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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:

THE BALLARD COALITION

of the adequacy of the Final Environmental Impact Statement, prepared by the Seattle Department of Transportation for the Burke Gilman Trail Missing Link Project

Hearing Examiner File

W-17-004

DECLARATION OF JOSHUA C. BROWER IN SUPPORT OF THE BALLARD COALITION'S RESPONSE IN OPPOSITION TO SDOT'S MOTION FOR PARTIAL DISMISSAL

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

1. I am an attorney for the Ballard Coalition.

2. I am over 18 years of age, am licensed to practice law in the State of Washington, and am competent to testify in a court of law, and base this declaration on my own personal knowledge.

3. Attached as Exhibit A is a true and correct copy of correspondence dated February 11, 2009.

4. On June 30, 2017, the Ballard Coalition served its first set of Interrogatories and Requests for Production of Documents ("Discovery Requests") to the Seattle Department of Transportation ("SDOT") in this matter the ("SDOT Discovery Requests"). SDOT's deadline to respond to the SDOT Discovery Requests was July 31, 2017.

DECLARATION OF JOSHUA C. BROWER IN SUPPORT OF THE BALLARD COALITION'S RESPONSE IN OPPOSITION TO SDOT'S MOTION FOR PARTIAL DISMISSAL 1

Veris Law Group PLLC
1809 Seventh Avenue, Suite 1400
Seattle, Washington 98101
tel 206.829.9590 fax 206.829.9245

1 5. On July 11, 2017, the Ballard Coalition served its first set of Discovery Requests
2 to the Cascade Bicycle Club (“CBC”) in this matter (the “CBC Discovery Requests”)

3 6. The CBC’s deadline to respond to the CBC Discovery Requests was August 10,
4 2017.

5 7. On July 31, 2017, SDOT began providing documents responsive to the SDOT
6 Discovery Requests on a rolling basis. It was not until August 10, 2017, 10 days after its
7 deadline, that SDOT provided the Ballard Coalition with its objections and responses to the
8 SDOT Discovery Requests.

9 8. SDOT is still providing records responsive to the SDOT Discovery Requests on a
10 rolling basis and its production is not yet complete.

11 9. On August 3, 2017, the CBC requested an extension for its response to CBC
12 Discovery Requests. The Ballard Coalition was willing to grant this extension so long as CBC
13 and SDOT agreed to grant the Ballard Coalition the same extension for its responses to
14 Discovery Requests the CBC served on the Ballard Coalition and, if necessary, agreed to extend
15 the deadline for all the parties to disclose preliminary witnesses and exhibits to account for the
16 CBC’s late production. CBC refused. A true and correct copy of my email exchange with
17 Matthew Cohen, counsel for CBC, is attached as Exhibit B.

18 10. On August 10, 2017, CBC provided the Ballard Coalition with its objections and
19 responses to the CBC Discovery Requests. Its production was woefully incomplete. With the
20 exception of one single document, CBC has not produced any records responsive to the CBC
21 Discovery Requests.

22 11. The Ballard Coalition is still waiting for SDOT and the Cascade Bicycle Club to
23 complete their production of records responsive to the Discovery Requests and discovery is
24 ongoing.
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I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington this 18th day of August, 2017.

/s/ Joshua C. Brower
Joshua C. Allen Brower, WSBA #25092

4830-6076-1165, v. 5

Exhibit A

Tupper|Mack|Brower PLLC

1100 Market Place Tower
2025 First Avenue • Seattle, WA 98121
Phone (206) 493-2300 Fax (206) 493-2310
www.TupperMackBrower.com

BRAD DOLL
Direct (206) 493-2324
bdoll@TupperMackBrower.com

February 11, 2009

Via U.S. Mail and Facsimile

Gordon White
Shorelands & Environmental Assistance Program Manager
Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Geoff Tallent
Shorelands & Environmental Assistance
Department of Ecology, Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

RE: City of Seattle SMA exemption for construction of the "Missing Link" portion of the Burke-Gilman trail in Seattle

Dear Messrs. White and Tallent:

We are writing to bring to your attention and to request the Department of Ecology take enforcement action regarding the City of Seattle's decision to exempt itself from obtaining a shoreline substantial development permit in compliance with the Shoreline Management Act for its construction of a mile-plus segment of the Burke-Gilman Trail (the "missing link"), portions of which are located within the shoreline environment. We are asking Ecology to review the City's exemption and take appropriate action because we believe the City applied the Act in a manner that undercuts the SMA's shoreline protections.

The City of Seattle recently gave itself a shoreline substantial development permit exemption after asserting that construction of a mile-plus segment of a new, multi-user recreational trail is somehow "repair and maintenance of an existing structure." Attachment A. At least four segments of the proposed trail run through the shoreline zone. Attach. B (see map).

appearance” after it constructs the Missing Link; and photographs C-11 and C-12 show existing improvements (an enclosed area for trash receptacles and sidewalk/bus stop, respectively) that will be removed and rebuilt with the trail.

