would include safety features to reduce conflict between trail users and vehicles."</p>	<p>09-069</p> <p>Response: "The EIS is inadequate and must be revised. Information on driveway operations or vehicle movements related to the Preferred, and that, has no information or understanding of such business operations or vehicle movements related to the Preferred. The EIS is inadequate and must be revised."</p> <p>SDOT failed to interview any representatives of other businesses located along the Preferred, and that, has no information or understanding of such business operations or vehicle movements related to the Preferred. The EIS is inadequate and must be revised."</p>
09-069	<p>Comment No. 09-069</p> <p>ESR Statement: "Although it is not feasible to analyze impacts on operations at all driveways along the Build Alternative, analysis selected a sampling of driveways in the study area that would be representative of all driveways. Analysis evaluated driveways that have a range of traffic volume and that also represent industrial and commercial driveways in order to provide a range of typical impacts that could be experienced by all driveways in the study area."</p> <p>Page 3-45:</p> <p>"Although it is not feasible to analyze impacts on operations at all driveways along the Build Alternative, analysis selected a sampling of driveways in the study area that would be representative of all driveways. Analysis evaluated driveways that have a range of traffic volume and that also represent industrial and commercial driveways in order to provide a range of typical impacts that could be experienced by all driveways in the study area."</p>	<p>09-069</p> <p>Response: "The EIS is inadequate and must be revised. Information on driveway operations or vehicle movements related to the Preferred, and that, has no information or understanding of such business operations or vehicle movements related to the Preferred. The EIS is inadequate and must be revised."</p> <p>SDOT failed to interview any representatives of other businesses located along the Preferred, and that, has no information or understanding of such business operations or vehicle movements related to the Preferred. The EIS is inadequate and must be revised."</p>
09-069	<p>Comment No. 09-069</p> <p>ESR Statement: "The EIS is inadequate and must be revised. Information on driveway operations or vehicle movements related to the Preferred, and that, has no information or understanding of such business operations or vehicle movements related to the Preferred. The EIS is inadequate and must be revised."</p> <p>Page 7-49:</p> <p>"In coordination with businesses, driveway access points to reduce the number of conflict locations. However, the final design of the trail would include safety features to reduce conflict between trail users and vehicles."</p>	<p>09-069</p> <p>Response: "The EIS is inadequate and must be revised. Information on driveway operations or vehicle movements related to the Preferred, and that, has no information or understanding of such business operations or vehicle movements related to the Preferred. The EIS is inadequate and must be revised."</p> <p>SDOT failed to interview any representatives of other businesses located along the Preferred, and that, has no information or understanding of such business operations or vehicle movements related to the Preferred. The EIS is inadequate and must be revised."</p>

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Comment No.	EIS Discussion	Response
C11 NO. 55 Additional analysis is required because of the different types (commercial/residential) of operations along this Alternative.		
C11 NO. 54 SDOT did not take the ordinary practices of the businesses, for example, a vehicle blocking the street with large vehicles while unloading, into account when determining the potential delay to commercial users, only the operation of the trail.		
C11 NO. 57 SDOT failed to interview any business owners or to understand actual operations. SDOT's "conclusionary statement" are generally inadequate because they do not provide decision-makers a "reasonable" thorough discussion of significant impact of the public environmental consequences" of SDOT's proposed Alternative and that the DEIS must be withdrawn. <i>Kovach County Group, Inc. v. Clark County</i> , 83 Wn. App. 133, 140 (1996)		
		<p>Page 7-25: "All alternatives would cause delays used for freight movement. Freight vehicles would be required to stop for a short period of time to allow for loading and unloading. The count included on page 7-27 of the Draft EIS only includes driveways and loading docks, and does not include intersections.</p> <p>The driveways and loading zones along each of the alignments, including the Shilshole South Alternative, were identified and counted using design drawings and field work. The count included on page 7-27 of the Draft EIS only includes driveways and loading docks, and does not include intersections.</p> <p>SDOT has committed to working with adjacent business and property owners and key stakeholders throughout the design process.</p>
		<p>Page 7-26: "At driveway, freight vehicle could be delayed from zero to 11 seconds (on average) - this delay would not be considered a significant impact."</p> <p>Page 7-29: "All driveways, freight vehicles could be delayed from zero to 11 seconds (on average) - this delay would not be considered a significant impact."</p> <p>Page 7-26: "Some businesses that currently use the City right-of-way for access parking or loading docks make the blocks. The changes in access would potentially change how businesses operate. Some businesses may not be able to access their business as they currently do and may have to reorient their business operations to accommodate freight by reducing loading docks or driveways."</p> <p>Page 7-30: "Vehicle would be required to stop for a short period of time to allow for loading and unloading. The count included on page 7-27 of the Draft EIS only includes driveways and loading docks, and does not include intersections. However, it is possible that vehicle blocking the trail would occasionally delay trail users during the day. On average, trail users could have to wait between 15 to 27 seconds for a vehicle to clear the trail."</p>

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09 - 070 Please see Chapter 7 of the Final EIS and Chapter 4 of Technical Appendix B (Volume 3) for updated information, including driveway operations and vehicle classification as developed from interviews with businesses and data collection completed in late 2016 and early 2017. A sample of representative driveways provides a range of potential impacts that could occur at driveways. SEPA requires the disclosure of impacts and does not demand a particular result. The Final EIS discloses potential impacts at driveways under each of the Build Alternatives in Chapter 5 of Technical Appendix B (Volume 3) and provides mitigation measures to address impacts. Please also see the responses to comment 09-069.

The Draft EIS and Final EIS, Chapter 7 disclose that some unpermitted operations, such as the use of public right-of-way for loading and unloading activities, would no longer be allowed under any of the Build Alternatives.

The driveways and loading zones along each of the alignments, including the Shilshole South Alternative, were identified and counted using design drawings and field work. The count included on page 7-27 of the Draft EIS only includes driveways and loading docks, and does not include intersections.

SDOT has committed to working with adjacent business and property owners and key stakeholders throughout the design process.

<p>Comment No. 65: SCOT did not take the ordinary practices of the business into account when determining the potential delay to nonmotorized users, only the operation of the trail. CM NO. 65: SCOT needs to disclose information regarding actual business operations so decision-makers can make an informed decision.</p>	<p>Page 7-41: "There are approximately 23 driveways and loading docks along the alignment. To the extent necessary, driveway access to all businesses would be reconfigured and provided in the same location as the Build Alternative. However, some properties with multiple access points could have their driveways consolidated into a single access point in coordination with the City and property owners." Page 7-42: "Approximately 42 driveways and loading docks... Vehicles would be required to stop for trail users at all driveway/trail intersections. However, if a queue of vehicles blocking the trail would occasionally delay trail users after stopping before the trail, vehicles would continue forward over the trail and stop at the driveway. On average, trail users could have to wait between 15 and 25 seconds for a vehicle to clear the trail."</p>	<p>Alternative Adverse Adverse Adverse</p>
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<p>Comment No. 66: SCOT did not take the ordinary practices of the business into account when determining the potential delay to nonmotorized users, only the operation of the trail. CM NO. 66: SCOT needs to disclose information regarding actual business operations so decision-makers can make an informed decision.</p>	<p>Page 7-40: "Approximately 42 driveways and loading docks are located along the alignment of the Build Alternative. Driveways, freight vehicles could be delayed from zero to 25 seconds on average above the 36 Build Alternative during the PM peak hour. This would not be considered an adverse impact." Page 7-41 (copy added): "Vehicles would be required to stop for trail users at all driveway/trail intersections. However, if a queue of vehicles blocking the trail would occasionally delay trail users after stopping before the trail, vehicles would continue forward over the trail and stop at the driveway. On average, trail users could have to wait 15 to 25 seconds for a vehicle to clear the trail." Page 7-42: "Approximately 58 driveways and loading docks are located along the alignment of the Build Alternative. Driveways, freight vehicles could be delayed from zero to 25 seconds on average above the 36 Build Alternative during the PM peak hour. This would not be considered an adverse impact." Page 7-43: "Approximately 58 driveways and loading docks are located along the alignment of the Build Alternative. Driveways, freight vehicles could be delayed from zero to 25 seconds on average above the 36 Build Alternative during the PM peak hour. This would not be considered an adverse impact." Page 7-44 (copy added): "Vehicles would be required to stop for trail users at all driveway/trail intersections. However, if a queue of vehicles blocking the trail would occasionally delay trail users after stopping before the trail, vehicles would continue forward over the trail and stop at the driveway. On average, trail users could have to wait 15 to 25 seconds for a vehicle to clear the trail."</p>	<p>Alternative Adverse Adverse Adverse</p>
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Comment No. 67:
SCOT did not take the ordinary practices of the business into account when determining the potential delay to nonmotorized users, only the operation of the trail.
CM NO. 67:
SCOT needs to disclose information regarding actual business operations so decision-makers can make an informed decision.

Page 7-45:
"There are approximately 41 driveways and loading docks along the alignment of the Build Alternative. Driveways, freight vehicles could be delayed from zero to 25 seconds on average above the 36 Build Alternative during the PM peak hour. This would not be considered an adverse impact."
Page 7-46 (copy added):
"Vehicles would be required to stop for trail users at all driveway/trail intersections. However, if a queue of vehicles blocking the trail would occasionally delay trail users after stopping before the trail, vehicles would continue forward over the trail and stop at the driveway. On average, trail users could have to wait 15 to 25 seconds for a vehicle to clear the trail."

Alternative
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Adverse
Adverse

Comment No.	Comment Text	Response
09-071	<p>The HLE Order states: "The HLE Order states: distance [i.e. 175 feet] between the closest part of a road object and the roadway, and two feet between the roadway and the closest part of a road object."</p> <p>The HLE Order states: "The HLE Order states: distance [i.e. 175 feet] between the closest part of a road object and the roadway, and two feet between the roadway and the closest part of a road object."</p>	<p>See Exhibit A, HLE Order, Page 5, Item 22.</p>
09-072	<p>The HLE Order states: "The HLE Order states: distance [i.e. 175 feet] between the closest part of a road object and the roadway, and two feet between the roadway and the closest part of a road object."</p> <p>The HLE Order states: "The HLE Order states: distance [i.e. 175 feet] between the closest part of a road object and the roadway, and two feet between the roadway and the closest part of a road object."</p>	<p>See Exhibit A, HLE Order, Page 6, Item 29.</p>

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09 - 071 Please see response to comment 09-017.
 09 - 072 Please refer to the responses to Comments 09-017 and 09-063.

A 'safety study' is not required under SEPA. Please see Section 1.7.1, Roadway Design and Safety Considerations, for additional design measures to provide separation and address safety, which could be incorporated during final design.

