

1 **SHORELINES HEARINGS BOARD**  
2 **STATE OF WASHINGTON**

3 MLK LABOR, GENERAL TEAMSTERS  
4 UNION LOCAL NO. 174, SALMON BAY  
5 SAND & GRAVEL CO., BALLARD  
6 TERMINAL RAILROAD CO. LLC,  
7 BALLARD INTERBAY NORTHEAST  
8 MANUFACTURING & INDUSTRIAL  
9 CENTER, NORTH SEATTLE  
10 INDUSTRIAL ASSOCIATION, CSR  
11 MARINE, and THE SEATTLE MARINE  
12 BUSINESS COALITION,

13 Petitioners,

14 v.

15 CITY OF SEATTLE,

16 Respondent.

SHB No. 19-007

ORDER ON MOTION TO DISMISS  
AND MOTION FOR PARTIAL  
SUMMARY JUDGMENT

17 **I. INTRODUCTION**

18 On July 12, 2019, MLK Labor, General Teamsters Union Local No. 174, Salmon Bay  
19 Sand and Gravel Co., Ballard Terminal Railroad Co. LLC, Ballard Interbay Northend  
20 Manufacturing & Industrial Center, North Seattle Industrial Association, CSR Marine and the  
21 Seattle Marine Business Coalition (collectively, the Coalition) filed an appeal of the Shoreline  
Substantial Development Permit (SSDP) issued by the City of Seattle (City) for the Burke  
Gilman Missing Link Project (Missing Link).

On September 16, 2019, the City filed Respondent City of Seattle's Motion to Dismiss  
(City's Motion). The Coalition opposed the City's Motion.

1 On September 16, 2019, the Coalition filed Petitioner’s Motion for Partial Summary  
2 Judgment (Coalition’s Motion). The City opposed the Coalition’s Motion.

3 Assistant City Attorney Erin Ferguson represents the City. Attorneys Joshua Brower and  
4 Patrick Schneider represent the Coalition. The Shorelines Hearings Board (Board) considering  
5 the Motions was comprised of Board Members Neil L. Wise, Jason Sullivan and Dennis Weber.  
6 Administrative Appeals Judge Heather C. Francks presided for the Board.

7 The Board reviewed the following materials in deliberating on these motions:

- 8 1. Respondent City of Seattle’s Motion to Dismiss;
- 9 2. Declaration of Erin Ferguson in support of City’s Motion;
- 10 3. Response to City of Seattle’s Motion to Dismiss;
- 11 4. Declaration of Salmon Bay Sand & Gravel Company in support of Response to City  
12 of Seattle’s Motion to Dismiss;
- 13 5. Declaration of CSR Marine in support of Response to City of Seattle’s Motion to  
14 Dismiss;
- 15 6. Declaration of General Teamsters Union Local #174 in support of Response to City  
16 of Seattle’s Motion to Dismiss;
- 17 7. Declaration of North Seattle Industrial Association in support of Response to City of  
18 Seattle’s Motion to Dismiss;
- 19 8. Declaration of Ballard Interbay Northend Manufacturing & Industrial Center in  
20 support of Response to City of Seattle’s Motion to Dismiss;

- 1 9. Declaration of Northwest Marine Trade Association in support of Response to City of
- 2 Seattle's Motion to Dismiss;
- 3 10. Declaration of Ballard Terminal Railroad Co. LLC in support of Response to City of
- 4 Seattle's Motion to Dismiss;
- 5 11. Declaration of Joshua C. Allen Brower regarding Petitioner's Opposition to
- 6 Respondent's Motion to Dismiss and Exhibits 1-7;
- 7 12. Respondent City of Seattle's Reply on Motion to Dismiss;
- 8 13. Second Declaration of Erin Ferguson in support of City's Motion and Exhibit A;
- 9 14. Petitioner's Corrected Motion for Partial Summary Judgment;
- 10 15. Declaration of Joshua C. Allen Brower in support of Petitioner's Motion for Partial
- 11 Summary Judgment and Exhibits 1-17;
- 12 16. City of Seattle's Response to the Coalition's Motion for Summary Judgment; and
- 13 17. The Coalition's Reply in support of Motion for Partial Summary Judgment; and
- 14 18. The Board's file in the matter.