In addition to not accurately describing the true scope and scale of this project, SDOT also stated in its application for the exemption that the Missing Link would involve “no new impervious surfaces” and that it would be located “within existing impervious areas inside City of Seattle property.” Attach. B at 2.

Both of these statements are contradicted by reality and the SEPA checklist SDOT prepared months after obtaining the SMA exemption.³ The existing roadway improvements do not include the amount or configuration of impervious surface or amenities that will be “repaired” by SDOT through construction of the Missing Link. See photographs, Attach. C. In the SEPA checklist, SDOT admits that the Missing Link will not be constructed entirely within City property but instead a portion will be located on *private property* over which the City must obtain an easement. See SEPA Checklist, page 4, Answer A-11. The drainage report prepared for SDOT’s checklist states that the Missing Link will include “*over 5,000 SF of new impervious surface.*” Attach. D, Section 2.2 (emphasis added).

Not only did the SDOT fail to properly disclose and describe this project to Seattle DPD, SDOT failed to conduct SEPA analysis as part of the SMA exemption. Instead, SDOT conducted SEPA review approximately 8 months after obtaining the SMA exemption.

On March 27, 2008, the City granted itself the shoreline substantial development permit exemption, citing WAC 173-27-040(2)(b). Attach. A. The City did not publicly announce this exemption and we only learned about it when the City issued its SEPA checklist in December 2008.⁴

Ecology is charged with ensuring compliance with the SMA.

It is axiomatic that “no development may occur on the shoreline of the state unless it is consistent with the policy of the SMA....” *Samuel’s Furniture v. Department of Ecology*, 147 Wn.2d 440, 449, 54 P.3d 1194 (2002)(*amended on denial of reconsideration* 2003). While local governments are given authority to administer the SMA permit process, Ecology is given joint authority to enforce compliance with the SMA. *Id.*; RCW 90.58.210(1) (Attorney general or attorney for local government shall bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shoreline of the state in conflict with the provisions and programs of this chapter.); RCW 90.58.210(2) (Ecology or local government may issue cease and desist orders, require corrective action, or issue penalties if a party undertakes development on a shoreline without a permit.). In order to establish its jurisdiction to enforce the SMA, Ecology may be required to challenge a local government’s final land use decision. See *Samuels Furniture*, 147 Wn.2d at 457.

³ The SEPA Checklist is dated November 17, 2008 while the SMA Exemption is dated March 27, 2008.

⁴ “Local governments are encouraged to send all exemptions to Ecology.” Dep’t of Ecology, *Focus: Shoreline Management*, Pub. No. 01-06-012 (Oct. 2001).

new related trail amenities. *See* SDOT SEPA Checklist. Under no stretch of the imagination can these improvements be considered “repair and replacement.”

Most damning, the Missing Link (i.e., the “replacement structure or development”) is *not* “comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance.” WAC 173-27-040(2)(b); *see also* SMC 23.60.020(C)(1). The Missing Link will require over 5,000 SF of *new* impervious surface. The Missing Link will not be located *entirely* within City Property and instead requires an easement over private property not currently developed with “roadway improvements.” *See* Attachs. C, D.

As the photos amply show, there is no trail where the Missing Link will be located. In many cases, it is impossible to cross the areas intended for the Missing Link because they are occupied by structures and utilities. Furthermore, segments of the trail will run over what are now pervious surfaces. Since the trail does not exist, the City cannot “repair” or “maintain” it and thus the Missing Link does not qualify for the SMA exemption. Ecology must exercise its enforcement authority to rectify this SMA violation.

Ecology should take enforcement action because the City failed to properly apply the SMA exemption.

First, the City failed to follow the proper analytical and review process by obtaining the SMA exemption before it conducted SEPA review. “Exemptions should only be granted after meaningful review under the State Environmental Policy Act (SEPA), unless the proposed project is categorically exempt under SEPA” Dep’t of Ecology, *Focus, Shoreline Management*, Pub. No. 01-06-012 (Oct. 2001). Failure to engage in coordinated SMA and SEPA review can lead to “coerced land use development.” *Merkel v. Port of Brownsville*, 8 Wn. App. 844, 850, 509 P.2d 390 (1973). SEPA and the SMA are to be consistent. *Id.* Coordinated review ensures consideration of impacts on land adjacent to shorelines. “[L]ands adjacent to shorelines must also be taken into consideration if the consistency stressed in the [SMA] is to be achieved.” *Id.* “[T]he permit system of the SMA is inextricably interrelated with and supplemented by the requirements of SEPA. The requirements of SEPA clearly overlay the whole SMA permit process.” *Sisley v. San Juan County*, 89 Wn.2d 78, 83, 569 P.2d 712 (1977) (internal citations omitted). *See also Brachvogel v. Mason County*, SHB Nos. 45 and 45-A (Aug. 10, 1973) (Findings of Fact, Conclusions and Order) (local government should comply with SEPA before issuing a substantial development permit).