The driveways and loading zones along each of the alignments, including the Shilshole South Alternative, were identified and counted using design drawings and field work. The count included on page 7-27 of the Draft EIS only includes driveways and loading docks, and does not include intersections.

Please refer to the Methodology described in Chapter 3 of Technical Appendix B (Volume 3) of the Final EIS, which summarizes the methodology used to summarize impacts to all modes, including freight, nonmotorized users, and safety. Safety impacts under the Build Alternative are described in Chapter 7 of the Final EIS, as well as Chapter 5 in the Technical Appendix B (Volume 3).

Comment Matrix	Comment	Response
<p>Comment Matrix Burke-Gilman Trail Missing Link Project – Draft Environmental Impact Statement (June 2016)</p>	<p>Comment 76 EIS Statement EIS Statement</p> <p>Comment 77 EIS Statement EIS Statement</p>	<p>Response 76 EIS Statement EIS Statement</p> <p>Response 77 EIS Statement EIS Statement</p>
<p>Comment Matrix Burke-Gilman Trail Missing Link Project – Draft Environmental Impact Statement (June 2016)</p>	<p>Comment 78 EIS Statement EIS Statement</p> <p>Comment 79 EIS Statement EIS Statement</p> <p>Comment 80 EIS Statement EIS Statement</p>	<p>Response 78 EIS Statement EIS Statement</p> <p>Response 79 EIS Statement EIS Statement</p> <p>Response 80 EIS Statement EIS Statement</p>

Comment Matrix	Comment	Response
<p>Comment Matrix Burke-Gilman Trail Missing Link Project – Draft Environmental Impact Statement (June 2016)</p>	<p>Comment 81 EIS Statement EIS Statement</p> <p>Comment 82 EIS Statement EIS Statement</p> <p>Comment 83 EIS Statement EIS Statement</p> <p>Comment 84 EIS Statement EIS Statement</p> <p>Comment 85 EIS Statement EIS Statement</p> <p>Comment 86 EIS Statement EIS Statement</p> <p>Comment 87 EIS Statement EIS Statement</p> <p>Comment 88 EIS Statement EIS Statement</p> <p>Comment 89 EIS Statement EIS Statement</p> <p>Comment 90 EIS Statement EIS Statement</p>	<p>Response 81 EIS Statement EIS Statement</p> <p>Response 82 EIS Statement EIS Statement</p> <p>Response 83 EIS Statement EIS Statement</p> <p>Response 84 EIS Statement EIS Statement</p> <p>Response 85 EIS Statement EIS Statement</p> <p>Response 86 EIS Statement EIS Statement</p> <p>Response 87 EIS Statement EIS Statement</p> <p>Response 88 EIS Statement EIS Statement</p> <p>Response 89 EIS Statement EIS Statement</p> <p>Response 90 EIS Statement EIS Statement</p>

09 - 073 Please refer to the responses to Comments 09-059 and 09-072.

Alternative	Comments	Response
Alternative 1	<p>The IJC Order states:</p> <p>“The IJC Order states: [Applicant agrees that the 20-095 level of design is not sufficient to address impacts.] The sign now covers location and description of existing and historic trail, and description of signage. The level of design along the location, driveway width, driveway placement, driveway width, and driveway placement is insufficient to address impacts. [Applicant agrees that the 20-095 level of design is not sufficient to address impacts.] The sign now covers location and description of existing and historic trail, and description of signage. The level of design along the location, driveway width, driveway placement, driveway width, and driveway placement is insufficient to address impacts.”</p> <p>See Exhibit A, IJC Order, Page 8, Conclusion 2</p>	<p>At the public meeting on July 14, 2016, SIDOT stated it would take approximately 1 year to design the selected Alternative.</p> <p>“The final design would also include safety considerations to ensure that the trail operates safely. In addition, design elements such as pavement markings, signage, or vehicle mirrors could be used to further improve safety. A warning sign at driveway entrances, driveway width, and driveway placement, and other signs at driveway entrances could be used to clearly identify where the trail intersects driveways and to notify drivers of the intersection. Other improvements, such as intersection rationalization or advanced warning systems with vehicle detection that activate when a vehicle enters and notifies that a trail intersection exists. Other improvements, such as intersection rationalization or advanced warning systems with vehicle detection that activate when a vehicle enters and notifies that a trail intersection exists. Other improvements, such as intersection rationalization or advanced warning systems with vehicle detection that activate when a vehicle enters and notifies that a trail intersection exists.”</p> <p>“The final design would also include safety considerations to ensure that the trail operates safely. In addition, design elements such as pavement markings, signage, or vehicle mirrors could be used to further improve safety. A warning sign at driveway entrances, driveway width, and driveway placement, and other signs at driveway entrances could be used to clearly identify where the trail intersects driveways and to notify drivers of the intersection. Other improvements, such as intersection rationalization or advanced warning systems with vehicle detection that activate when a vehicle enters and notifies that a trail intersection exists. Other improvements, such as intersection rationalization or advanced warning systems with vehicle detection that activate when a vehicle enters and notifies that a trail intersection exists.”</p> <p>“The final design would also include safety considerations to ensure that the trail operates safely. In addition, design elements such as pavement markings, signage, or vehicle mirrors could be used to further improve safety. A warning sign at driveway entrances, driveway width, and driveway placement, and other signs at driveway entrances could be used to clearly identify where the trail intersects driveways and to notify drivers of the intersection. Other improvements, such as intersection rationalization or advanced warning systems with vehicle detection that activate when a vehicle enters and notifies that a trail intersection exists. Other improvements, such as intersection rationalization or advanced warning systems with vehicle detection that activate when a vehicle enters and notifies that a trail intersection exists.”</p>
Alternative 2	<p>At the public meeting on July 14, 2016, SIDOT stated it would take approximately 1 year to design the selected Alternative.</p> <p>“The final design would also include safety considerations to ensure that the trail operates safely. In addition, design elements such as pavement markings, signage, or vehicle mirrors could be used to further improve safety. A warning sign at driveway entrances, driveway width, and driveway placement, and other signs at driveway entrances could be used to clearly identify where the trail intersects driveways and to notify drivers of the intersection. Other improvements, such as intersection rationalization or advanced warning systems with vehicle detection that activate when a vehicle enters and notifies that a trail intersection exists. Other improvements, such as intersection rationalization or advanced warning systems with vehicle detection that activate when a vehicle enters and notifies that a trail intersection exists.”</p>	<p>At the public meeting on July 14, 2016, SIDOT stated it would take approximately 1 year to design the selected Alternative.</p> <p>“The final design would also include safety considerations to ensure that the trail operates safely. In addition, design elements such as pavement markings, signage, or vehicle mirrors could be used to further improve safety. A warning sign at driveway entrances, driveway width, and driveway placement, and other signs at driveway entrances could be used to clearly identify where the trail intersects driveways and to notify drivers of the intersection. Other improvements, such as intersection rationalization or advanced warning systems with vehicle detection that activate when a vehicle enters and notifies that a trail intersection exists. Other improvements, such as intersection rationalization or advanced warning systems with vehicle detection that activate when a vehicle enters and notifies that a trail intersection exists.”</p>
Alternative 3	<p>At the public meeting on July 14, 2016, SIDOT stated it would take approximately 1 year to design the selected Alternative.</p> <p>“The final design would also include safety considerations to ensure that the trail operates safely. In addition, design elements such as pavement markings, signage, or vehicle mirrors could be used to further improve safety. A warning sign at driveway entrances, driveway width, and driveway placement, and other signs at driveway entrances could be used to clearly identify where the trail intersects driveways and to notify drivers of the intersection. Other improvements, such as intersection rationalization or advanced warning systems with vehicle detection that activate when a vehicle enters and notifies that a trail intersection exists. Other improvements, such as intersection rationalization or advanced warning systems with vehicle detection that activate when a vehicle enters and notifies that a trail intersection exists.”</p>	<p>At the public meeting on July 14, 2016, SIDOT stated it would take approximately 1 year to design the selected Alternative.</p> <p>“The final design would also include safety considerations to ensure that the trail operates safely. In addition, design elements such as pavement markings, signage, or vehicle mirrors could be used to further improve safety. A warning sign at driveway entrances, driveway width, and driveway placement, and other signs at driveway entrances could be used to clearly identify where the trail intersects driveways and to notify drivers of the intersection. Other improvements, such as intersection rationalization or advanced warning systems with vehicle detection that activate when a vehicle enters and notifies that a trail intersection exists. Other improvements, such as intersection rationalization or advanced warning systems with vehicle detection that activate when a vehicle enters and notifies that a trail intersection exists.”</p>

Comment No.	EIS Response
<p>SCOT did not conduct a specific evaluation and comprehensive mid-term analysis of all alternatives located along the Alternative. It is "possible" to do so because Mr. Bishop did it for the 55-vehicle segment.</p> <p>CM NO. 301</p>	<p>"Although it is not feasible to analyze impacts on operations at all driveways along the built-up range of typical impacts that would be experienced by all driveways in the study area,"</p> <p>CM NO. 304</p> <p>SCOT has prepared and provided an economic and alternative analysis and traffic volume and that also represent a number of alternative driveways in order to provide a representative of all driveways. Analysis of individual driveways that has a range of traffic alternatives, analysis selected a sampling of driveways in the study area that would be</p>
<p>Mr. Bishop's opinion was based on detailed and specific examination of the driveways along the 55-vehicle segment and that was."</p> <p>The EIS Order states:</p> <p>"But there is a dearth of specific evidence in their report regarding Mr. Bishop's analysis and his findings about the impact on traffic and the well."</p>	<p>See Exhibit A, EIS Order, Page 9, Conclusion 7.</p>

Page 22 of 22

Voth Law Group PLLC

09 - 075 Please see the responses to Comments 09-015 and 09-068. The design of the alternatives is to a sufficient level to inform decision-makers by describing and identifying locations where there could be impacts to driveways, the types of impacts that could occur, and potential mitigation, primarily in the form of design options, that could minimize any potential impacts. The locations where there could be impacts under any of the Build Alternatives have been identified in the Final EIS Chapter 7 and Chapter 5 of Technical Appendix B (Volume 3). Mitigation strategies to address impacts have also been included in the Final EIS.