15 Based on the written argument and evidence before the Board on the motions, the Board  
16 enters the following decision.

## 17 **II. BACKGROUND**

18 The Coalition is a group of labor unions, trade organizations and local businesses who  
19 will be impacted by the proposed Missing Link, a 1.4 mile multi-use trail proposed to connect  
20 two existing segments of the Burke-Gilman Trail in the Ballard Neighborhood of Seattle.

1 Coalition Motion, p.2. The Coalition has opposed the Missing Link for decades, both in and out  
2 of the courtroom. City’s Motion p. 3.

3 In May 2018, the Seattle Department of Transportation (SDOT) applied for an SSDP  
4 only for the part of the trail located in the Urban Industrial (UI) shoreline environment and not  
5 the entire 1.4 mile Missing Link trail which includes areas outside the shoreline environment.  
6 The Coalition appealed the Seattle Department of Construction and Inspections’s (SDCI)  
7 issuance of an SSDP for the Missing Link on a number of grounds described below in the list of  
8 legal issues.

9 **III. ANALYSIS**

10 The parties submitted and agreed to the following legal issues contained in the Prehearing  
11 Order, which govern the case:

- 12 1. Did the Seattle Department of Transportation (SDOT) submit a complete application  
13 for a shoreline substantial development permit (SSDP) pursuant to Seattle Municipal  
Code (SMC) 23.60A.063 and 23.76.010 and WAC 173-27-180?
- 14 2. Is the Missing Link a “linear transportation project” pursuant to SMC 23.60A.022.B  
15 such that a SSDP is only required for those portions of the Project located within the  
UI Shoreline Environment or is a SSDP required for the entire 1.4 mile trail?
- 16 3. Did the Seattle Department of Construction and Inspections (SDCI) properly issue the  
17 SSDP to SDOT in compliance with SMC 23.60A.030 and RCW 90.58.020?
- 18 4. Did SDCI properly issue the SSDP to SDOT in compliance with the criteria and  
standards in Chapter 23.60A, including:
  - 19 a. SMC 23.60A.002.B—does the Missing Link implement and is it consistent with  
20 the policies and provisions of the Shoreline Management Act (SMA) and the  
Shoreline Goals and Policies of Seattle’s Comprehensive Plan;
  - 21 b. SMC 23.60A.002.B.2—will the Missing Link impact and in “extreme cases” put  
water-dependent and water-related businesses located in the UI Shoreline

1 Environment out of business as stated in the draft Economic Consideration Report  
2 prepared as part of SDOT's Draft EIS for the Missing Link;

- 3 c. SMC 23.60A.004—will the Missing Link have an adverse impact on the  
4 Shoreline District by significantly and adversely impacting adjacent water-  
5 dependent/water-related uses;
- 6 d. SMC 23.60A.152—did SDOT design the Missing Link in a manner that  
7 minimizes adverse impacts to surrounding land and water uses in the Shoreline  
8 District and is it compatible with the affected area in the UI Shoreline District;
- 9 e. SMC 23.60A.213—are there other reasonable options for locating the Missing  
10 Link outside the UI Shoreline District;
- 11 f. SMC 23.60A.220—is the Missing Link consistent with the purpose of the UI  
12 Shoreline Environment or will it undermine and substantially impede the use of  
13 industrial shorelines by water-dependent and water-related uses, and will it  
14 displace water-oriented uses while not achieving other goals of the SMA;
- 15 g. SMC 23.60A.482—is the Missing Link a permitted adjacent upland use within  
16 the UI Shoreline Environment;
- 17 h. SMC 23.60A.483—is the Missing Link a permitted use in the UI Shoreline  
18 Environment;
- 19 i. Is the Missing Link consistent with the Shoreline goals and policies in the City's  
20 Comprehensive Plan, including, without limit, SA G31, SA G35, SA G1, SA G3,  
21 SA P1, SA P4, SA P5, SA P8, SA P16, SA P18, SA P37, and SA P40; and
- 22 j. Is the Missing Link consistent with other goals and policies in the City's  
23 Comprehensive Plan, including, without limit, BI-P1, BI-P2, BI-P3, BI-P4, BI-P5,  
24 BI-P6, BI-P8, BI-P9, BI-P11, BI-G1, BI-G2, BI-G4, BI-G5, BI, G6, BI-G10, BI-  
25 G11, BI-P13, BI-P14, BI-P15, BI-P17, BI-P19, BI-P20, BI-P21, GS 1.16, GS  
26 1.18, GS, 1.19, GS, 1.20, GS 1.21, LU 2.1, LU G10, LU 10.2, LU 10.3, LU 10.16,  
27 LU 10.26, LU 10.27, T 1.6, TG 5, TG 5.3, TG 5.7, and T 7.5?
- 28 5. Did SDCI properly acknowledge, discuss or analyze the goals and policies applicable  
29 to the Shoreline Area and other Comprehensive Plan goals and policies listed above  
30 in subsections 4.i and 4.j, or those listed in SDCI's decision approving SDOT's  
31 SSDP?