SDOT obtained the SMA exemption on March 27, 2008 and then, approximately 8 months later, issued its SEPA checklist on November 17, 2008. The City could not have ensured consistency where, as here, its SEPA review post-dated its SMA review. By doing this, SDOT failed to conduct “meaningful” SEPA review *before* obtaining the SMA exemption.

Messrs. White and Tallent
February 11, 2009
Page 7

Sincerely,

TUPPER MACK BROWER PLLC

A handwritten signature in black ink, appearing to read 'Brad Doll', written in a cursive style.

BRAD DOLL

Enclosures

cc: client (with enclosures)



6170417
5489 Shilshole Ave NW
Gregory J. Nickels, Mayor

Seattle Department of Transportation

Grace Crunican, Director

February 13, 2008

Dept. of Planning & Development
Public Resource Center

FEB 13 2008

RECEIVED

City of Seattle - DPD
Public Resource Center
700 Fifth Ave., Suite 2000
P.O. Box 34019
Seattle, WA 98124-4019

Re: Exemption from Shoreline Substantial Development Permit for the Burke Gilman Trail 11th Avenue NW to NW 54th Street

Dear Seattle DPD:

This letter is to apply for a Shoreline Substantial Development Permit exemption for construction of a multi-use trail between 11th Ave NW and NW 54th Street (at the Chittenden Locks) in Seattle. This project will complete the missing link between existing portions of the Burke-Gilman Trail, which currently travel from the Chittenden Locks to Golden Gardens Park and from 11th Ave NW to Tracey Owen Station in Kenmore, Washington.

Exemption Type

The proposed project is exempt under Seattle Municipal Code (SMC) 23.60.020 C1, Normal maintenance or repair of existing structures or developments. The project will repair and replace existing roadway, including compact gravel and paved shoulders, to allow for the addition of a multi-use trail. The new roadway and trail will be comparable to the existing roadway in size, shape, configuration, location, and external appearance and will not result in substantial adverse effects to any shoreline resources or the environment.

Property Address

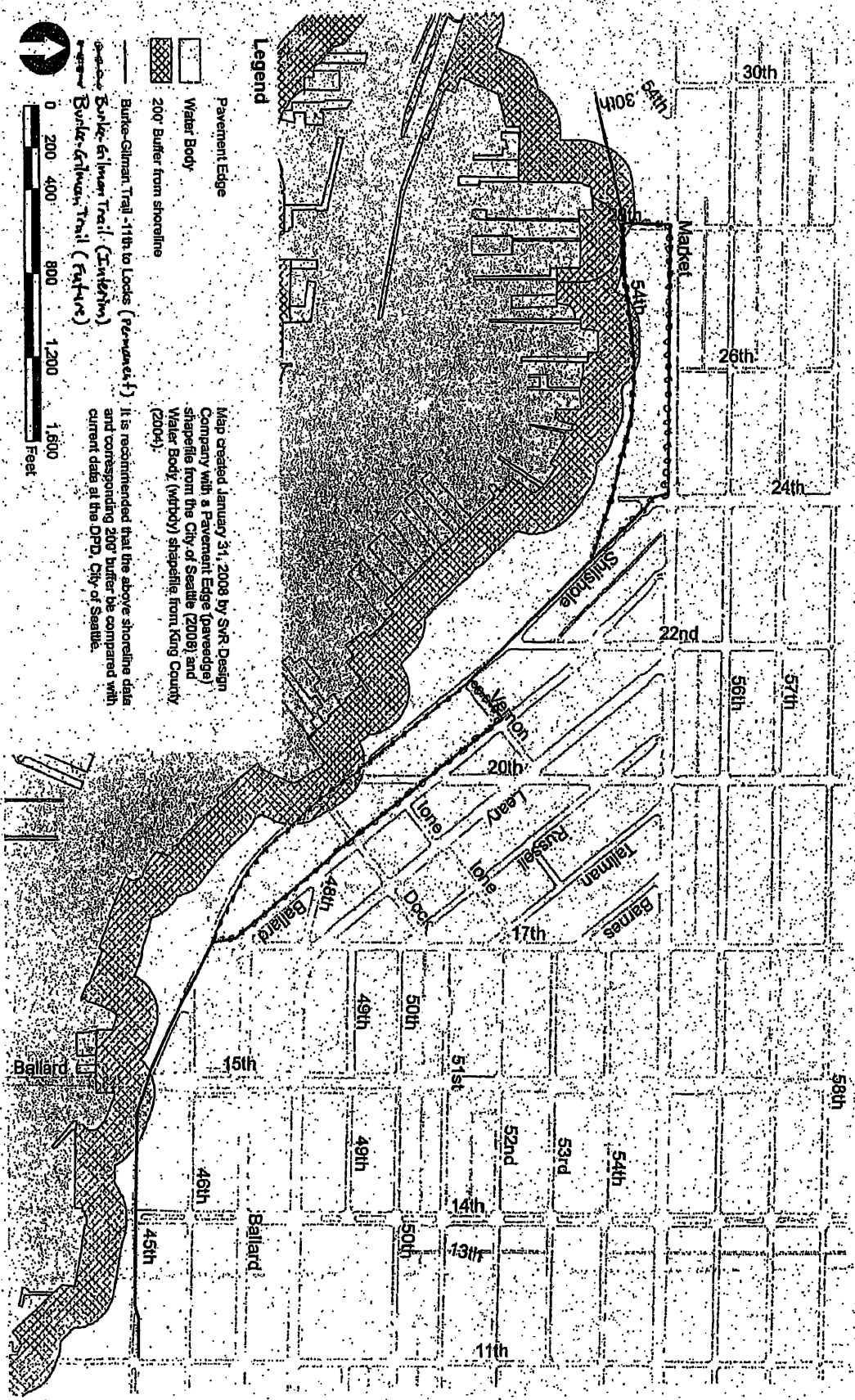
Please see Figure 1 for a map of the proposed alignment, which includes permanent, interim, and future sections of the trail. At this point in time SDOT only proposes to construct the permanent and interim portions of the trail. It is unknown at this time when the future portions of the trail will be developed.

