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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

Martin Luther King, Jr. County Labor Council  
of Washington, AFL-CIO, General Teamsters  
Union Local No. 174, Salmon Bay Sand &  
Gravel, Co., Ballard Terminal Railroad, Ballard  
Interbay Northend Manufacturing & Industrial  
Center, North Seattle Industrial Association,  
CSR Marine, and the Seattle Marine Business  
Coalition (hereafter collectively, the “Ballard  
Coalition”),

Plaintiffs/Petitioners,

v.

The City of Seattle and the Seattle Department  
of Transportation,

Defendants/Respondents.

No.

COMPLAINT FOR DIRECT REVIEW  
UNDER SEPA, COMPLAINT FOR  
DECLARATORY JUDGMENT,  
APPLICATION FOR CONSTITUTIONAL  
WRIT OF REVIEW, and REQUEST FOR  
INJUNCTION

Plaintiffs/Petitioners aver and allege as follows:

**I. PARTIES**

1.1 Plaintiffs/Petitioners are the Ballard Coalition, an unincorporated association of labor, business, and industry groups, which includes among its members MLK Labor (MLK Labor), General Teamsters Union Local No. 174 (Teamsters), Salmon Bay Sand & Gravel Company (Salmon Bay), the Ballard Terminal Railroad (BTRR), the Ballard Interbay Northend Manufacturing & Industrial Center (BNMIC), the North Seattle Industrial Association (NSIA), CSR Marine (CSR), and the Seattle Marine Business

1 Coalition (SMBC). Plaintiffs/Petitioners are collectively known, for purposes of this  
2 appeal, as the “Ballard Coalition” or “Appellants.”

3 1.2 The Defendants/Respondents are the City of Seattle (hereafter “City”), which is a  
4 Washington Municipal Corporation, and one of its agencies, the Seattle Department of  
5 Transportation (hereafter “SDOT”).

6 1.3 SDOT issued a “Notice of Action” dated November 4, 2021 (the “Notice of Action”)  
7 wherein it stated:

8 a. SDOT is taking “agency action” to “[p]roceed with design and construction of the  
9 Burke-Gilman Missing Link Project, as described in [Sections] (3) and (4) [the  
10 “Project”]”; and

11 b. “The Project will complete the Burke-Gilman Trail through the Ballard  
12 neighborhood with a marked, dedicated multi-use trail between 11<sup>th</sup> Ave NW and  
13 the Hiram M. Chittenden (Ballard) Locks following the route described in  
14 [Section] 4...”; and

15 c. “The project [sic] meets exemption criteria under SMC 25.05.800.B and SMC  
16 25.05.800.X.”

17 1.4 This appeal challenges both the City’s/ SDOT’s underlying action to proceed with  
18 design and construction of the Missing Link without obtaining the necessary permits and  
19 approvals, and the City’s/SDOT’s refusal to comply with SEPA’s procedural and  
20 substantive requirements, as follows:

21 a. The decision/action to proceed with the design and construction of the Project  
22 despite lacking required permits to do so, including, without limit, a Shoreline  
23 Substantial Development Permit for the entire Missing Link as required by the  
24 Shoreline Hearings Board,<sup>1</sup> and a properly issued NPDES Construction  
25 Stormwater General Permit for the entire Missing Link, not just one or more

26 <sup>1</sup> SHB 19-007, Order on Motion to Dismiss and Motion for Partial Summary Judgment, January 13, 2020.

1 phases of the Project, because the entire Project includes approximately 7.28 acres  
2 of disturbed area, thereby exceeding the SEPA categorical exemption threshold;  
3 and

4 b. The determination that the Project is categorially exempt from SEPA despite the  
5 fact that the City’s Deputy Hearing Examiner, after an open-record hearing,  
6 determined that the Missing Link will cause significant adverse impacts in the  
7 form of traffic hazards and required the City and SDOT to prepare and issue an  
8 Environmental Impact Statement (“EIS”), thereby disqualifying the Project from  
9 being categorially exempt, and the Examiner’s decision has never been  
10 overturned nor reversed; and

11 c. Th determination that the Project complies with SEPA’s procedural and  
12 substantive requirements despite the fact of Court Orders ruling that the Final EIS  
13 for the Project is inadequate and that the City and SDOT have not properly  
14 corrected those inadequacies;

15 d. The determination that the Project is exempt from SEPA despite creating  
16 approximately 7.28 acres of disturbed area that requires a NPDES Permit; and

17 e. The determination that the Project is categorially exempt from SEPA as “minor  
18 roadway” improvements because, even as redesigned, the Project does not fit into  
19 that categorical exemption (collectively, the “Actions and Decisions”).