1           6. Did SDCI comply with SEPA, both substantially and procedurally, and with SMC  
2           25.05.070, in issuing the SSDP to SDOT?

3           The City moves to dismiss the Coalition’s Petition on the ground that the Coalition and  
4           its members lacked standing. Alternatively, the City moves to dismiss those parties who lack  
5           standing; dismiss Issue 6 regarding the State Environmental Policy Act (SEPA); dismiss Issue  
6           4.j. regarding compliance with non-shoreline goals and policies; for summary judgment in favor  
7           of the City on Issue 2 regarding the definition of “linear transportation project ;” Issue 1  
8           regarding completeness of SDOT’s permit application; Issue 5 regarding explicit identification  
9           of applicable shoreline goals and policies, and Issue 4.e. regarding the location of new streets;  
10          and dismiss Issues 4.a., 4.b., 4.c., and 4.f. for failure to state a claim upon which relief may be  
11          granted. City’s Motion at 4.

12          The Coalition moves for partial summary judgment on Issue 2, arguing that the 1.4 mile  
13          segment of the Burke-Gilman trail known as the Missing Link, is not exempt from obtaining an  
14          SSDP for the entire 1.4 mile trail because it is not a “linear transportation” use pursuant to SMC  
15          23.60A.022B.

16                **A. Legal standards**

17          Summary judgment<sup>1</sup> is a procedure available to avoid unnecessary trials where there is  
18          no genuine issue of material fact. *Am. Express Centurion Bank v. Stratman*, 172 Wn. App. 667,  
19          675-76, 292 P.3d 128 (2012). The summary judgment procedure is designed to eliminate trial if

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20          <sup>1</sup> Because the parties relied on evidence outside of the pleadings (*i.e.*, numerous declarations and attachments) and  
21          the Board reviewed those materials when considering the City’s Motion, the Board will treat the City’s Motion as a  
        request for summary judgment. *See*, CR 12(b) and (c) (If, on a motion to dismiss, “matters outside the pleadings are  
        presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of  
        as provided in rule 56.”).

1 only questions of law remain for resolution, and neither party contests the facts relevant to a  
2 legal determination. *Rainier Nat'l Bank v. Security State Bank*, 59 Wn. App. 161, 164, 796 P.2d  
3 443 (1990), *review denied*, 117 Wn.2d 1004 (1991).