EXHIBIT E

FILED

17 APR 12 PM 1:16

The Honorable Suzanne Parisien
KING COUNTY

SUPERIOR COURT CLERK

E-FILED

CASE NUMBER: 09-2-26586-1 SEA

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

7 SALMON BAY SAND & GRAVEL,
8 INC., BALLARD CHAMBER OF
9 COMMERCE, SEATTLE MARINE
10 BUSINESS COALITION, BALLARD
11 OIL COMPANY, NORTH SEATTLE
INDUSTRIAL ASSOCIATION, and the
BALLARD INTERBAY NORTHEAST
MANUFACTURING & INDUSTRIAL
CENTER,

12 Plaintiffs/Petitioners,

13 vs.

14 THE CITY OF SEATTLE, THE
15 SEATTLE DEPARTMENT OF
TRANSPORTATION, THE SEATTLE
HEARING EXAMINER, and

16 THE CASCADE BICYCLE CLUB,

17 Defendants/Respondents.
18

No. 09-2-26586-1SEA

MOTION TO DISMISS

19
20
I. RELIEF REQUESTED

21 The City respectfully asks this Court to dismiss all three matters consolidated under
22 Cause No. 09-2-26586-1SEA, pursuant to King County Civil Rule 12(b)(6), because the first two
23 matters (originally filed under Cause Nos. 09-2-26586-1SEA and 11-2-25099-7SEA) are moot

1 and the third matter (originally filed under Cause No. 12-2-30454-8SEA) is not yet ripe for
2 review.

3 II. STATEMENT OF RELEVANT FACTS & AUTHORITY

4 These three consolidated matters are all related to the environmental review, pursuant to
5 the State Environmental Policy Act (SEPA), for the Seattle Department of Transportation's
6 (SDOT) proposal to construct the Burke Gilman Trail Extension Project (the Missing Link or
7 Project) in the Ballard neighborhood of Seattle. The Missing Link would connect an
8 approximately 1.5 mile gap between two existing portions of the Burke Gilman Trail.

9 SEPA requires agencies to consider the potential adverse environmental impacts of a
10 proposed action in their decision-making processes.¹ The first step in that process is for the lead
11 agency to make a procedural determination whether the proposed action will result in probable
12 significant adverse environmental impacts, called a "threshold determination."² The threshold
13 determination is often based on information gathered through the preparation of a SEPA
14 "checklist," which is a prescribed form that includes questions about all of the elements of the
15 environment required to be analyzed under SEPA.³

16 If the agency determines that there will *not* be any probable significant adverse impacts,
17 then the agency will issue a Determination of Nonsignificance (DNS) and the DNS is the final
18 procedural step required by SEPA before the project may move forward.⁴ If the agency
19 determines that there *will* be probable significant adverse impacts, the agency must issue a
20 Determination of Significance (DS), prepare an Environmental Impact Statement (EIS), which
21 includes both a Draft and Final EIS, and comply with other procedural requirements, such as

22 ¹ RCW 43.21C.030.

² WAC 197-11-310 (Threshold determination required) and WAC 197-11-330 (Threshold Determination Process).

³ WAC 197-11-315 (Environmental checklist).

⁴ WAC 197-11-340 (Determination of nonsignificance (DNS)).

1 providing notice and allowing public input at several points throughout the process, prior to
2 moving forward with the proposed “action”⁵ – in this case, before constructing the multi-use trail
3 through the Ballard neighborhood. Although SEPA allows some administrative appeals of
4 threshold determinations, any judicial appeal must be of both SEPA compliance *and* the
5 underlying governmental action.⁶

6 The SEPA review of the Missing Link and related appeals has resulted in a long and
7 complicated procedural history. In addition to the description of that history included in this
8 motion below, a timeline with copies of associated SEPA documents, appeals, and decisions, all
9 of which are included in the record under Case No. 09-2-26586-1, is attached to this motion.⁷

10 The first step relevant to the current appeals occurred in November 2008: following the
11 preparation of a SEPA checklist, SDOT issued a DNS for the Project, determining that the
12 Project would *not* have a probable significant adverse impact on the environment. The
13 Petitioners filed an administrative appeal of that DNS, which was affirmed by the Seattle
14 Hearing Examiner.⁸ Following that Hearing Examiner decision, SDOT issued a Notice of
15 Action to proceed with the Project.⁹ The Petitioners then filed their *first appeal* to this Court to
16 challenge the Hearing Examiner’s decision and the underlying action to proceed (Cause no. 09-
17 2-26586-1SEA).¹⁰ This Court ruled in the City’s favor on a number of issues, but remanded for

18
19 ⁵ WAC 197-11-360 (Determination of significance (DS)/initiation of scoping).

20 ⁶ RCW 43.21C.075(1)(SEPA “is not intended to create a cause of action unrelated to a specific governmental
21 action.”) and RCW 43.21C.075(2)(a)(“Appeals under this chapter shall be of the governmental action together with
22 its accompanying environmental determinations.”) and WAC 197-11-680 (Appeals). Also, see *State ex. rel. Friend
& Rikalo Contractor v. Grays Harbor County*, 122 Wn.2d 244, 249, 857P.2d 1039 (1993).

23 ⁷ See the Declaration of Erin Ferguson (Ferguson Declaration), with attached Overview of Procedural History and
Exhibits A.1 through A.11.

⁸ Exhibit A.1 to Ferguson Declaration (Findings and Decisions of the Hearing Examiner, W-08-007).

⁹ Exhibit A.2 to Ferguson Declaration (Notice of Action, stating SDOT’s intent to proceed with construction of the
Burke Gilman Trail Extension Project). See RCW 43.21C.080 (Notice of Action by governmental agency – How
publicized – Time limitation for commencing challenge to action).

¹⁰ Exhibit A.3 to Ferguson Declaration (Verified Complaint, Cause No. 09-2-26586-1SEA (first appeal)).

1 additional environmental analysis of a 0.3 mile segment of the Project along Shilshole Ave. NW,
2 between 17th Ave. NW and NW Vernon Place (the Shilshole Segment).¹¹ SDOT performed that
3 additional review and issued a Revised DNS, which superseded the original DNS. The
4 Petitioners appealed the Revised DNS, which was affirmed by the Hearing Examiner.¹²

5 In 2011, the Petitioners then filed their *second appeal* to this Court, challenging the
6 Hearing Examiner's decision affirming the Revised DNS (originally filed under Cause no. 11-2-
7 25099-7SEA, prior to consolidation).¹³ This Court again ruled in the City's favor on a number of
8 issues, but remanded for additional design of the Shilshole Segment so that the potential impacts
9 could be evaluated.¹⁴ SDOT did additional design of the Shilshole Segment and reissued the
10 Revised DNS,¹⁵ again superseding any prior threshold determinations, which the Petitioners
11 again appealed to the Hearing Examiner. The Hearing Examiner reversed and remanded for
12 preparation of an EIS related to traffic hazard impacts along the Shilshole Segment.¹⁶

13 In 2012, the Petitioners filed their *third appeal* to this Court, challenging the Hearing
14 Examiner's decision on the reissued Revised DNS and requesting the preparation of an EIS for
15 the entire Project (originally filed under Cause no. 12-2-30454-8SEA, prior to consolidation).¹⁷
16 Petitioners' third appeal challenges the adequacy of an EIS that has not yet been prepared.¹⁸

17 Following the Hearing Examiner's decision requiring preparation of an EIS, the City
18 made the decision to prepare a full EIS, studying the entire length of the Missing Link,
19

20 ¹¹ Exhibit A.4 to Ferguson Declaration (Order of Remand, Cause No. 09-2-26586-1SEA, signed June 7, 2010).

¹² Exhibit A.6 to Ferguson Declaration (Findings and Decision of the Hearing Examiner, W-11-002).

¹³ Exhibit A.7 to Ferguson Declaration (Verified Complaint, Cause No. 11-2-25099-7SEA (*second appeal*)).

¹⁴ Exhibit A.8 to Ferguson Declaration (Second Order of Remand, Cause No. 09-2-26586-1SEA, signed March 2, 2012).

¹⁵ Exhibit A.9 to Ferguson Declaration (Reissued Revised DNS).

¹⁶ Exhibit A.10 to Ferguson Declaration (Findings and Decision of the Hearing Examiner, W-12-002, at p. 9 and 10).

¹⁷ Exhibit A.11 to Ferguson Declaration (Verified Complaint, Cause No. 12-2-30454-8SEA).

¹⁸ Declaration of Mark Mazzola (Mazzola Declaration), no. 8.

1 reasonable alternatives, and all relevant elements of the environment.¹⁹ In July 2013, SDOT
2 began the EIS scoping process for the Project, which involves seeking input from the public on
3 what alternatives and elements of the environment will be analyzed in the EIS and is the first
4 step in beginning to prepare an EIS.²⁰ The scoping notice provided that the EIS would include
5 discussion of the entire Missing Link, from 11th Ave. NW to the Ballard Locks, and that
6 elements of the environment in addition to those preliminarily identified by SDOT
7 (transportation, land and shoreline use, earth, plants and animals, historic and cultural resources,
8 and economics) may be included based on SDOT's review of scoping comments.²¹ SDOT
9 issued a Draft EIS in June 2016 and anticipates issuing a Final EIS in late May 2017.²² The
10 Petitioners will be entitled to appeal the Final EIS to the Seattle Hearing Examiner.

11 The City agreed to stay the consolidated appeals and chose not to file a motion to dismiss
12 the consolidated appeals sooner, because they hoped that their work on the EIS would result in a
13 voluntary dismissal and that cooperating *out* of Court was a better approach than taking action *in*
14 Court.²³ Unfortunately it appears that voluntary dismissal is unlikely, so the City is now taking
15 action to dismiss the moot and unripe appeals. This motion in no way inhibits the Petitioners'
16 right to appeal the Final EIS when it is issued.²⁴

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¹⁹ Mazzola Declaration, at no. 3. SEPA "elements of the environment" include both the natural and built
20 environment, including consideration of geology, topography, air, water, plants and animals, noise, land use,
housing, transportation, and public services and utilities, among others. See WAC 197-11-444.

21 ²⁰ WAC 197-11-408.

22 ²¹ Declaration of Mark Mazzola, at no. 4 and Exhibit A to that declaration (Scoping Notice), at p. 2, stating that the
City has chosen to expand the scope of the EIS.

23 ²² Mazzola Declaration, at no. 6 (A copy of the Executive Summary of the Draft Environmental Impact Statement is
attached to that declaration Exhibit B and a link to the full DEIS can be found at
<http://www.seattle.gov/transportation/docs/bgt/EIS/BGTDraftEISJune2016.pdf>)

24 ²³ Mazzola Declaration, at no. 7.

²⁴ See WAC 197-11-680 (Appeals).