The project will begin at 11th Ave NW and head west along NW 45th Street where it will intersect with Shilshole Ave NW. The project will continue northwest along Shilshole Ave NW, head north at 17th Ave NW, northwest along NW Ballard Ave, then southwest back to Shilshole Ave NW at NW Vernon Place. The trail will continue along Shilshole Ave NW until it intersects with 24th Ave NW and NW Market Street. There, it will run west along NW Market Street to 28th Ave NW, head south on 28th Ave NW to NW 54th Street, then continue west until it connects to the existing Burke-Gilman Trail near 30th Ave NW and the Chittenden Locks.



Seattle Municipal Tower, 700 5th Avenue, Suite 3900, PO Box 34996 Seattle, WA 98124-4996
Tel: (206) 684-ROAD (684-7623), TTY/TDD (206) 684-4009, FAX: (206) 684-5180
Internet address: <http://www.seattle.gov/transportation>

An equal opportunity employer. Accommodations for people with disabilities provided on request.



Legend

-  Pavement Edge
-  Water Body
-  200' Buffer from shoreline
-  Burke-Gilman Trail - 11th to Locke (Future)
-  Burke-Gilman Trail - (Current)
-  Burke-Gilman Trail (Future)

Map created January 31, 2008 by SVR Design Company with a Pavement Edge (shaded) shapefile from the City of Seattle (2008) and Water Body (white) shapefile from King County (2004). It is recommended that the above shoreline data and corresponding 200' buffer be compared with current data at the DFD, City of Seattle.