4 The party moving for summary judgment must show there are no genuine issues of  
5 material fact and the moving party is entitled to judgment as a matter of law. *Magula v. Benton*  
6 *Franklin Title Co., Inc.*, 131 Wn.2d 171, 182, 930 P.2d 307 (1997). A material fact in a  
7 summary judgment proceeding is one affecting the outcome under the governing law. *Eriks v.*  
8 *Denver*, 118 Wn.2d 451, 456, 824 P.2d 1207 (1992). If the moving party satisfies its burden,  
9 then the nonmoving party must present evidence demonstrating that material facts are in dispute.  
10 *Atherton Condo Ass'n v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990). Bare  
11 assertions concerning alleged genuine material issues do not constitute facts sufficient to defeat a  
12 summary judgment motion. *SentinelC3, Inc. v. Hunt*, 181 Wn.2d 127, 140, 331 P.3d 40 (2014).  
13 When determining whether an issue of material fact exists, all facts and inferences are construed  
14 in favor of the nonmoving party. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068  
15 (2002). The Board will enter summary judgment for a non-moving party under appropriate  
16 circumstances. *Impecoven v. Department of Revenue*, 120 Wn.2d 357, 842 P.2d 470 (1992).

17 Summary judgment is subject to a burden shifting scheme. After the moving party  
18 submits adequate affidavits, the nonmoving party must set forth specific facts which sufficiently  
19 rebut the moving party's contentions and disclose the existence of a genuine issue as to a  
20 material fact. *Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 601 (2009) (citing *Meyer v. Univ. of*  
21 *Wash.*, 105 Wn.2d 847, 852, 719 P.2d 98 (1986)).

1           **B. Standing**

2           The City moved to dismiss the appeal on the grounds that none of the Coalition’s  
3 members had standing to challenge the issuance of the SSDP. In response to the City’s Motion,  
4 the Coalition provided individual declarations on behalf of the General Teamsters Union Local  
5 No. 174 (Teamsters), Salmon Bay Sand & Gravel Company (Salmon Bay), CSR Marine, North  
6 Seattle Industrial Association (NSIA), Ballard Interbay Northend Manufacturing & Industrial  
7 Center (BINMIC) and Ballard Terminal Railroad Co., LLC (BTRR)<sup>2</sup>. The Board concludes that  
8 four of the petitioning parties have standing: Salmon Bay, CSR Marine, NSIA, and BINMIC.  
9 The Shoreline Management Act (SMA) allows any person “aggrieved by the granting, denying,  
10 or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140” to seek review  
11 from the Board. RCW 90.58.180(1). The term “person aggrieved” has been interpreted to  
12 include anyone with standing to sue under existing law. *Anderson v. Pierce County*, 86 Wn.  
13 App. 290, 299, 936 P.2d 432 (1997). The Board applies a three-part test to determine whether a  
14 party has demonstrated standing: (1) the appellant must suffer an injury in fact that is concrete  
15 and particularized; (2) the appellant’s injury must fall within the “zone of interests” protected by  
16 the statute at issue; and (3) the Board must have within its legal power the ability to impose a  
17 remedy that will redress the appellant’s injury. *Puyallup Tribe of Indians v. Dep’t of Ecology et*  
18 *al*, PCHB 16-120c, p. 15 (January 16, 2018).

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20 \_\_\_\_\_  
21 <sup>2</sup> Oddly, the Coalition filed a declaration on behalf of Northwest Marine Trade Association (NMTA) which is not a party listed in the petition. The declaration mentions that CSR Marine is a member of NMTA. As the Coalition lists CSR Marine in the caption as a party, provides a declaration for CSR Marine and argues for the standing of CSR Marine separately, the Board disregards the NMTA declaration.



1 The “injury-in-fact” test requires that the party seeking review be among the injured.  
2 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). A  
3 party asserting general enforcement of a statute does not have standing unless he or she is  
4 “perceptibly affected by the unlawful action in question.” *Id.* at 566. Moreover, no standing is  
5 conferred to a party alleging a conjectural or hypothetical injury. *Snohomish County Property*  
6 *Rights Alliance v. Snohomish County*, 76 Wn. App. 44, 53, 882 P.2d 807 (1994).

7 Here, the Coalition is comprised of organizations, not individuals. To establish that each  
8 organization has representational standing, the Coalition must also show that (1) the members of  
9 the organization would otherwise have standing to sue in their own right; and (2) that the  
10 interests that the organization seeks to protect are germane to its purpose. *International Ass'n of*  
11 *Firefighters, Local 1789 v. Spokane Airports*, 146 Wn.2d 207, 213-214, 45 P.3d 186 (2002). As  
12 the party asserting standing, the Coalition bears the burden of establishing each of these  
13 elements. *Center for Environmental Law & Policy v. Department of Ecology*, PCHB No. 96-165  
14 (Jan. 7, 1997)(COL 4, citing *Lujan* at 561).

