

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:)
) Hearing Examiner File
THE BALLARD COALITION)
) W-17-004
of the adequacy of the FEIS issued by the)
Director, Seattle Department of) DECLARATION OF ERIN E. FERGUSON
Transportation for the for the Burke-Gilman)
Trail Missing Link Project)
)

I, Erin E. Ferguson, declare under penalty of perjury under the laws of the State of Washington the following:

1. I am over eighteen years of age, have personal knowledge of the matters herein, and am competent to testify regarding all matters set forth herein.
2. I am one of the attorneys for Respondent Seattle Department of Transportation in this matter.
3. Attached as Exhibit A is a true and correct copy of the Second Order of Remand in the King County Superior Court, No. 09-2-26586-1 SEA, dated March 2, 2012.
4. 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

- 5. Attached as Exhibit C is a true and correct copy of pages 1 – 2 and 17 of Volume 1 of the FEIS for the “Burke-Gilman Trail Missing Link Project.”
- 6. Attached as Exhibit D is a true and correct copy of the Findings and Decision of the Hearing Examiner in File W-12-002, dated August 27, 2012.

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

DATED this 31st day of July, 2017.

PETER S. HOLMES
Seattle City Attorney

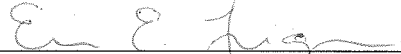
By: 
Erin E. Ferguson, WSBA #39535

EXHIBIT A

FILED
KING COUNTY WASHINGTON

THE HONORABLE JIM ROGERS

MAR 2 2012

SUPERIOR COURT CLERK
BY DAVID J. SEBERTIS
DEPUTY

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~~ ^{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. ^{Second,} 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 UPHELD.

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
ISSUE

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

2 DATED this 2 day of March, 2012.

3
4 
THE HONORABLE JIM ROGERS

5 Presented by:

6 PETER S. HOLMES
7 Seattle City Attorney

8 By s/ Erin E. Ferguson
9 ERIN E. FERGUSON, WSBA #39535
10 The City of Seattle
Attorney for Respondent/Defendant

Dated: 3/2/2012

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

12 By /s Jeffrey M. Eustis
13 Jeffrey M. Eustis, WSBA #9262
Aramburu & Eustis, LLP
Attorney for Respondent Cascade Bicycle Club

Dated: *authorized 3/1/2012*

14 By /s Patrick J. Schneider
15 Patrick J. Schneider, WSBA #11957
16 Foster Pepper, PLLC
Co-counsel for Petitioners

Dated: *email authorization 3/2/2012*

17 BROWER LAW, PS

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

Dated: *email authorization 3/1/2012*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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 &) No. 09-2-26586-1 SEA
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.)

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)

15

16

17

18

19

20

21

22

23

CERTIFICATE

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

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

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

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

Dated this 23rd day of February, 2012.



Debra Hernandez

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

Findings and Decision of the Hearing Examiner

W-11-002

Page 2 of 13

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

Page 4 of 13

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 [.]*")

Findings and Decision of the Hearing Examiner

W-11-002

Page 8 of 13

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

Findings and Decision of the Hearing Examiner

W-11-002

Page 12 of 13

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
c/o Joshua Brower
3326 19th Avenue S.
Seattle, WA 98144 and
Patrick Schneider
Foster Pepper PLLC
111 3rd Avenue, Suite 3400
Seattle, WA 98101

DEPARTMENT

Seattle Department of Transportation
Peter Hahn, Director
P.O.Box 34996
Suite 3900, 700 Fifth Avenue
Seattle, WA 98124-4996

Intervenors

Cascade Bicycle Club
c/o Jeffrey Eustis
Aramburu & Eustis, LLP
720 Third Avenue, Suite 2112
Seattle, WA 98104

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

EXHIBIT C



CHAPTER 1: PROJECT HISTORY AND ALTERNATIVES

1.1 Project Background and History

The Burke-Gilman Trail (BGT) is a regional trail that runs east from Golden Gardens Park in Seattle and connects to the Sammamish River Trail in Bothell, except for a missing segment through the Ballard neighborhood. Currently, the regional trail ends at 30th Ave NW by the Hiram M. Chittenden (Ballard) Locks on the west, and begins again at the intersection of 11th Ave NW and NW 45th St on the east. The Seattle Department of Transportation (SDOT) proposes to connect these two segments of the BGT with a marked, dedicated route that would serve all users of the multi-use trail. The proposed project to complete the regional facility is referred to as the Missing Link.