FIGURE 1 - PROJECT ALIGNMENT

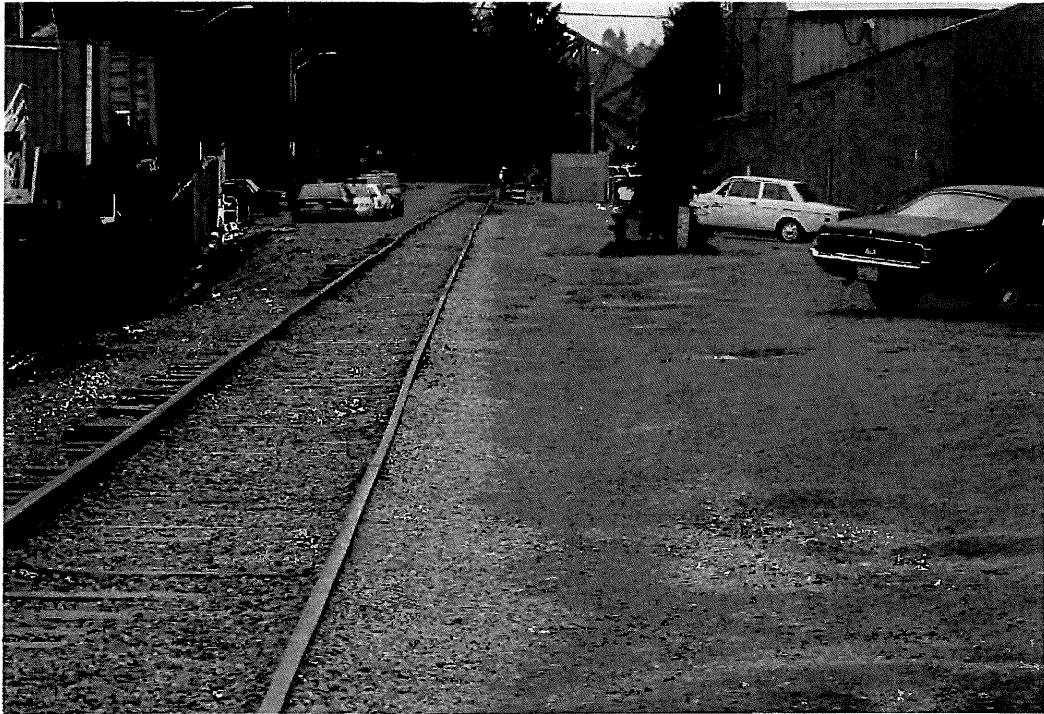
C-3



C-4



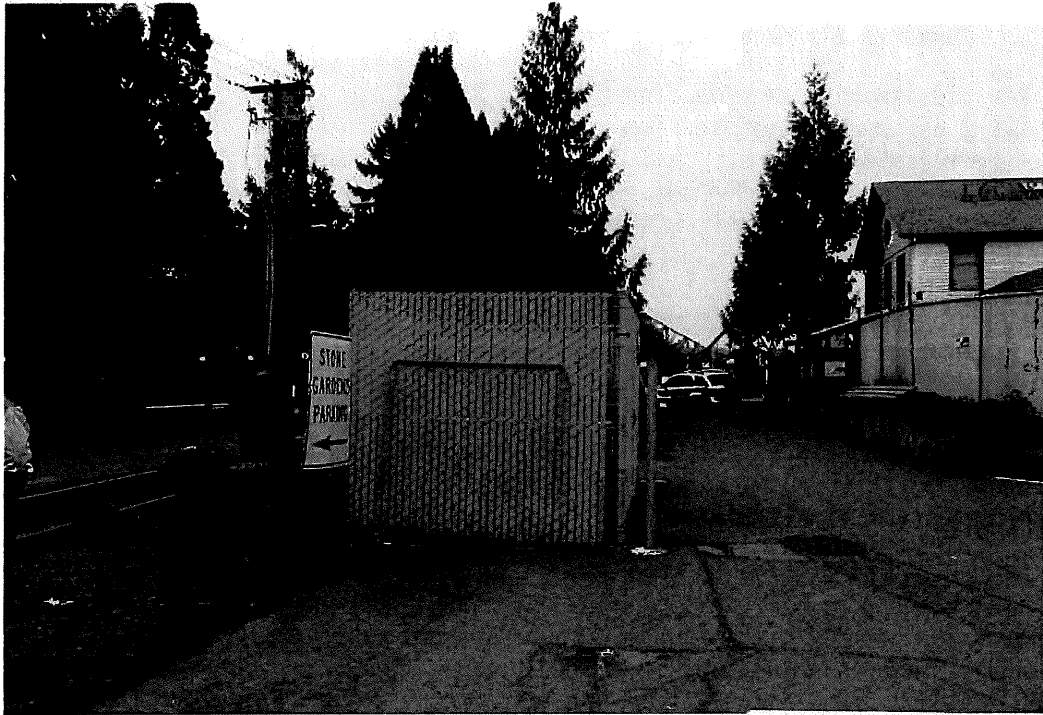
C-7



C-8



C-11



C-12



Department of Planning and Building
Staff Report
To City of Lake Forest Park Hearing Examiner
King County Shoreline Substantial Development Permit
Burke-Gilman Trail Redevelopment

The following review is based on information contained in the November 20, 2007 application, September 23, 2008 supplemental correspondence and applicable shoreline code.

SUMMARY INFORMATION

File No.: SSD07-04

Hearing Date: January 15, 2009

Requested Action: Burke Gilman Trail - Request for Shoreline Substantial Development Permit

Applicant: King County Parks and Recreation Division ; Attn: Gina Auld;
201 S. Jackson Street, Suite 700 Seattle, WA 98104

Site Location: The section of Burke Gilman Trail through the City of Lake Forest Park is approximately 2.3 miles long. Approximately 1.33 miles of the trail lies within 200 feet of the Lake Washington Shoreline: 0.98 miles of the trail beginning at the southern limits of the City and extending north approximately to NE 165th Street and 0.35 miles of the trail north of Ballinger Way NE. (See applicant letter from Watershed Company dated September 23, 2008 with attached exhibit.) (Exhibit 28)

Comprehensive Plan Designation: The land use designation for the trail is Recreation/Open Space; land uses adjacent to the proposed trail are single family residential, and recreation/open space.

Zoning Classification: RS-7200 Single Family Residential; uses not specifically identified as permitted, including multi-use trails, are regulated as conditional uses

Shoreline Designation: Urban

Attachments: The Watershed Company Letter, dated September 23, 2008 containing review of BGT Redevelopment proposal's compliance with Shoreline policies

Summary of Suggested Conditions of Approval: Staff recommends approval of a shoreline substantial development permit subject to:

1. Obtaining a Land Clearing, Grading and Excavation

Description of the proposal: King County Parks filed application for a Substantial Shoreline Development Permit for proposed improvements to the Burke Gilman Trail On November 20, 2007 (Exhibit 14), that includes:

- Widen existing trail from 10 feet to 12 feet;
- Install a 1 foot shoulder on the west side of the trail and a 3 foot shoulder on the east side of the trail;
- Resurface the trail throughout the City of Lake Forest Park;
- Construct new bridge (to replace existing Lyon Creek pedestrian bridge);
- Replace existing retaining walls that are considered to be in poor condition and/or inadequate to support drainage loads;
- Construct new retaining walls in locations as needed to support the cuts and fills associated with the new trail reconfiguration;
- Implement trail protection and/or stabilization measures in areas of recent slope instability;
- Install re-designed traffic controls and signage at trail intersection points with public roadways and driveways; and
- Install signage improvements, site furnishings, new landscaping, and fencing.