15 The zone of interests of the SMA include shoreline use, environmental protection and  
16 public access. In general, it seeks to protect against impacts to the environment and to public  
17 health, to the general public’s use and enjoyment of the shorelines, and to other “land use,  
18 aesthetic, and view impacts” from proposed shoreline development. *Pacific Power v. City of*  
19 *Walla Walla et al.*, SHB No. 13-023, pp. 9-10 (February 12, 2014); RCW 90.58.020; *KS Tacoma*  
20 *Holdings, LLC v. Shorelines Hearings Board*, 166 Wn. App.117, 127-128, 272 P.3d 876 (2012)  
21 review denied, 174 Wn.2d 1007 (2012). Purely business and economic interests are not within

1 the zone of interests protected by the SMA. *Snohomish County Farm Bureau v. Snohomish*  
2 *County et al.*, SHB No. 14-002 at 10 (January 15, 2015) citing *Alexander v. City of Port Angeles*,  
3 SHB No. 02-027, 028 (March 13, 2003).

4 **1. Petitioners with standing**

5 The Board concludes that Salmon Bay, CSR Marine, NSIA and BINMIC have  
6 demonstrated standing to challenge the SSDP. The four declarations set forth the following: they  
7 (or their members) operate businesses located on the shoreline that receive barge and water  
8 deliveries, repair boats, operate fishing vessels and support the majority of the United States'  
9 North Pacific fishing fleet. Salmon Bay Decl., ¶8; CSR Marine Decl., ¶¶3,8; NSIA Decl., ¶¶6,7;  
10 BINMIC Decl., ¶4.

11 Salmon Bay, CSR Marine, NSIA and BINMIC allege specific injuries to water dependent  
12 and water related businesses. These injuries include limiting or blocking access to driveways  
13 and facilities and creating an unsafe condition by locating a trail used by vulnerable and  
14 inexperienced users in front of a water dependent industrial business. Salmon Bay Decl., ¶¶5, 9;  
15 CSR Marine Decl., ¶10; NSIA Decl., ¶¶9,10; BINMIC Decl., ¶¶5,6.

16 The interests identified by Salmon Bay, CSR Marine, NSIA and BINMIC are within the  
17 zone of interests protected by the SMA (shoreline use, environmental protection and public  
18 access). The purposes of NSIA and BINMIC are to support maritime and fishing interests in the  
19 area. These purposes are germane to the SMA.

20 The Board has authority to redress the injury suffered as it can invalidate the SSDP or  
21 impose conditions on the permit.

1           **2. Petitioners without standing**

2           The Board concludes the Teamsters and BTRR lack standing. The Teamsters (a labor  
3 union whose members are truck drivers) contend that the Missing Link would cause their drivers  
4 to lose their union jobs because an accident with a cyclist or trail user would impact the driver’s  
5 ability to maintain his or her commercial driver’s license. Also, the Teamsters allege that if the  
6 Missing Link forces local businesses to cease operating, Teamster members will lose employers  
7 and jobs. Teamsters’ Decl., ¶¶ 7, 8. These injuries are speculative.

8           BTRR contends the Missing Link will cause railroad customers to go out of business and  
9 eliminate any need for rail transportation. BTRR also claims that locating an active travel lane at  
10 the proposed location will adversely impact its ability to operate its railroad. BTRR Decl., ¶¶ 4,  
11 7. These injuries are also speculative.

12           In addition, the interests of the Teamsters and BTRR implicate solely business or  
13 economic interests which are not within the zone of interests protected by the SMA. Concerns  
14 about workplace safety similarly fall outside the SMA’s zone of interests. Finally, the purposes  
15 of the Teamsters (to protect its union members) and BTRR (to operate a railroad) are not  
16 germane to the interests of the SMA.