Completing this section of the BGT has been discussed and analyzed since the late 1980s. In the early 1990s, the City of Seattle (City) included the extension of the BGT in its comprehensive plan. By the late 1990s, the Seattle City Council passed a resolution outlining the guiding principles for extending the trail and developed an operating agreement between the Ballard Terminal Railroad (BTR) and the City to preserve the rail line in City ownership while continuing rail service to area businesses. The City Council adopted an ordinance, the Ballard Terminal Railroad Franchise Agreement, which granted BTR the right, privilege, and authority to construct and operate the railway in the railroad right-of-way. In the early 2000s, the City evaluated alternative routes for the trail. In 2003, the Seattle City Council adopted a resolution identifying Shilshole Ave NW as the preferred alignment for the Missing Link, with interim portions of the route to be located along Ballard Ave NW and NW Market St. In 2007, the City adopted the Bicycle Master Plan, which called for completing the trail. Environmental documentation was prepared for the Missing Link beginning in 2008 and was challenged multiple times. In 2012, after the third appeal to the City's Hearing Examiner over the project's environmental determination, the Hearing Examiner required SDOT to develop an environmental impact statement (EIS) related to traffic hazards on the Shilshole Ave NW segment of the project. As a result of the ruling, SDOT decided to prepare an EIS for the entire project and to include an evaluation of alternative routes. SDOT began preparation of an EIS in 2013. Figure 1-1 provides a general timeline of the Missing Link project history.

Changes from the Draft EIS

Chapter 1 includes a description of the newly developed Preferred Alternative, which was not analyzed in the DEIS. It also includes a revised description of Roadway Design and Safety Considerations, and summarizes the comments received on the DEIS.