Existing Site Characteristics: The trail parcel runs north/south along an east-facing slope above the western shore of Lake Washington. The parcel containing the trail was originally established as a railroad. The parcel containing the trail extends 25 feet on either side of the centerline of the original railroad. The southern ¼ mile segment of the trail is located in a 100 foot wide parcel. There is at least one parcel in between the trail parcel and the shoreline throughout the trail length through Lake Forest Park. These parcels are predominately occupied by single family homes with a few private community beach access parcels. Access roads to the waterfront homes occupy private easements, portions of the Burke Gilman Trail parcel and public right of way. Some of the homes have structures and parking located within the trail parcel.

Physical conditions are characterized by a 15 to 20 foot wide graded “bench” (former rail bed) with cut and embankment slopes between 2h:1v (horizontal: vertical) and 3h:1v for most of its length. Side slopes vary in location and extent generally rising to the west and dropping to the lake to the east. A more complete description of conditions may be found in the Final environmental Impact Statement for the project issued in June 25, 2008.

STATE ENVIRONMENTAL POLICY ACT REVIEW

The Final EIS for the Burke Gilman Trail was published June 25, 2008 (Exhibit 22).

SHORELINE CRITERIA REVIEW

The proposal's compliance with applicable Title 25 requirements is reviewed in the section below: (See Exhibit 28 for applicant provided discussion)

E. Parking facilities except parking facilities associated with detached single-family and agricultural development shall conform to the following minimum conditions:

- 1. Parking areas serving a water related or a nonwater related use must be located beneath or upland of the development which the parking area serves.***
- 2. Any outdoor parking area perimeter, excluding entrances and exits, must be maintained as a planting area with a minimum width of five feet.***
- 3. One live tree with a minimum height of four feet shall be required for each thirty linear feet of planting area.***
- 4. One live shrub of one-gallon container size or larger for each sixty linear inches of planting area shall be required.***
- 5. Additional perimeter and interior landscaping of parking areas may be required, at the discretion of the director, when it is necessary to screen parking areas or when large parking areas are proposed.***

No parking facilities are being proposed or altered that would fall under this requirement.
This requirement is met.

F. Collection facilities to control and separate contaminants shall be required where storm water runoff would degrade or add to the pollution of recipient waters or adjacent properties.

As a paved bicycle pathway, the BGT is not considered a Pollution Generating Impervious Surface (PGIS). Per the King County Surface Water Manual, a PGIS means an impervious surface considered to be a significant source of pollutant in storm water runoff. Such surfaces include those that are subject to vehicular use or storage of erodible or leachable materials, wastes, or chemicals, and that receive direct rainfall or the run-on or blow in of rainfall. Metal roofs are also considered to be PGIS unless they are treated to prevent leaching.

In a footnote to the reference to **vehicular use**, the King County Surface Water Manual states, *subject to vehicular use means the surface, whether paved or not, is regularly used by motor vehicles. The following surfaces are considered regularly used by motor vehicles: roads, unvegetated road shoulders, bike lanes within or not separated from the traveled roadway, driveways, parking lots, unfenced fire lanes, diesel equipment storage yards, and airport runways. The following surfaces are not considered regularly used by motor vehicles: road shoulders primarily used for emergency parking, paved bicycled pathways, bicycle lands adjacent to unpaved or paved road shoulders primarily used for emergency parking, fenced fire lanes, and infrequently used maintenance access roads.*

Approximately 5,730 square feet of the Burke Gilman Trail Project includes reconstruction of roadway crossings that are Pollution Generating Impervious Surface however the project will not add Pollution Generating Impervious Surface in these locations.

Staff finds that water quality treatment facilities are not required for the proposed project; this requirement is met.

C. Landfill or excavations shall be permitted only when technical information demonstrates water circulation, littoral drift, aquatic life and water quality will not be substantially impaired;

Not applicable, see applicant response. (Exhibit 24, page 2)

E. Wetlands such as marshes, swamps, and bogs shall not be disturbed or altered through excavation, filling, dredging, or disposal of dredged material unless the manager determines that:

1. The wetland does not serve any of the valuable functions of wetlands identified in KCC 20.12.080 and US Army Corps of Engineers 33 CFR 320.4(b), including but not limited to wildlife habitat and natural drainage functions, or

2. The proposed development would preserve or enhance the wildlife habitat, natural drainage, and/or other valuable functions of wetlands as discussed in KCC 20.12.080 or US Army Corps of Engineers 33 CFR 320.4(b) and would be consistent with the purpose of this Title;