## 20 II. JURISDICTION AND VENUE

21 2.1 The subject matter of this appeal comprises actions taken by public officers of the City of  
22 Seattle, and venue therefore is proper pursuant to RCW 4.12.020.

23 2.2 On November 4, 2021 SDOT published a “Notice of Action” pursuant to RCW  
24 43.21C.080, which identifies the Actions, Decisions and the Project.

25 2.3 On its website, SDOT further elucidates the Action and the Project, stating:  
26

- 1 a. “We have refined the Burke-Gilman Trail "Missing Link" design to address  
2 previous community concerns and allow the City to start construction as soon as  
3 next year. The design refinement will keep the important project moving and  
4 follow through with a commitment to additional safe travel options. SDOT  
5 anticipates the adjustments will put the project back on track to be completed  
6 before the voter-approved Levy to Move Seattle sunsets in 2024 and will  
7 minimize risk of increased costs.” And,
- 8 b. “Because the new scope addresses previous concerns, a simpler design and  
9 permitting process is anticipated, potentially setting SDOT up to start construction  
10 in late 2022 or early 2023. The new timeline anticipates 7  
11 months of construction, putting the City on pace to deliver the project as a part of  
12 the nine-year Levy to Move Seattle.” And,
- 13 c. “As we obtain required permits and work towards final design, we will continue  
14 to share project updates through our website, [project emails](#), and through online  
15 discussions.”<sup>2</sup>

16 2.4 The Notice of Action states that a request for judicial review must be commenced on or  
17 before December 8, 2021.

18 2.5 This Court has jurisdiction to hear this appeal pursuant to the direct authority of RCW  
19 43.21C.075, which provides an independent “basis for challenging whether governmental  
20 action is in compliance with the substantive and procedural provisions” of SEPA. The  
21 Coalition challenges the Actions and Decisions for their substantive and procedural non-  
22 compliance with SEPA, and therefore direct review under RCW 43.21C.075 is the proper  
23 cause of action for invoking this Court’s jurisdiction.

24  
25  
26 <sup>2</sup> <https://www.seattle.gov/transportation/projects-and-programs/programs/bike-program/ballard-multimodal-corridor>

1 2.6 In the alternative, this Court has jurisdiction to grant review pursuant to an action for  
2 declaratory judgment, Chapter 7.24 RCW; or a constitutional writ of review pursuant to  
3 this Court’s inherent constitutional authority to review the actions of the other branches  
4 of government.

5 2.7 In addition, this Court also has jurisdiction to grant an injunction pursuant to Chapter  
6 7.40 RCW.

7 **III. STANDING**

8 3.1 Any “person aggrieved” has a right to judicial review under SEPA. RCW 43.21C.075(4).

9 3.2 “A party wishing to challenge actions under SEPA must meet a two-part standing test: (1)  
10 the alleged endangered interest must fall within the zone of interests protected by SEPA,  
11 and (2) the party must allege an injury in fact.”<sup>3</sup>

12 3.3 “SEPA’s ‘zone of interests’ contemplates broad questions of environmental impact,  
13 identification of unavoidable adverse environmental effects, choices between long- and  
14 short-term environmental uses, and identification of the commitment of environmental  
15 resources.”<sup>4</sup>

16 3.4 The core interests protected by SEPA are damages to elements of the environment.

17 3.5 It is the City’s responsibility under SEPA to use all practical means to “assure” its  
18 citizens “safe, healthful and productive...surroundings” so as to “attain the widest range  
19 of beneficial uses of the environment without degradation, risk to health or safety, or  
20 other undesirable and unintended consequences.” RCW 43.21C.020(2) (b) and (c). In  
21 addition, the City must recognize each citizen’s “fundamental and inalienable right to a  
22 healthful environment,” RCW 43.21C.020(3), and a built environment that is not safe is  
23 not a healthful environment nor one that can be used productively.

24  
25 <sup>3</sup> *Lands Council v. Washington State Parks Recreation Comm'n*, 176 Wn.App. 787, 799, 309 P.3d 734, 740 (Div. 2,  
2013).