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III. ISSUES

1. Whether the first two appeals must be dismissed as moot, because the Seattle Hearing Examiner granted the relief sought by the Petitioners by reversing the Determination of Non-Significance, voiding the underlying action, and requiring preparation of an EIS?
2. Whether the third appeal must be dismissed because it is not yet ripe for judicial review, where it challenges a process that is currently underway, but has not yet been completed, that may result in the relief sought by the Petitioners, and that must be appealed in conjunction with an underlying action that has not yet been taken?

IV. EVIDENCE RELIED UPON

This Motion relies upon the following evidence:

- Declaration of Mark Mazzola and Exhibit A (Scoping Notice) and Exhibit B (Executive Summary from Draft EIS for the Project).
- Declaration of Erin Ferguson and attachments, including:
 - Findings and Decision of the Hearing Examiner, W-08-007, W-11-002, and W- 12-002.
 - Verified Complaints for Direct Review Under SEPA, Applications for Writ of Review, Complaints for Declaratory Judgment, Applications for Constitutional Writ of Review, and Requests for Injunction, in Cause Nos. 09-2-26586-1SEA, 11-2-25099-7SEA, and 12-2-30454-8SEA.
 - KCSC Order of Remand in Cause No. 09-2-26586-1SEA
 - KCSC Second Order of Remand in consolidated Cause No. 09-2-26586-1SEA
- Other pleadings and papers related to this matter on file with this Court.

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V. ARGUMENT

A. **Petitioners' first and second appeals are moot, because the Seattle Hearing Examiner already reversed SDOT's DNS and ordered the preparation of an EIS, which is the relief sought by the Petitioners.**

Judicial review is moot if a court could not provide effective relief.²⁵ Here, the Petitioners request essentially the same relief in both their first and second judicial appeals: that the initial DNS and the revised DNS be **reversed and remanded for preparation of an EIS.**²⁶ The Petitioners have subsequently been granted that relief through the Seattle Hearing Examiner's August 2013 decision, in which she **reversed** the reissued revised DNS for the Project and **remanded it for preparation of an EIS.**²⁷ Because the Hearing Examiner already ordered the relief requested – the preparation of an EIS – and SDOT is currently in the process of completing that EIS, this Court cannot provide any effective relief, so the first and second appeals must be dismissed under King County Superior Court Civil Rule 12(b)(6).

²⁵ *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 630-32, 860 P.2d 390 (1993).

²⁶ Exhibit A.3 (First appeal, p. 19, section 6.1) and Exhibit A.7 (Second appeal, p. 24, section 7.1) to Ferguson Declaration. The only difference between the relief requested in the first and second appeals was that the second appeal did not request that the Action be reversed. Regardless, an agency cannot take action on a proposal until a final EIS is issued, if an EIS is required (WAC 197-11-070).

²⁷ Exhibit A.10 to Ferguson Declaration (Findings and Decision of the City of Seattle Hearing Examiner, W-12-002) at p. 10. Although the August 2013 Hearing Examiner decision provided that the DNS was reversed "in part," a threshold determination is either correct or not: if a proposal may have *any* probable significant environmental impact, a Determination of Significance (DS) must be issued and an EIS prepared. WAC 197-11-360. Consistent with the Hearing Examiner's August 2013 decision, SEPA does provide that "[d]iscussion of insignificant impacts is not required." WAC 197-11-402. Regardless, even though the Hearing Examiner's remand was for preparation of an EIS related to traffic impacts in the Shilshole Segment, SDOT chose to pursue the preparation of a full EIS related to the entire Missing Link and all relevant elements of the environment, including the consideration of reasonable alternatives, as reflected in the Draft EIS. See the Declaration of Mark Mazzola, nos. 3, 4, and 6.

1 **B. The third appeal is not ripe for judicial review, because SEPA does not allow**
2 **for the appeal of intermediate determinations and the adequacy of the EIS is**
3 **only reviewable by this Court upon issuance of a final document, once**
4 **administrative remedies have been exhausted.**

5 SEPA “precludes judicial review of SEPA compliance until final agency action on the
6 proposal”²⁸ and requires that “any appeal brought under [RCW chapter 43.21C] shall be linked
7 to a specific governmental action.”²⁹ Here, the underlying action – the Notice of Action to
8 proceed with the Project – was invalidated when the Hearing Examiner reversed the DNS and no
9 new action can be taken until after issuance of a final EIS, since SEPA prohibits taking any
10 action until the completion of an EIS, if required.³⁰

11 An often-cited treatise on SEPA provides that the purposes of this linkage requirement
12 are to preclude judicial review of SEPA compliance before an agency has taken final action on a
13 proposal, foreclose multiple lawsuits challenging a single agency action, and deny the existence
14 of what are referred to as “orphan” SEPA claims, unrelated to any governmental action.³¹ That
15 same treatise provides that earlier steps in the SEPA process, including scoping and EIS
16 preparation and adequacy, are only subject to judicial review upon final agency action on the
17 proposal.³² In addition, SEPA strictly requires the exhaustion of administrative remedies prior to

18 ²⁸ RCW 43.21C.075(6)(c) and see *State ex rel. Friends & Rikalo Contractor v. Grays Harbor County*, 122 Wn.2d
19 244, 250, 857 P.2d 1039 (1993).

20 ²⁹ RCW 43.21C.075(2)(a). Also, see *State v. Grays Harbor*, 122 Wn.2d at 249. SEPA “is not intended to create a
21 cause of action unrelated to a specific governmental action.” RCW 43.21C.075.

22 ³⁰ WAC 197-11-070(1) (“Until the responsible official issues a final determination of nonsignificance or **final**
23 **environmental impact statement**, no action concerning the proposal shall be taken by a governmental agency that
24 would:

- 25 (a) Have an adverse environmental impact; or
- 26 (b) Limit the choice of reasonable alternatives.

27 See also, WAC 197-11-460(5) (“Agencies shall not act on a proposal for which an EIS has been required prior to
28 seven days after issuance of the FEIS.”)

29 ³¹ Richard L. Settle, *The Washington State Environmental Policy Act: A Legal and Policy Analysis*, Section 20, at
30 244 (1995), cited in *Grays Harbor County*, 122 Wn.2d 244, 251, 857 P.2d 1039 (1993).

31 ³² See 197-11-680(3)(a)(ii) and (iii).

1 seeking judicial review.³³ Each of these purposes would be thwarted if the third appeal is allowed
2 to proceed.

3 Specifically, allowing an appeal now would frustrate one of the purposes of the linkage
4 requirement of RCW 43.21C.075, by failing to foreclose multiple lawsuits challenging a single
5 agency action, since the Petitioners may very well choose to appeal the Final EIS when it is
6 issued. If the third appeal is not dismissed and a new appeal is filed, there could be two appeals
7 related to environmental review of the same project running concurrently, which would be
8 confusing and a waste of judicial resources.³⁴

9 The Petitioners may not appeal the adequacy of an EIS to this Court until the Final EIS
10 has been issued, an underlying action has been taken, and administrative remedies have been
11 exhausted. Because none of those things has occurred here, the third appeal is not ripe and must
12 be dismissed.

13 VI. CONCLUSION

14 If the Petitioners are still dissatisfied with the City's environmental review for the
15 Missing Link Project, they may appeal the Final EIS when it is issued. The three consolidated
16 appeals that have been pending before this Court for nearly *eight* years, related to determinations
17 that have already been invalidated or that are not yet ripe for review, must be dismissed. It would
18 be a waste of judicial resources and contrary to the law to allow the pending appeals to sit any
19 longer in this Court. SDOT respectfully requests the Court grant its motion to dismiss and
20 dismiss the consolidated matters, to clear the slate before any new, appropriate, and timely
21 appeals are filed.

22 ³³ WAC 197-11-680(3)(c) and see *Citizens for Clean Air v. Spokane*, 114 Wn.2d 20, 30, 785 P.2d 447 (1990).

23 ³⁴ Moreover, the third appeal will be *moot* once the Final EIS is issued and is arguable moot already, given SDOT's Scoping Notice and Draft EIS, which provide the relief sought by Petitioners. See Mazzola Declaration, at 3, 4, and 6.

1 DATED this 12th day of April, 2017.

2 By: s/Erin E. Ferguson

3 Erin E. Ferguson, WSBA #39535

4 Assistant City Attorney

5 Seattle City Attorney's Office

6 701 5th Ave. Suite 2000

7 Ph: (206) 684-8615

8 E-mail: erin.ferguson@seattle.gov

9 *Attorney for Respondents City of Seattle*

10 *Seattle Department of Transportation & Seattle Hearing*

11 *Examiner*

1 **CERTIFICATE OF SERVICE**

2 I certify that on the 12th day of April, 2017, I caused a true and correct copy of this
3 document to be served on the following in the manner indicated below:

4 Patrick J. Schneider Foster Pepper PLLC 1111 Third Avenue, Suite 3400 Seattle, WA 98101 <i>Attorney for Plaintiff/Petitioner</i>	() U.S. Mail () ABC Legal Messengers (X) Via Email via E-Filing
6 Joshua C. Allen Brower Tupper Mack Brower PLLC 1100 Market Place Tower 2025 First Avenue Seattle, WA 98121 <i>Attorney for Plaintiff/Petitioner</i>	() U.S. Mail () ABC Legal Messengers (X) Via Email via E-Filing
9 Matthew Cohen, WSBA #11232 Stoel Rives LLP 600 University Street, Suite. 3600 Seattle, WA 98101 Phone: (206) 624-0900 <i>Attorneys for Defendant/Respondent Cascade Bicycle Club</i>	() U.S. Mail () ABC Legal Messengers (X) Via Email via E-Filing

13
14 *s/Autumn Derrow*
15 Autumn Derrow, Legal Assistant

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

SALMON BAY SAND & GRAVEL, INC., et)	No. 09-2-26586-1SEA
al.,)	
)	
Plaintiffs/Petitioners,)	
)	
vs.)	
)	ORDER OF DISMISSAL
THE CITY OF SEATTLE, et al.,)	
)	[PROPOSED]
Defendants/Respondents.)	
)	
)	

This matter came before this court for hearing on May 19, 2017 on the City’s Motion to Dismiss. Petitioners were represented by Joshua C. Allen Brower of Veris Law Group, PLLC and Patrick J. Schneider of Foster Pepper, PLLC. Respondent City of Seattle was represented by Erin E. Ferguson; and Respondent Cascade Bicycle Club was represented by Matthew Cohen, of Stoel Rives, LLP. The Court, having considered the arguments of counsel and:

1. City of Seattle’s Motion to Dismiss;
2. Declaration of Mark Mazzola and Exhibits A and B;
3. Declaration of Erin Ferguson, the attached Overview of Procedural History and Exhibits A.1 through A.11;

- 1 4. Petitioner's brief in opposition to the City's Motion;
- 2 5. Intervenor Cascade Bicycle Club's brief in support of the City's Motion;
- 3 6. City of Seattle's Reply Brief and any attachments or declarations; and
- 4 7. The other pleadings and papers related to this matter on file with this Court.