On the Sensitive Area Exhibits Permit Submittal sheets provided to the City to show work in the Wetlands and Streams (Exhibit 32); the applicant has shown:

- (1) 2,169 square feet of wetland fill
- (2) 5,280 square feet of mitigation measures being applied to wetlands onsite and adjacent to the trail.
- (3) 10,215 square feet of wetland mitigating measures at an off site location. The off site wetland mitigation area (as shown on Sensitive Area Exhibits Sheet W4.0 to W4.3) (Exhibit 32) is along Ballinger Way NE; the offsite wetland improvements include:
 - (1) Installation of a split rail fence with a Sensitive Areas sign and;
 - (2) 5,117 square feet of wetland enhancement via invasive vegetation species removal and conifer infill planting;
 - (3) 5,098 square feet of wetland enhancement via invasive vegetation removal and restoration planting;
 - (4) 4,086 square feet of buffer enhancement via invasive vegetation removal and restoration planting.

Once a permit from the US Army Corps of Engineers is issued for this project, compliance with requirement E, 1, above will be met.

H. Marina facilities shall be prohibited on Class I beaches or where their development would interrupt littoral currents and starve Class I beaches.

Not applicable.

I. Public pedestrian and bicycle pathways shall be permitted adjacent to water bodies.

Shoreline Substantial Development Permit Application SD07-04 is for the redevelopment of a multi-use trail.

This requirement is met.

J. Public contact with unique and fragile areas shall be permitted where it is possible without destroying the natural character of the area.

Compliance with this requirement will be achieved upon determination of compliance with LFPMC Chapter 16.16.

K. Water viewing, nature study, recording and viewing shall be accommodated by space, platforms, benches or shelter, consistent with public safety and security.

The October 5, 2007 BGT Redevelopment Permit sheets (Exhibit 6) demonstrated that the applicant is proposing, in Demolition Sheets D1 through D9, to remove eight seating benches, two trash receptacles, and one water fountain during demolition phase of the redevelopment project.

The October 5, 2007 Permit Set Plan Enlargement Sheets L1 through L15 show the applicant has proposed 10 park benches be added to the site; the two park benches removed in the demolition phase will be relocated with 5 trash receptacles being added. The two trash receptacles removed in the demolition phase will be relocated and the 1 water fountain water fountain removed in the demolition phase will be relocated.

With the Redevelopment proposal, the applicant is meeting the intent of this requirement by providing benches and use areas.

This requirement has been met.

FINDINGS:

Applicant has proposed analysis of Master Program elements which support approval of a Shoreline Substantial Development Permit. Approval of this permit is recommended with conditions noted above.

Exhibit B

From: [Josh Brower](#)
To: [Cohen, Matthew](#)
Cc: [Erin Ferguson \(erin.ferguson@seattle.gov\)](#); [Cox, Rachel H.](#); [Tadas Kisiellius](#); [Pat Schneider \(pat.schneider@foster.com\)](#); [Leah Silverthorn](#); [Danielle Granatt](#); [Megan Manion](#)
Subject: Re: discovery
Date: Thursday, August 03, 2017 7:07:30 PM
Attachments: [image002.png](#)

Matt, let me explain our position in an effort to avoid a downstream discovery dispute with the CBC.

I sent you a very short response earlier today because, as you know from my "Out of Office" email notifications, I am on vacation, returning to the office on August 16: I am celebrating my 24th wedding anniversary and then heading to the east coast for our long-planned annual family trip.

Despite this, I took time out of my vacation to thoughtfully consider your request that we accommodate your and your client's vacation schedule, including conferring with my co-counsel so that we could provide you a reasoned and balanced approach to resolving this issue.

Our offer is reasonable and balanced and provides protection to every party involved. You are asking us to give up 11 days that we are planning to use to review and evaluate what you yourself characterize as voluminous records so we can timely disclose our preliminary witness and exhibit list on September 8. If we agree to your request, you get more time to respond to discovery and we get less time to review it before having to meet the September 8 deadline. That is not fair.

Our proposal is fair because we are not asking to move the September 8 date now and instead simply reserving flexibility and certainty so we can make sure later that we have the same amount of time as we do now to prepare our witness and exhibit list—***if we need it***. We may or may not need that extra time but we will not be able to make that determination until we receive CBC's discovery responses.

All we are asking you to do is decide now whether or not you agree to that approach. We are not willing to defer your decision until later (as you suggest in your "compromise") because later there will be no incentive for you to agree and instead you will be incentivized not to agree to for obvious reasons. The decision needs to be made now and schedule needs to be set so everyone can go enjoy their respective vacations and family trips without lingering uncertainty hanging over everyone's heads.

Please do not misunderstand this email—we are not asking you to agree to give us more time and we are only responding to your request. If you don't want to agree to extend the deadlines as you requested, that is fine. We were not going to ask for extensions to accommodate our schedules.