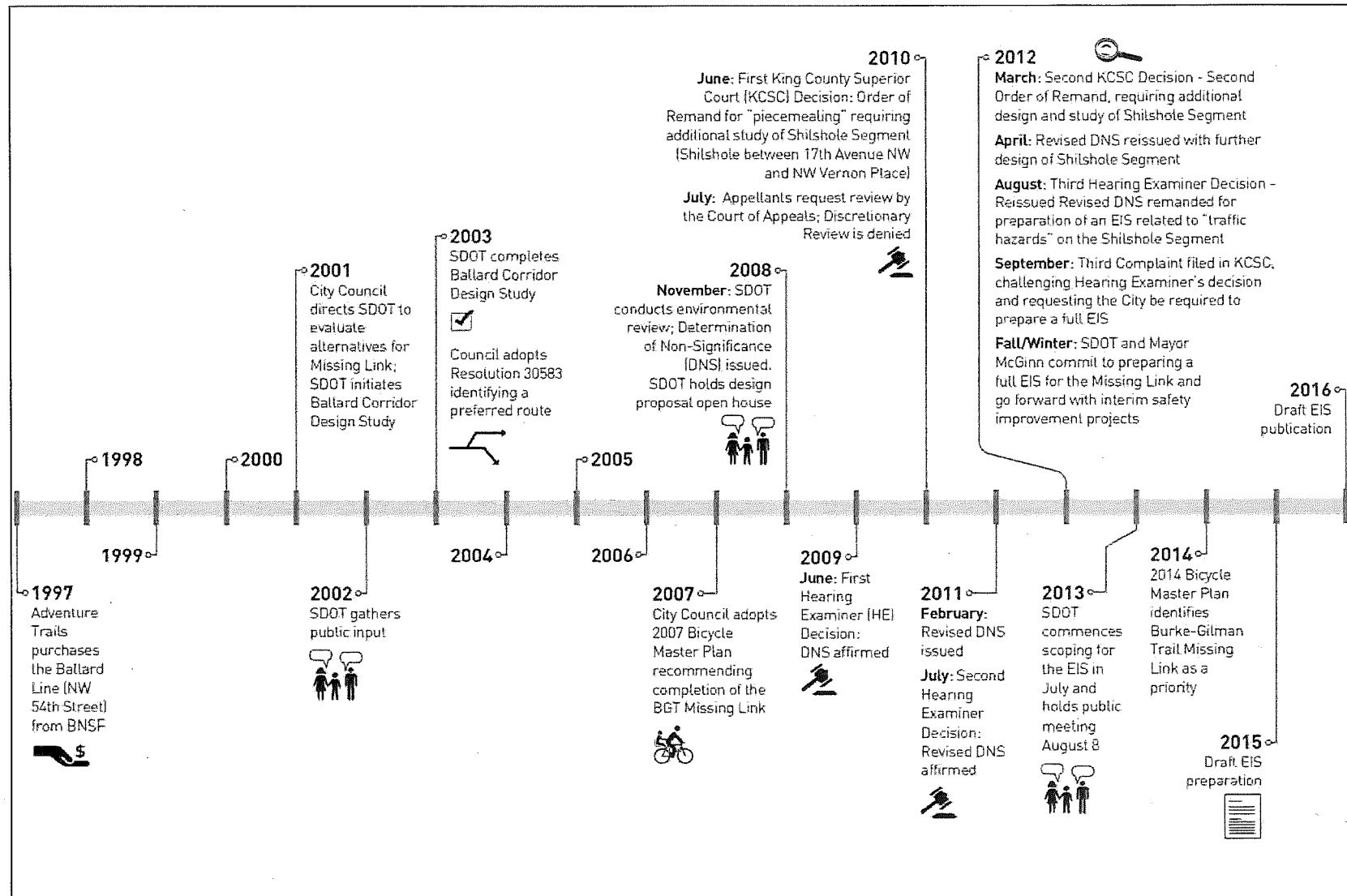


Figure 1-1. Missing Link Project History Timeline

Roadway Design

Adding a trail to the street system would require roadway modifications for vehicles to co-exist with nonmotorized users under any of the Build Alternatives. These changes could include geometric changes to create perpendicular intersections, changes to roadway lane configurations, alterations of curb radii, and design details that provide sight lines between vehicles and nonmotorized users:

- **Perpendicular Intersections**—Modification of diagonal streets to create perpendicular intersections would be included in the designs wherever feasible. Several streets along the alternative alignments intersect at diagonals rather than at a preferred perpendicular angle. Adjusting the geometry of the intersections would slow vehicles down as they are turning through the intersection, allow crosswalks to be shorter, and provide more consistent sight distance for all users. Figure 1-7 depicts a perpendicular intersection configuration.
- **Lane Configurations**—Lane configurations would be modified to create additional space within the roadway for the multi-use trail where necessary. These changes could include the removal of parking or vehicle lanes as well as the removal or addition of intersection or center turn lanes.
- **Curb Radii**—Curb radii would be modified to accommodate the turning requirements for different vehicles such as large freight trucks. Different intersections may have different types of vehicles that typically use the street, including passenger vehicles, single unit trucks (delivery-style trucks), buses, emergency vehicles, or semi-trucks. Appropriate curb radii would be chosen to accommodate the differing vehicles and roadway geometry at each location. In general, smaller radii are preferred to slow vehicles making turning movements while at the same time accommodating truck movements where needed. Figure 1-8 illustrates a variety of features, including curb radii.
- **Sight Lines**—Sight lines are important for safety and would be considered throughout the corridor. Trees, vegetation, and other obstructions would be cleared from intersections and from the back of sidewalks to avoid obstructing sight lines. Parking would also be restricted near driveways and intersections to preserve sight lines. Where possible, the trail would be shifted to allow greater sight distances around buildings adjacent to the property lines. However, because of the developed nature of the study area, sight lines may not meet industry standards in all locations, depending on the alternative.
- **Driveways**—In addition to pavement and painting elements, driveway locations, heights, and widths would also be considered for modifications. Driveways could be narrowed such that the current use is maintained. A narrower width would provide a more defined location for vehicles and would be matched with the turning movement

Refining the Analysis

To supplement the analysis presented in the DEIS and inform the development of the Preferred Alternative, additional **intersection and driveway data** were collected in the study area in November and December 2016; the new data were analyzed to provide more information on potential transportation and freight impacts. The traffic volume data included PM peak hour turning movements at driveways, as well as turning movements for the PM peak hour at additional study area intersections. Similarly, an **AutoTURN analysis** (a vehicle swept path software that analyzes the ability of large trucks to maneuver driveway and roadway configurations) was completed to determine if the design of the Build Alternatives would affect freight access to businesses in the study area. Results of this new analysis are presented in Appendix A of the FEIS.

EXHIBIT D

**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

Page 2 of 10

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

Findings and Decision of the Hearing Examiner

W-12-002

Page 4 of 10

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

Findings and Decision of the Hearing Examiner

W-12-002

Page 6 of 10

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

W-12-002

Page 10 of 10

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

Ballard Business Appellants
c/o Joshua Brower
3326 19th Avenue S.
Seattle, WA 98144 and
Patrick Schneider
Foster Pepper PLLC
111 3rd Avenue, Suite 3400
Seattle, WA 98101

DEPARTMENT

Seattle Department of Transportation
Peter Hahn, Director
P.O.Box 34996
Suite 3900, 700 Fifth Avenue
Seattle, WA 98124-4996

Intervenors

Cascade Bicycle Club
c/o Jeffrey Eustis
Aramburu & Eustis, LLP
720 Third Avenue, Suite 2112
Seattle, WA 98104