5 Based on the foregoing, the Court FINDS:

- 6 1. Pursuant to CR 12(b)(6), the Petitioners fail to state a claim upon which relief can be
- 7 granted;

8 NOW, therefore, this Court hereby ORDERS that:

- 9 2. Respondent City of Seattle's Motion to Dismiss is granted.
- 10 3. All three consolidated matters, originally filed under Cause Nos. 09-2-26586-1SEA, 11-
- 11 2-25099-7SEA, and 12-2-30454-8SEA, are dismissed with prejudice.

12 DATED this ___ day of May, 2017.

13
14 THE HONORABLE SUZANNE PARISIEN

15 Presented by:

16 PETER S. HOLMES
17 Seattle City Attorney

18 By:

19 Erin E. Ferguson, WSBA # 39535
20 Attorney for Respondent/Defendant
The City of Seattle

21 Approved as to form by:

22 Matther Cohen, WSBA #11232
23 Stoel Rives LLP
Attorney for Intervenor Cascade Bicycle Club

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Joshua C. Allen Brower, WSBA #25092
Veris Law Group
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Foster Pepper, PLLC
Co-Counsel for Petitioners

EXHIBIT F

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

SALMON BAY SAND AND GRAVEL, INC.;
BALLARD CHAMBER OF COMMERCE;
SEATTLE MARINE BUSINESS
COALITION; BALLARD OIL COMPANY;
NORTH SEATTLE INDUSTRIAL
ASSOCIATION; and, THE BALLARD
INTERBAY NORTHEAST
MANUFACTURING & INDUSTRIAL
CENTER,

Plaintiffs/Petitioners

v.

THE CITY OF SEATTLE; THE SEATTLE
DEPARTMENT OF TRANSPORTATION;
THE SEATTLE HEARING EXAMINER; and,
CASCADE BICYCLE CLUB,

Defendants/Respondents.

NO. 09-2-26586-1 SEA¹

PLAINTIFFS'/PETITIONERS' RESPONSE
IN OPPOSITION TO THE CITY OF
SEATTLE'S MOTION TO DISMISS

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¹ The parties agreed to consolidate the 2012 appeal, Cause No. 12-2-30454-8 SEA, under Cause No. 09-2-26586-1 SEA and assign it to Judge Rogers pursuant to an Agreed Order entered on December 12, 2012, a copy of which is attached as Exhibit A to the Declaration of Joshua C. Allen Brower (hereinafter "Brower Decl."). Previously, the parties had similarly stipulated to consolidate the 2011 appeal, Cause No. 11-2-25099-7SEA, under Cause No. 09-2-26586-1SEA

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14 **I. INTRODUCTION AND RELIEF REQUESTED**

15 The Plaintiffs/Petitioners respectfully request the Court deny the City’s Motion because
16 this Court is sitting in its appellate capacity and thus CR12(b)(6) does not apply; because the
17 issues painstakingly preserved over nine years of appeals are not moot; this case involves issues
18 affecting a substantial public interest; the City’s ripeness argument is speculative; and because
19 the City is equitably estopped from preemptively breaching a binding stay and Case Schedule
20 Order properly entered by and repeatedly confirmed to this Court.

21 This Odyssey-esque appeal spans nearly nine years, including three administrative
22 “trials” (hearings) before the City of Seattle’s Hearing Examiner (“Examiner”), two prior appeals
23 before Judge Rogers in this Court, one unfinished Appellate Court appeal, and a record
24 thousands of pages in the making, all over an ill-conceived bicycle trail in Seattle known as the
25 “Missing Link.” The Missing Link is an unfinished portion of the Burke-Gilman Trail the City
has spent the last twenty years unwisely trying to build in the heart of industrial Ballard, a
segment of which would be located on Shilshole Avenue NW.² Plaintiffs/Petitioners are Ballard
businesses, community groups, and nonprofits concerned with bicycle safety, preserving union-

² Shilshole Avenue NW is a “Major Truck Street” under the City’s Comprehensive Plan. See https://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web_informational/dpdd016641.pdf.

1 and family-wage jobs, and maintaining Ballard’s multi-generational maritime-industrial
2 businesses (“Ballard Businesses”).

3 In 2008, the Ballard Businesses challenged the adequacy of the Seattle Department of
4 Transportation (“SDOT’s”) Determination of Non-Significance (“DNS”) for the Missing Link to
5 the Examiner under the State Environmental Policy Act (“SEPA”). The Ballard Businesses
6 repeatedly appealed the Examiner’s decisions to this Court and filed an interlocutory appeal to
7 the Appellate Court.³ For nearly nine years, SDOT failed to comply with SEPA’s procedural
8 and substantive requirements. Nearly five years ago, on August 27, 2012, the Examiner issued
9 an order (the “2012 Order”)⁴ directing SDOT to prepare and issue an Environmental Impact
10 Statement (“EIS”) for the Missing Link, which SDOT has still not accomplished. The following
11 procedural history demonstrates SDOT’s repeated refusal to comply with SEPA without this
12 Court’s continued jurisdiction:

Date	Entity	Event
December 16, 2008	Ballard Businesses	Notice of Appeal to the Examiner, challenging adequacy of SDOT’s first DNS for the Missing Link.
June 9, 2009	Examiner	Order on appeal, affirming DNS.
June 7, 2010	This Court	Order after appeal, remanding the DNS to the Examiner. Certain issues preserved for appeal. This Court retains jurisdiction.
Sept. 16, 2010	Court of Appeals	Order holding that June 7, 2010 order was interlocutory and that this Court retains jurisdiction until a final order on all preserved issues. <i>Salmon Bay Sand & Gravel Co. v. City of Seattle</i> , No. 65572-8-I (Wa. Ct. App., Sept. 16, 2010).
Feb 1, 2011	SDOT	Issues revised DNS for the Missing Link.
July 1, 2011	Examiner	Order on second appeal, affirming revised DNS.

24 ³ The Washington Court of Appeals held that this Court’s orders were interlocutory, and that an appeal could be
25 filed once this Court issues a final order. *Salmon Bay*, No. 65572-8-I at p. 6, copy attached as Exhibit A to the
Brower Decl.

⁴ See Exhibit B to Brower Decl.

1	Mar. 2, 2012	This Court	Order remanding and directing SDOT to prepare further environmental review on certain issues and retaining jurisdiction over “any actions taken in response to this order, and for entry of a final order upon compliance with this Court’s Second Order of Remand.” ⁵
2			
3			
4			
5	April 30, 2012	SDOT	Issues a second revised DNS.
6	Aug. 17, 2012	Examiner	Order remanding decision on second revised DNS and ordering SDOT to prepare an EIS for the Shilshole Segment only.
7			
8	Sept. 17, 2012	Ballard Businesses	Perfected appeal to this Court, asking it to reverse certain aspects of the 2012 Order, which is not limited to the mere preparation of an EIS.
9			
10	December 12, 2012	This Court	Order consolidating current appeal under Cause No. 09-2-26586 and assigning case to Judge Rogers.
11	September 30, 2013	This Court	Order Setting Case Schedule setting hearing date for December 12, 2014 unless SDOT has not issued the Final EIS, in which case the Hearing date is keyed off any “City Decision” regarding the adequacy of the Final EIS. ⁶
12			
13			
14	September 3, 2014	This Court	Stipulation and Agreed Order to Revise Case Schedule, resetting the hearing date to October 14, 2016 to give SDOT time to finish the Final EIS and, if it has not done so by that date, again keying the Hearing date off any “City Decision” regarding the adequacy of the Final EIS. ⁷
15			
16			
17			
18	July 7, 2016	This Court	Stipulation and Agreed Order to Rescind Revised Case Schedule deleting the October 14, 2016 hearing date and again keying the hearing date off any “City Decision” regarding the adequacy of the Final EIS. ⁸
19			
20			
21	November 30, 2016	City of Seattle	Confirms “[t]here has been no change in the status since the Stipulation and Agreed Order to Rescind Revised Case Schedule on July 7, 2016.” ⁹
22			
23	March 8, 2017	Ballard	Letter to Court confirming there has been no change

⁵ A copy of Judge Roger’s Second Order of Remand is attached as Exhibit C to the Brower Decl.

⁶ A copy of the 09/20/13 Case Schedule Order is attached as Exhibit D to the Brower Decl.

⁷ A copy of the 09/03/14 Case Schedule Order is attached as Exhibit E to the Brower Decl.

⁸ A copy of the 07/07/16 Case Schedule Order is attached as Exhibit F to the Brower Decl.

⁹ A copy of Ms. Ferguson’s email to the Court is attached as Exhibit G to the Brower Decl.

	Businesses	in the status of the Stipulation and Agreed Order to Rescind Revised Case Schedule dated July 7, 2016. ¹⁰
March 30, 2017	City of Seattle	Email to Court informing it the City intends to file the instant Motion to Dismiss. ¹¹
TBD	This Court	Remand or Final Order.

II. PROCEDURAL HISTORY

1. *The Ballard Businesses' Most Recent Appeal*

In 2012, the Ballard Businesses timely filed a Verified Complaint for Direct Review Under SEPA (the "Complaint"),¹² thereby properly invoking this Court's appellate jurisdiction to review and analyze errors of fact and law made by the Examiner in the 2012 Order. The appeal to this Court seeks a final Order that addresses issues far beyond the mere preparation of a Final EIS for the Missing Link. The prior two appeals both resulted in interim Orders from this Court remanding this matter to the Examiner for further evidentiary proceedings. This Court's prior Orders and the Examiner's orders are binding on SDOT. At each stage of review/appeal, the Ballard Businesses built upon the prior record created at the Examiner's Hearings and preserved for appeal various errors of law and fact, over which this Court expressly retained ongoing jurisdiction. These preserved issues and claims are in the Complaint and were stayed before this Court pursuant to a number of stipulations amongst the parties entered into to give the City time to prepare the draft and final EIS for the Missing Link as ordered by the Examiner. Despite being in complete control of the EIS process, it took SDOT until 2016 just to issue the draft EIS and SDOT has yet to issue the final EIS as the Examiner ordered.¹³

¹⁰ A copy of the letter is attached as Exhibit H to the Brower Decl.

¹¹ A copy of Ms. Ferguson's email to the Court is attached as Exhibit I to the Brower Decl.