Our offer will remain open on the terms I outlined below until COB tomorrow. Please let me know either way--if you change your mind and you and the City want to amend the schedule as outlined, or not.

It is a beautiful summer and we should all go enjoy while it lasts.

Regards, Josh

Joshua C. Allen Brower

Veris Law Group PLLC

1809 Seventh Avenue, Suite 1400

Seattle, WA 98101

206.829.8233 direct

206.829.9590 office

josh@verislawgroup.com

www.verislawgroup.com

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HUNGER DOESN'T HAVE TO HAPPEN

Be a SUPERHERO this summer!



FOODFRENZY
JULY 14-28, 2017

From: Josh Brower <josh@verislawgroup.com>

Date: Thursday, August 3, 2017 at 1:31 PM

To: "Cohen, Matthew" <matthew.cohen@stoel.com>

Cc: Erin' 'Ferguson <erin.ferguson@seattle.gov>, "Cox, Rachel H." <rachel.cox@stoel.com>, Tadas Kisielius <tak@vnf.com>, "Pat Schneider (pat.schneider@foster.com)" <pat.schneider@foster.com>, Leah Silverthorn <leah@verislawgroup.com>, Danielle Granatt <danielle@verislawgroup.com>, Megan Manion <megan@verislawgroup.com>

Subject: Re: discovery

No Matt, it is not. CBC's complete discovery requests are due on the 10th

Josh

Message by Josh; typos by iPhone

On Aug 3, 2017, at 12:58 PM, Cohen, Matthew <matthew.cohen@stoel.com> wrote:

Josh, in exchange for the Ballard Coalition's courtesy in granting Cascade an additional 11 days to respond to your discovery requests, we agree to provide the same extension to the Coalition. Our responses would be due on August 21, and yours on September 4.

At this time Cascade cannot stipulate to any extension of the schedule set forth in the pre-hearing order, including the deadline to disclose preliminary witnesses and exhibits.

Please advise if this compromise is acceptable to the Coalition.

Matthew Cohen

STOEL RIVES LLP | 600 University Street, Suite 3600 | Seattle, WA 98101-4109

Direct: (206) 386-7569 | Mobile: (206) 714-1671

mcohen@stoel.com | www.stoel.com

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

Sent: Thursday, August 03, 2017 11:08 AM

To: Cohen, Matthew; Erin Ferguson (erin.ferguson@seattle.gov); Cox, Rachel H.; Tadas Kisielius

Cc: Pat Schneider (pat.schneider@foster.com); Leah Silverthorn; Danielle Granatt; Megan Manion

Subject: Re: discovery

Matt, we are willing to grant the professional courtesy you request if CBC and the City agree to the following:

1. The Coalition will agree to extend CBC's discovery response deadline from August 10 to August 21 (the extra 11 days you requested);
2. CBC **and** the City **stipulating** now that, **if necessary**, the Coalition can prepare and you both will sign a Joint Motion to extend the deadline for the parties to disclose preliminary witnesses and exhibits (currently Sept. 8) by up to 11 days to no later than Sept. 19. The Coalition will determine whether or not it needs any extra time to do so once we receive CBC's discovery responses—we cannot make that determination now since we have no idea what we are going to receive from CBC and the City. And;
3. CBC gives the Coalition a similar 11 day extension to respond to CBC's discovery requests--the Coalition's responses will be due September 4.

Erin and Matt, please let me know today if you agree.

Regards, Josh

Joshua C. Allen Brower
Veris Law Group PLLC
1809 Seventh Avenue, Suite 1400
Seattle, WA 98101
206.829.8233 direct
206.829.9590 office
josh@verislawgroup.com
www.verislawgroup.com

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HUNGER DOESN'T HAVE TO HAPPEN

Be a SUPERHERO this summer!

<image001.jpg>

<image002.png>

From: "Cohen, Matthew" <matthew.cohen@stoel.com>
Date: Thursday, August 3, 2017 at 8:04 AM
To: Josh Brower <josh@verislawgroup.com>, "Pat Schneider (pat.schneider@foster.com)" <pat.schneider@foster.com>, Leah Silverthorn <leah@verislawgroup.com>, Danielle Granatt <danielle@verislawgroup.com>, Megan Manion <megan@verislawgroup.com>
Cc: "Cox, Rachel H." <rachel.cox@stoel.com>, Erin' 'Ferguson <erin.ferguson@seattle.gov>
Subject: discovery

Counsel, I am writing to request the Ballard Coalition's consent to an eleven day extension of the date for Cascade to respond to your First Interrogatories and Requests For Production to Cascade. We propose to serve answers, documents and objections by August 21. The reason for our request is that your discovery requests are sweeping in scope, they require internal review of thousands of documents and the response period included long-planned vacations for Cascade staff and counsel.

Matthew Cohen
STOEL RIVES LLP | 600 University Street, Suite 3600 | Seattle, WA 98101-4109
Direct: (206) 386-7569 | Mobile: (206) 714-1671
mcohen@stoel.com | www.stoel.com

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