17           Finally, the Board concludes that MLK Labor Council and Seattle Marine Business  
18 Coalition (SMBC) lack standing because appellants failed to provide any evidence on their  
19 behalf. Appellants provided no declaration for MLK Labor Council or SMBC. Therefore, MLK  
20 Labor Council and SMBC have failed to prove standing.

1 Based on the analysis above, the Board concludes that four petitioners in the Coalition  
2 have standing to challenge issuance of the SSDP. Turning to the issues set forth in the  
3 Prehearing Order, the Board addresses Issue 2 which is the subject of the Coalition’s Motion.

4 **C. Issue 2 “linear transportation use” exemption**

5 The Coalition moves for partial summary judgment on Issue 2 arguing that “the 1.4 mile  
6 segment of the Burke-Gilman trail colloquially known as the ‘Missing Link,’ is not exempt as a  
7 ‘linear transportation’ use pursuant to SMC 23.60A.022B from obtaining a shoreline substantial  
8 development permit (SSDP)” for the entire 1.4 mile trail. The Board agrees.

9 When SDOT applied for the SSDP for the Missing Link, it only applied for the area  
10 located within the UI shoreline on the grounds that it was a “linear transportation use” and  
11 therefore exempt from the usual requirement that the SSDP apply to the entire development.  
12 Brower Decl., Exs. 9.1, 9.2.

13 The Seattle Shoreline Master Program (SMP) Regulations are codified at Seattle  
14 Municipal Code (SMC) 23.60A. SMC 23.60A.022.B provides:

15 If a substantial development is proposed that would be partly within the  
16 Shoreline District, a Shoreline Substantial Development Permit is required for  
17 the entire development, except that a Shoreline Substantial Development Permit  
18 is not required for:

- 17 1. Those portions of a linear transportation use such as light rail tracks, track  
18 support structure or tunnels that are outside the Shoreline District; and
- 19 2. For discrete facilities, such as stations, that are wholly outside the Shoreline  
20 District.

20 The Coalition challenges the application of this exemption to the Missing Link on the  
21 grounds that it is not “portions of a linear transportation use such as light rail tracks, track

1 support structure or tunnels that are outside the Shoreline District” envisioned by the City  
2 Council when it passed the ordinance creating the exemption.

3 The City concedes that the term “linear transportation use” is not defined in or used  
4 elsewhere in the City’s Shoreline Master Program (SMP)<sup>3</sup>. The City argues that the term is not  
5 ambiguous and consults a dictionary definition of “transportation” and “trail” to make its  
6 argument. City’s Motion, p. 10.

7 Exemptions from the substantial development permit process are construed narrowly.  
8 *Ecology v. City of Spokane Valley*, 167 Wn. App. 952, 964, 275 P.3d 367 (2012). Local  
9 ordinances are interpreted the same as statutes. *Sleasman v. City of Lacey*, 159 Wn.2d 639, 643,  
10 151 P.3d 9901 (2007). If the statute’s meaning is plain on its face, then the courts give effect to  
11 that plain meaning as an expression of legislative intent. *Dep’t of Ecology v. Campbell &*  
12 *Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). If a statute is susceptible to two or more  
13 reasonable interpretations, it is ambiguous. *Dep’t of Ecology v. City of Spokane Valley*, 167 Wn.  
14 App. 952, 964, 275 P.3d 367 (2012).

15 The Coalition argues that the entire phrase “portions of a linear transportation use such as  
16 light rail tracks, track support structure or tunnels that are outside the Shoreline District” is  
17 relevant. The Board agrees and finds that the ordinance is susceptible of two or more reasonable  
18 interpretations and is therefore ambiguous.

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<sup>3</sup> The Board notes that there is a definition that could apply to the Missing Link in the SMP: the definition of “parks and open space, shoreline” includes “bicycle and pedestrian paths”. SMC 23.60A.932.

1 If, as here, an ordinance is ambiguous, legislative history can be consulted. *Dep't of*  
2 *Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 12, 43 P.3d 4 (2002). It is clear from the  
3 legislative history of the amendments to the SMP, that both the City and Ecology intended the  
4 language to apply only to link light rail.