¹² A copy of the Verified Complaint, which includes claims for Direct Review Under SEPA, Application for Writ of Review, Complaint for Declaratory Judgment, Application for Constitutional Writ of Review, and Request for Injunction, is attached as Exhibit J to the Brower Decl.

¹³ Ironically, Mr. Mazzola stated in his Declaration in support of the City's Motion, the City may issue the Final EIS in late May, 2017.

1 2. ***The Parties Repeatedly Stipulate to and Confirm a Stay and Revised Case***
2 ***Schedule Order***

3 For years, the parties have stipulated to and confirmed to this Court an agreed stay and
4 revised Case Schedule Order. This was necessary, at first, because in 2012, as it does for all civil
5 cases after a Complaint is filed, this Court automatically generated a Case Scheduling Order,
6 setting the Trial Date in this matter for January 27, 2014.¹⁴ Since this is a continuation of the
7 ongoing SEPA appeal, the parties agreed in October 2012 to consolidate the current appeal under
8 the 09-Cause Number and to stipulate to a revised Case Schedule Order providing time for the
9 City to prepare and issue the EIS.¹⁵ The main issue regarding timing for the appeal was the then-
10 unknown scope of the EIS. *Id.* In September 2013, after still not agreeing on a new case
11 schedule, the City stated it would file a motion to dismiss since it had finally started working on
12 the EIS.¹⁶ At that time, the Ballard Businesses stressed to the City that a motion to dismiss
13 would “an enormous waste to time, money and energy, which, if successful, will lead directly to
14 an appeal in Division...” and that the only reason the case had been unable to proceed is because
15 the City “has delayed taking action on the EIS....” *Id.* The City finally relented and the parties
16 entered into a binding stay entered by this Court on September 30, 2013. *See* Exhibit D to
17 Brower Decl. The parties stipulated and affirmed the stay and updated the Case Schedule Order
18 on September 3, 2014, and again on July 7, 2016, all to give the City more time to complete and
19 issue the final EIS. *See* Exhibits E and F, respectively, to the Brower Decl. As recently as
20 November 30, 2016, the City confirmed to this Court that “[t]here has been no change in the
21 status since the Stipulation and Agreed Order to Rescind Revised Case Schedule on July 7,
22 2016.” *See* Exhibit G to Brower Decl.
23

24 ¹⁴ A copy of the 2012 Case Scheduling Order is attached as Exhibit K to the Brower Decl.

25 ¹⁵ A copy of the October 2012 email exchange amongst counsel is attached as Exhibit L to the Brower Decl.

¹⁶ Copies of the email exchange amongst counsel between September 16-20, 2013 are attached as Exhibit L to the Brower Decl.

1 The stay allowed the parties to focus on preparation of an adequate EIS rather than
2 litigation.¹⁷ During the entire five year stay, the Ballard Businesses have trusted that SDOT was
3 represented that it was preparing an EIS that might adequately resolve many or all of the issues
4 raised on appeal, and hoped further litigation would not be required. If the Ballard Businesses
5 decide that the final EIS is as inadequate as the prior three SEPA determinations made by the
6 City, it will proceed to exhaust appropriate remedies. Or it may review the EIS and decide that it
7 adequately addresses its concerns, voluntarily dismiss this appeal, and not appeal the final EIS.
8 Such decisions cannot be made until the Ballard Businesses review the final EIS, which may be
9 issued in May 2017. *See* Exhibit H to Brower Decl. (“We will be able to update the court after
10 the FEIS is released.”)

11 III. ARGUMENT

12 A. The City Does Not Meet the Standard Required For Dismissal of a 13 Perfected Appeal

14 In complete disregard for and abrogation of the stipulated stays, and seemingly oblivious
15 to being responsible for the entire delay of this matter, the City brought its Motion to Dismiss
16 claiming a need to “clear the slate” and start anew. Of course the City would prefer to start
17 anew—the record preserved on appeal is egregiously bad for its case. The City alleges, with no
18 evidence and little law, that the issues properly preserved by the Ballard Businesses are now
19 moot, unripe, and a waste of judicial resources because of SDOT’s 2013 decision to voluntarily
20 proceed with an EIS for the entire Missing Link, not just the Shilshole Section, and because the
21 City claims it will soon issue the final EIS. The City cannot erase years of binding orders from
22 the Examiner and this Court because it decided it might someday voluntarily issue a final EIS. It
23
24

25 ¹⁷ During this process, the Ballard Businesses continued to engage with the City and submitted comments to the draft EIS published by SDOT in May, 2016.

1 cannot wave a magic wand and pretend that the evidentiary findings and errors of law that were
2 properly preserved on appeal, and await a final order from this Court, no longer exist.

3 In Washington, a superior court reviewing a land use decision such as this one acts in its
4 limited appellate capacity. *Conom v. Snohomish County*, 155 Wn.2d 154, 157, 118 p.3d 344
5 (2005); *Union Bay Pres. Coal. v. Cosmos Dev. & Admin. Corp.*, 127 Wn.2d 614, 617, 902 p.2d
6 1247 (1995). Subject matter jurisdiction is conferred upon the Superior Court in its appellate
7 capacity after a petitioner satisfies applicable procedural requirements. RCW 36.70C.040. Rule
8 of Appellate Procedure 18.9 prescribes the only circumstances in which an appellate court may
9 order dismissal of a perfected appeal upon motion of a party: (1) for want of prosecution if the
10 party seeking review has abandoned the review; (2) if the application for review is frivolous,
11 moot, or solely for the purpose of delay; or (3) except as provided in rule 18.1, for failure to file
12 certain pleadings not applicable here. RAP 18.9(c).¹⁸

13 Of these, the only issue raised by the City is whether this appeal is moot. An appeal is
14 moot only where it “presents purely academic issues and where it is not possible for the court to
15 provide effective relief.” *Klickitat Cty. Citizens Against Imported Waste v. Klickitat Cty.*, 122
16 Wn.2d 619, 631, 860 p. 2d 390, (1993), as amended on denial of reconsideration (Jan. 28, 1994)
17 As the moving party, the City bears the burden to show that all of the issues raised by the Ballard
18 Businesses on appeal are moot.

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22 ¹⁸ The City purports to file its Motion to Dismiss under CR 12(b)(6). Although the Superior Court’s civil rules
23 govern “procedural matters,” they do not govern the Ballard Businesses’ right to maintain an appeal. Nevertheless,
24 the Ballard Businesses would also prevail under the CR 12(b)(6) standard, because dismissal is only appropriate
25 where the City demonstrates that “it appears beyond doubt that the plaintiff can prove no set of facts, consistent with
the complaint, which would entitle the plaintiff to relief.” *Lawson v. State*, 107 Wn.2d 444, 448 (1986). CR 12 sets
for the timing and defenses that a defendant is required to raise in response to a complaint. If CR 12(b)(6) were to
apply, then the City waived its rights to challenge this Court’s subject matter jurisdiction by failing to respond,
within 20 days, to the Ballard Businesses’ petition.

1 **B. SDOT’s Preparation of an EIS Does Not Render the Many Issues Raised on**
2 **Appeal Moot**

3 The Ballard Businesses met the statutory prerequisites for perfecting their appeal, and are
4 properly before this Court. The City’s arguments that the pending appeal is moot are easily
5 dispatched by a cursory review of the Ballard Businesses’ Complaint, which includes requests
6 for injunctive relief, statutory and constitutional writs, and is more than a simple request for this
7 Court to order SDOT to prepare an EIS. In fact, the Ballard Businesses are not requesting
8 judicial review of the Examiner’s order to prepare an EIS—it prevailed on that issue—and are
9 not seeking direct review of a yet-to-be issued final EIS. Instead, the Ballard Businesses are
10 seeking appellate review of the myriad other issues preserved to date in the voluminous record.

11 The only reason the City cites for the contention this litigation is now moot is that SDOT
12 is preparing to issue the final EIS. The City presented no evidence, however, to suggest that
13 SDOT’s yet-to-be issued final EIS satisfies any of the issues and requests for relief raised in the
14 Ballard Businesses’ Complaint. For this reason alone, the City’s Motion is without merit.

15 Likewise, the Motion is not supported by controlling law. The City cites a single case,
16 *Klickitat*, 122 Wn.2d at 631., for the general proposition that a case may be dismissed if it is
17 moot.¹⁹ Motion to Dismiss at p. 7, fn. 25. In reality, the Washington Supreme Court’s *Klickitat*
18 decision held that a SEPA case very similar to this one was not moot, in the context of a SEPA
19 appeal, where a new action is “standing on [a prior remanded action]’s shoulders, so to say.”
20 *Klickitat*, 122 Wn. 2d at 631-632. In *Klickitat*, the Yakima Indian Nation filed an administrative
21 appeal on a County’s decision to adopt a 1990 Comprehensive/Solid Waste Plan Update and an
22 EIS on the grounds that the EIS was inadequate. While that appeal was pending, the County
23 adopted a revised Plan Update (the “1992 Addendum”). The Supreme Court held that “[t]he
24 1992 addendum is not a completely new update or plan standing alone,” noting that the new

25 ¹⁹ The *Klickitat* case was not decided in the context of a motion to dismiss, but rather was made after briefing and argument of all appellate issues.

1 action “does not purport to correct any of the alleged errors in the 1990 Plan Update and EIS,
2 which the Yakima argued was inadequate.” *Id.* at 631-632.

3 Here, the issues preserved on appeal “stand on the shoulders” of record and proceedings
4 in this case. Those issues do not disappear simply because the City elected to prepare an as-yet-
5 unseen Final EIS for the Missing Link. Moreover, the adequacy of the Final EIS also stands on
6 the shoulders of, and will be measured against, the record preserved on appeal and the
7 Examiner’s and this Court’s prior Orders. All of this is properly preserved and perfected before
8 this Court and is not rendered moot simply because the City may or may not take an action in the
9 future. As Judge Rogers explained his 2011:

10 It is simply not fair to defer decisions and to trust the party making the decision to reach
11 the right outcome, because this defeats the entire policy of [SEPA] review.

12 *See* 2011 Order of Remand.²⁰

13 Judicial review of the errors made by the Examiner, which guide the preparation of an
14 EIS, is not “purely academic.” For instance, this Court could issue injunctive relief preventing
15 construction of the Missing Link while the project undergoes judicial review, or could determine
16 that SDOT, in its EIS process, is required to consider the Shoreline Management Act or the
17 Shoreline Master Program; is required to study traffic safety and hazards outside the Shilshole
18 Segment; or allow, where prohibited by the Examiner, the Ballard Businesses’ experts to use the
19 word “safety” at the hearing, which it was categorically prohibited to do during multiple
20 hearings.

21 Whether it is couched in terms of mootness or ripeness, the City’s arguments are without
22 merit. The City has not and cannot meet its burden to show that the issues raised on appeal are
23 “purely academic” and subject to dismissal.

24
25 ²⁰ A copy of the 2011 Order of Remand is attached at Exhibit C to Brower Decl., Transcript of Proceedings, p. 5,
lines 8-9.

1 **C. This Case Involves a Question Of Continuing and Substantial Public Interest**

2 Washington courts consistently hold that even if a case is moot, jurisdiction may be
3 maintained “if it involves a question of continuing and substantial public interest.” *Klickitat*, 122
4 Wn.2d at 632; *In re Det. Of T.A.H.-L*, 123 Wn.App 172, 176 (2004). The criteria the court
5 should consider are: (1) whether the issue is of a public or private nature; (2) whether an
6 authoritative determination is desirable for future guidance; (3) whether the issue is likely to
7 recur; and (4) whether there is genuine adverseness and quality advocacy on the issues.”²¹

8 As in *Klickitat*, these criteria are met here. The Missing Link is a public project for
9 which the City has repeatedly and continually failed to meet SEPA’s procedural and substantive
10 requirements. The City’s clear pattern of failure continues with the draft EIS, which, among
11 other deficiencies, fails to provide any additional design details for the Shilshole Segment,
12 despite being ordered by Judge Rogers to more fully design it, and the Examiner’s subsequent
13 finding that SDOT’s nominal design created hazards instead of remedying them. At each level
14 of this appeal, the City has repeatedly erred and the Ballard Businesses have continued to shed
15 light on an otherwise suspect process. There is no other channel for the Ballard Businesses, or
16 any other member of the public, to keep their public officials accountable and no other way for
17 the Ballard Businesses to resolve the many issues pending on appeal, for example, SDOT’s
18 failure to comply with the SMA or the Examiner’s decision to forbid the Ballard Businesses to
19 use the word “safety.” The public has a continuing and substantial interest in challenging its
20 government, at any level, when it is failing to follow the law. If this Court dismisses this case, it
21 will deprive the Ballard Businesses from seeking redress from our judicial system when they
22 have been repeatedly wronged and strung along for so many years.

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²¹ *Klickitat*, 122 Wn.2d at 632.

1 **D. This Court’s Prior Orders Are Binding**

2 This Court retained jurisdiction to address “any further administrative appeals of actions
3 taken in response to this Order, and for entry of a final order upon compliance with this court’s
4 Second Order of Remand.” *See* Exhibit C to Brower Decl., 2012 Order Page 2, at ¶ 7. The
5 Ballard Businesses properly appealed the result of that remand (the Examiner’s 2012 Order) to
6 this Court and the parties agreed to consolidate the two Cause numbers. In 2014 and continuing
7 through 2016, the parties stipulated to and the Court issued binding Orders staying this matter
8 and revising the Case Schedule Order pending the City’s issuance of the final EIS. *See* Exhibits
9 E and F to the Brower Decl. The City is bound by those stipulated Orders.

10 **E. The City’s Ripeness Argument Is Entirely Speculative**

11 The City makes a speculative argument that this case might become unripe if the as yet
12 unissued final EIS is inadequate and if the Ballard Businesses file an administrative appeal of
13 some new aspect of the City’s yet-to-be-issued final EIS. The City cites to no substantive rule or
14 procedure that would allow for dismissal of the present litigation on this speculative basis, and it
15 certainly does not fall within RAP 18.9.

16 As part of its speculative assertion regarding ripeness, the City argues that its decision to
17 voluntarily prepare an EIS for the entire Missing Link somehow invalidates the Examiner’s 2012
18 Order. That is not the case. The Examiner only partially invalidated SDOT’s DNS with respect
19 to the Shilshole Segment, not the entire Missing Link, and SDOT still has not complied with the
20 Examiner’s 2012 Order. The Ballard Businesses did not appeal the finding, upon which it
21 prevailed. The Ballard Businesses sought appellate review to reverse other findings of the
22 Examiner. SDOT’s decision to voluntarily undertake an EIS on the whole of the Missing Link
23 does not remedy the underlying errors sought to be corrected by this appeal. Nor does the
24 Ballard Businesses’ agreement to stay this appeal to work cooperatively with the City while it
25 attempts to voluntarily remedy the issues on appeal render this appeal unripe or moot.

1 The City’s “ripeness” argument sounds very much like its “mootness” argument, and
2 must be rejected. As discussed above, even if SDOT were to issue a final EIS, this only partially
3 addresses one of the several issues raised by the Ballard Businesses in this appeal, and our Court
4 of Appeals recognized that the Ballard Businesses have valid issues preserved on appeal that will
5 ultimately affect the outcome of this case. At minimum, the issue of whether SDOT will ever
6 comply with the Examiner’s 2012 Order is ripe for review. As a result, the City’s Motion to
7 Dismiss fails on this ground and should be denied.

8 **F. Equitable Estoppel Applies To Prevent the City from Moving to Dismiss**
9 **After a Delay for Which It Was the Sole Cause**

10 The City’s motion to dismiss relies heavily on its complaints that the litigation has been
11 pending for many years. The City has no one to blame for the delay but itself. The Ballard
12 Businesses forewent their opportunity to proceed with this appeal in reliance on the City’s
13 assertions that SDOT’s voluntary EIS would satisfy the Ballard Businesses’ appellate issues.
14 The parties hoped that once the Ballard Businesses saw the final EIS, which is five years in the
15 making, they would be satisfied and dismiss the litigation voluntarily. Now, on the eve of
16 issuance of the final EIS, the City moved for dismissal. The City should be estopped from
17 seeking dismissal of this case in light of its representations regarding the EIS and the parties’
18 stipulated stays.

19 Equitable estoppel applies when the following factors are demonstrated by clear, cogent,
20 and convincing evidence: (1) an admission, statement, or act inconsistent with the claim
21 afterwards asserted; (2) action by the other party on the faith of such admission, statement, or
22 act; and (3) injury to such other party from allowing the first party to contradict or repudiate such
23 admission, statement, or act. *Pioneer Nat. Title Ins. Co. v. State*, 39 Wn. App. 758, 760, 695
24 p.2d 996 (1985) (citing *Finch v. Matthews*, 74 Wn.2d 161, 171n.3 (1968)). The doctrine applies
25 to a governmental entity “when necessary to prevent a manifest injustice, and the exercise of

1 governmental powers will not thereby be impaired.” *Id.* at 760 (citing *Shafer v. State*, 83 Wn.2d
2 618, 622 (1974)).

3 Here, the parties negotiated and entered into binding stays so the City could prepare and
4 issue a draft and final EIS, which it has yet to complete. In 2012 through 2013, the parties
5 negotiated regarding whether to proceed or stay this litigation. The Ballard Businesses initially
6 objected to the stay, noting that the appeal included “a number of issues that cannot wait until
7 the City prepares an EIS or the Examiner opines on the adequacy of any such EIS.”²² The
8 Ballard Businesses raised, for example, the issue of whether SDOT would prepare an EIS for the
9 entire Missing Link or just the Shilshole Segment, the timing, and the types of matters that would
10 be evaluated in the EIS. See also Brower Decl., Exhibit N. The Ballard Businesses offered to
11 “put this matter ‘on hold’ by stipulating to the proposed order I sent you that is keyed to the
12 EIS.”²³

13
14 The fact that the City is truly working to prepare a comprehensive EIS as you
15 state makes it even more logical to wait. Once SDOT issues the EIS we will
16 know whether one, two, three, or all of the issues in the current appeal will be
moot. At that time, both sides will be in a better position to evaluate what, if any,
issues remain.

17 *Id.* In reliance on the City’s assertions, the Ballard Businesses refrained from moving forward
18 with the appeal of the Examiner’s 2012 Order.²⁴ Had the Ballard Businesses not believed they
19 would have the opportunity to review the final EIS, they would not have agreed to the stay and
20 would have prosecuted this appeal. If the City is now allowed to take the position that this case
21 is subject to dismissal after years of waiting for an EIS to be submitted, the Ballard Businesses

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23
24 ²² Exhibit M to Brower Decl.

²³ Exhibit O to Brower Decl.

25 ²⁴ By agreeing to stay this appeal, the Ballard Businesses also forfeited their right to obtain a final order from this Court and seek appeal to the Washington Court of Appeals. See *Salmon Bay Sand & Gravel Co.*, No. 65572-8-I (Sept. 16, 2010)—Exhibit A.

1 will suffer significant injury—namely, their ability to pursue an appeal of the errors of law and
2 fact made by the Examiner in its 2012 Order.

3 SDOT is the lead agency and the project proponent, and completely controls the timeline
4 for issuance of a final EIS. By proposing to tie case management deadlines to the issuance of the
5 final EIS, and then moving for dismissal after five years has passed, the City essentially took
6 control of the timeline of this appeal and made promises that it knew it would not keep. The City
7 strung the Ballard Businesses along for five years, and is now arguing that very process destroys
8 the Ballard Businesses’ appellate rights. Such a result is unjust and inconsistent with the Ballard
9 Businesses’ rights to ensure that their government is acting consistent with SEPA and the public
10 good. The Ballard Businesses should, at minimum, be allowed to continue with the current case
11 management deadlines until they have the chance to review the EIS and decide whether or not to
12 voluntarily dismiss.

13
14 **IV. CONCLUSION**

15 For the reasons set forth above, the Court should deny the City’s Motion to Dismiss.

16 DATED this 3rd day of May 2017.

17
18 VERIS LAW GROUP PLLC

19 By Joshua C. Brower
20 Joshua C. Brower, WSBA #25092
21 Danielle N. Granatt, WSBA #44182
22 Leah B. Silverthorn, WSBA # _____
23 Attorneys for Plaintiff Salmon Bay Sand and Gravel, Inc.
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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on this date I caused the foregoing document and the Declaration of Joshua C. Brower in Support of the Plaintiffs’/Petitioners’ Response in Opposition to the City of Seattle’s Motion to Dismiss to be served on the following persons via the methods indicated:

- Overnight Delivery via Fed Ex
- First Class Mail via USPS
- Hand-Delivered via ABC Legal Messenger
- Facsimile
- E-mail/KC ECF

Dated at Seattle, Washington, this 3rd day of May, 2017.