5 Prior to 2006, SMC 23.60.022.B provided:

6 If a substantial development is proposed that would be partly within the Shoreline  
7 District, a Shoreline Substantial Development permit is required for the entire  
8 development.

8 SMC 23.60.022 was amended in 2006-2007 specifically to allow Sound Transit to avoid  
9 having to seek an SSDP from the City for its entire link light rail system which included stations  
10 as far as 14 miles from the shoreline. Brower Decl., Ex. 17 pp. 2-4.

11 The Seattle Department of Planning and Development Director's recommendation for  
12 approval of the amendments to the SMP read: "The proposed amendments will promote the  
13 public interest by facilitating the construction of a light rail system..." *Id.* p.4. Nowhere in the  
14 Director's Report did it mention the amendments applying to any project other than link light  
15 rail. Brower Decl., Ex. 17.

16 Under the SMA, Ecology must approve of all changes to a city's SMP. RCW 90.58.080.  
17 Ecology reviewed the City's ordinance amending SMC 23.60.022B and revised the language to  
18 clarify that an SSDP *was still required* for the portion of the project within the shoreline. Brower  
19 Decl., Ex. 13 at 4. Mayor Nickels explained: "As a consequence of its review, DOE required a  
20 change to the City's legislation that they believe is needed in order to ensure that only those  
21 portions of a light rail project that are outside the Shoreline District are exempt from the

1 requirement for a shoreline substantial development permit.” Brower Decl., Ex. 14. In 2015, the  
2 SMP was updated and approved by Ecology. The current version of the relevant subsection is  
3 now SMC 23.60A.022B.

4 The Board finds that the SMP exemption for “portions of a linear transportation use such  
5 as light rail tracks, track support structure or tunnels that are outside the Shoreline District” refers  
6 only to light rail projects. As a result, the exemption cannot be used for the Missing Link bike  
7 trail. SDOT must apply for an SSDP for the entire 1.4 mile Missing Link project including the  
8 part outside of the shoreline zone. Because the SSDP issued by the City only addressed the part  
9 of the project located *within* the shoreline, it is invalid.

#### 10 **D. Remaining issues**

11 The Board’s decision on Issue 2 that the Missing Link is not exempt from the  
12 requirement to apply for an SSDP for the entire project dictates the outcomes of Issues 1, 3 and  
13 6. The SSDP was not properly issued because the entire Missing Link project was not included  
14 in the application. Therefore, the answer to Issue 1 is no, the SSDP application was not  
15 complete. The answer to Issue 3 is also no, the SSDP was not properly issued. By the same  
16 token, the answer to Issue 6 is also no, SDCI did not comply with SEPA because the entire  
17 project was not included in the analysis. With its determination that the SSDP was not properly  
18 issued for the reasons set forth in Issues 1, 2, 3, and 6 the Board does not need to reach Issues 4  
19 and 5 which include additional possible requirements for the SSDP.

#### 20 **IV. ORDER**

21 In accordance with the analysis above, the Board issues the following Order:

1 City of Seattle's Motion to Dismiss is GRANTED as to the standing of General  
2 Teamsters Local No. 174, Ballard Terminal Railroad Co. LLC, MLK Labor Council, and Seattle  
3 Marine Business Coalition, and DENIED as the standing of Salmon Bay Sand & Gravel  
4 Company, CSR Marine, North Seattle Industrial Association, Ballard Interbay Northend  
5 Manufacturing & Industrial Center. City of Seattle's Motion to Dismiss is DENIED as to its  
6 remaining issues.

7 The Coalition's Motion for partial summary judgment on Issue 2 is GRANTED.  
8 Therefore, the SSDP is invalidated and the appeal is DISMISSED.

9 SO ORDERED this 13th day of January, 2020.

10 **SHORELINES HEARINGS BOARD**

11  
12 NEIL L. WISE, Board Member

13  
14 JASON SULLIVAN, Board Member

15  
16 DENNIS WEBER, Board Member

17  
18 HEATHER C. FRANCKS, Presiding  
19 Administrative Appeals Judge