/s/ Megan Manion
Megan Manion, Veris Law Group

4846-5334-8423, v. 6

EXHIBIT G

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

SALMON BAY SAND & GRAVEL,
INC., BALLARD CHAMBER OF
COMMERCE, SEATTLE MARINE
BUSINESS COALITION, BALLARD
OIL COMPANY, NORTH SEATTLE
INDUSTRIAL ASSOCIATION, and the
BALLARD INTERBAY NORTHEAST
MANUFACTURING & INDUSTRIAL
CENTER,

Plaintiffs/Petitioners,

vs.

THE CITY OF SEATTLE, THE
SEATTLE DEPARTMENT OF
TRANSPORTATION, THE SEATTLE
HEARING EXAMINER, and
THE CASCADE BICYCLE CLUB,

Defendants/Respondents.

NO. 09-2-26586-1 SEA

ORDER DENYING RESPONDENTS'
MOTION TO DISMISS

~~PROPOSED~~ SRP

[CLERK'S ACTION REQUIRED]

ORDER DENYING MOTION TO DISMISS

THIS MATTER having come for hearing before the Court on Respondent City of
Seattle's Motion to Dismiss, and the Court having considered the files and records herein,
arguments of the parties, Respondent City of Seattle's Motion to Dismiss along with the
Declaration and Exhibits submitted in support thereof, the Memorandum of Cascade Bicycle
Club in Support of City of Seattle Motion to Dismiss, the Petitioner's Response in Opposition to
the City of Seattle's Motion to Dismiss, as amended, along with the Declaration and Exhibits

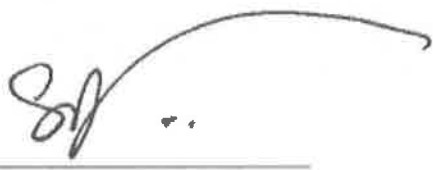
ORDER

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submitted in support thereof, and the City's Reply in Support of the Motion to Dismiss, along with the Declaration and Exhibits submitted in support thereof, and the Court having been fully advised on the matter,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Respondent City of Seattle's Motion to Dismiss is DENIED.

DATED this 18th day of May, 2017.



Honorable Suzanne Parisien

Presented By:

VERIS LAW GROUP PLLC

Joshua C. Brower, WSBA #25092
Danielle N. Granatt, WSBA #44182
Leah B. Silverthorn, WSBA # 51730
Attorneys for Plaintiffs/Petitioners

EXHIBIT H

the street. Unregulated parking occurs on both sides of the street. The No Build Alternative serves as the baseline condition against which the Build Alternatives are compared over time to their 2040 design year. The year 2040 was used as the timeline to analyze the impacts of the project. Over that time period, population and employment growth is expected to continue in the Ballard neighborhood, leading to an increase in traffic congestion, parking demand, and the number of people walking and biking.

Build Alternatives

The FEIS analyzes five possible alternatives for completing the Missing Link: the Preferred, Shilshole South, Shilshole North, Ballard Avenue, and Leary Alternatives. The alternatives described below are conceptual routes designed to provide distinct alternatives for analysis in the FEIS.

Preferred Alternative

The Preferred Alternative (illustrated in Figure ES-1) is a combination of components of the previously analyzed Build Alternatives. Except for one minor route connection (as described below), the Preferred Alternative does not contain any route segments or components that were not analyzed in the DEIS. The Preferred Alternative is most similar to the Shilshole South Alternative, but its westernmost portion contains elements of both the Leary and Shilshole North Alternatives. The Preferred Alternative does not share any segments or components of the Ballard Avenue Alternative.

There would be changes to parking areas, travel and motor vehicle lanes, as well as intersection configurations on both sides of the streets along the Preferred Alternative. The trail would accommodate users on a newly paved, grade-separated surface for most of its length. Route specifics are described below.

Beginning at the existing western trail end (at the Ballard Locks), the trail would continue east along the south side of NW 54th St until it turns into NW Market St. The trail would continue along the south side of NW Market St, until the intersection with 24th Ave NW. Up to this point, the Preferred Alternative follows the same route as both the Shilshole North and Leary Alternatives. At the intersection of NW Market St and 24th Ave NW, the Preferred Alternative would head south on the west side of 24th Ave NW for approximately 125 feet before the intersection with the south side of Shilshole Ave NW. The Preferred Alternative would then cross 24th Ave NW and proceed along the south side of Shilshole Ave NW, continuing onto the south side of NW 45th St to 11th Ave NW, and the eastern terminus of the trail. This section of the Preferred Alternative route is identical to the Shilshole South Alternative.

From the existing western trail end at the Ballard Locks, the trail would be north of the Ballard Terminal Railroad (BTR) tracks until just past 17th Ave NW, at which point the trail would cross to the south of the tracks. A signal would be installed at the intersection of Shilshole Ave NW and 17th Ave NW. The signal would facilitate nonmotorized user crossings of Shilshole Ave NW and allow for better traffic flow between Shilshole Ave NW and 17th Ave NW, which would provide a benefit to traffic mobility and trail users.

The trail width would vary somewhat throughout the corridor due to existing conditions and constraints, but would generally be between 10 and 12 feet wide. Based on the design concepts, the typical right-of-way on Shilshole Ave NW for this alternative would include a barrier or buffer zone adjacent to the railroad tracks, a multi-use trail, a barrier or buffer zone adjacent to the vehicle travel lanes, two vehicle travel lanes, and preservation or addition of parking areas where feasible (Figure ES-1). See Chapter 7, Transportation, for additional detail on this and all other Build Alternatives.

- Ballard Avenue NW;
- NW Vernon Place;
- 20th Avenue NW;
- 17th Avenue NW;
- 15th Avenue NW; and
- 14th Avenue NW.

If NW Vernon PI is used as a connector segment, then a signal at NW Vernon PI and Shilshole Ave NW may also be warranted, depending on whether the trail would continue on the north or south side of Shilshole Ave NW.

Features Common to All Build Alternatives

Roadway Design and Safety Considerations

Although safety itself is not an element of the environment required to be analyzed under SEPA, a focus of the FEIS is the analysis of potential “traffic hazard” impacts, as well as design treatments and other measures that may be taken to mitigate those potential impacts. Regardless of any relation to SEPA, safety is a key component of this project (and all SDOT projects), and therefore is described throughout the FEIS.

The SDOT design process relies on City standards and guidelines, such as the City of Seattle’s Standard Plans for Municipal Construction and Right-of-Way Improvements Manual (SDOT, 2012), which have been developed through research and adaptation of national publications. In addition to City standards, SDOT consistently follows national guidelines developed by the American Association of State Highway and Transportation Officials (AASHTO), National Association of City Transportation Officials (NACTO), and Federal Highway Administration (FHWA). The final construction documents rely on a milestone schedule that allows for a thorough quality control process where the design is vetted through several SDOT divisions and City of Seattle departments, whose expertise is applicable to the project. These reviews occur at multiple checkpoints during design.

Given the City’s diverse mobility needs, which include motorized and nonmotorized users, it is common for multiple modes of transportation to interact with each other. These areas may include but are not limited to intersections, driveways, or shared roads. While these interactions may introduce potential conflicts, they are not inherently traffic hazards. Designing to increase predictability between modes of travel is a priority of any project and standard practice.

Roadway designs would vary for each alternative based on factors such as intersection geometry, vehicle volumes, nonmotorized users, and types of vehicles. This section describes roadway modifications, intersection treatments, driveway design, and parking modifications that could be incorporated during the final design phase of the project to address safety, access, nonmotorized users, and vehicle types. Similar concepts can be found throughout the city and in design documents such as the Urban Bikeway Design Guide (NACTO, 2015) and Guide for Development of Bicycle Facilities (AASHTO, 2012). These features are common to all Build Alternatives, but the location and other specifics would vary by alternative. Chapter 7, Transportation, provides additional detail related to these design considerations.

points between motor vehicles and bicyclists and reduce the likelihood of collisions because potential conflict points would be clearly identifiable by both motor vehicle drivers and trail users. Potential conflict points would be clearly organized and delineated, which would allow motor vehicle drivers and trail users to be aware of where to travel cautiously. A dedicated facility would also reduce the likelihood of nonmotorized injury incidents by providing a facility that safely traverses or avoids obstacles in the study area such as the railroad tracks. The BGT Missing Link would be designed to clearly delineate trail user space from the roadway and would include safety features such as buffers, pavement markings, raised crosswalks, curb treatments, signage, and lighting.

Although the Preferred Alternative would improve overall safety compared to the No Build Alternative, there is potential for some new impacts depending on final design. Those potential impacts include:

- Sight distance concerns at driveway crossings with the BGT Missing Link;
- Conflicts between vehicles and nonmotorized users at trail crossings;
- Conflicts between nonmotorized users and trail design features, such as planter strips and curbing; and
- Conflicts between vehicles and trail design features, such as planter strips and curbing.

These potential new impacts would be minimized through detailed review during the trail design process, such as conducting detailed sight distance reviews at each driveway intersection during final design. However, these impacts may not be eliminated entirely. Under the Preferred Alternative, there would be sight distance concerns for exiting vehicles at four driveways on the south side of NW Market St between the Ballard Locks driveway and 26th Ave NW where buildings are constructed up to the property lines. Buildings and structures adjacent to the trail could reduce visibility for both vehicles and trail users. Sidewalks would be provided between the properties and the trail, which would improve sight distances by providing a buffer of 10 feet from the property frontage.

There could be conflicts at trail crossings with driveways and intersections, including delay for nonmotorized users and vehicles while waiting for shared areas to clear, as well as collisions. As discussed in Section 1.7, Features Common to All Build Alternatives, the final design of the trail would include safety features to reduce conflicts between trail users and vehicles. Under the Preferred Alternative, there would be no sight distance issues on Shilshole Ave NW because the BTR tracks would be relocated to allow the trail to be placed farther from property lines, as discussed in the Freight Rail section. Wherever possible at driveways along the alignment of the Preferred Alternative, signage, pavement markings, and advanced warning systems, among other safety enhancements, would be used to notify trail users and vehicle drivers that there is a trail crossing. In addition to these safety enhancements, drivers would be required to stop before continuing across the trail as described under SMC 11.58.230, which states:

“Except as directed otherwise by official traffic-control devices, the driver of a vehicle emerging from any alley, driveway, private property, or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alley or driveway, or onto a public path, and shall yield the right-of-way to any pedestrian or bicyclist as may be necessary to avoid collision, and upon entering the roadway of a street shall yield the right-of-way to all vehicles approaching on the roadway.”

There would be no sight distance concerns for vehicles entering driveways because trail crossings would be clearly marked with signage, pavement markings, and other safety enhancements, and buildings would not block views of the trail. Driveway widths would be wide enough to safely accommodate industrial and commercial traffic.