26 <sup>4</sup> *Conservation Nw. v. Okanogan Cty.*, 194 Wn.App. 1034 (Div. 3, 2016)(Unpublished opinion cited pursuant to GR  
14.1).

1 3.6 The Appellants' and its Members' interests are within the zone of interests protected by  
2 SEPA and they will suffer injury in fact from the Project because of its impacts on  
3 specific elements of the environment, including its adverse impacts upon:

- 4 a. The built environment that includes the existing maritime-industrial land uses in  
5 the project area, which, under the City's Comprehensive Plan, are priority uses  
6 within the project area, and which, under SEPA, are entitled to the widest range of  
7 beneficial uses without degradation, risk to health or safety, or other undesirable  
8 or unintended consequences caused by the Project;
- 9 b. The unsafe conditions and impacts to the built environment created by locating  
10 the Project through the heart of an industrially zoned, highly developed maritime  
11 and industrial business area and cluster;
- 12 c. The Project's impact to parking used by the Coalition's members, employees and  
13 customers and patrons;
- 14 d. The Project's creation of traffic hazards because of the unresolved conflicts  
15 between recreational users of the trail and the industrial and commercial trucks,  
16 forklifts, and other such traffic in the area, which traffic hazards will make this  
17 area unsafe despite the fact that the City's policy is to protect and foster these  
18 maritime-industrial land uses in this unique, industrially zoned area next to the  
19 Ship Canal;
- 20 e. The Project's creation of unsafe conditions and traffic hazards inherent in a  
21 contra-flow, multi-user recreational trail;
- 22 f. The Project's negative social and economic impacts, which must be included in  
23 an EIS pursuant to SMC 25.05.440.E.6; and
- 24 g. The Project's negative impacts to the built and natural environment.

25 3.7 SDOT's Notice of Action substantively fails to protect the fundamental and inalienable  
26 right of every citizen of the state, including the Appellants and their Members, to a safe

1 and healthful environment. The Project will result in significant and unmitigated adverse  
2 impacts to the use and enjoyment of the environment in this area, as well as to the  
3 existing structures and uses along the proposed Project alignment.

4 3.8 SDOT's Notice of Action substantively fails to comply with RCW 43.21C.080 because  
5 SDOT has not completed the design of nor obtained all necessary permits to construct the  
6 Project.

7 3.9 This portion of Ballard – from 11<sup>th</sup> NW to the Ballard Locks – is a critical corridor and an  
8 integral part of the maritime and industrial business community in Seattle. The City's  
9 land use policies and goals give special priority to water-dependent uses in this area; and  
10 these maritime and industrial uses are supposed to receive the highest priority and  
11 protection from non-compatible and competing uses. Routing a multi-user, contra-flow  
12 recreational trail through the heart of the maritime/industrial area ignores these policies  
13 and goals and will significantly and adversely impact the Appellants.

14 3.10 Numerous businesses, employing thousands of people, including the Members of the  
15 Appellants, are located in this maritime and industrial area in proximity to the proposed  
16 Project alignment. Users of the proposed Project will be in almost constant conflict with  
17 heavy trucks, an active railroad, forklift traffic, maritime and industrial traffic and  
18 activities, loading docks, commercial parking and busy arterial streets along its entire  
19 alignment.

20 3.11 The Project, as currently proposed, will have substantial adverse impacts to this maritime  
21 and industrial community, and it is very likely a trail user will be hurt or killed by a  
22 vehicle serving this maritime-industrial community.

23 3.12 MLK Labor is a Washington non-profit corporation, whose address is 2800 First Avenue,  
24 Suite 206, Seattle, WA 98121. MLK Labor is comprised of approximately 150 unions  
25 representing over 100,000 members, many of whom work in the Project area and will be  
26 adversely impacted by the Project because it will create an unsafe environment, adversely

1 impact the built environment, create traffic hazards in this area, and eliminate parking  
2 utilized by MLK Labor members.

3 3.13 The General Teamsters Union Local No. 174 is a labor association, whose address is  
4 14675 Interurban Ave. South, Suite 303, Tukwila, WA 98168. Numerous Teamsters are  
5 directly employed at Salmon Bay and provide services to other Coalition Members and  
6 other businesses within the Project area and they will be adversely impacted by the  
7 Project because it will create an unsafe environment, adversely impact the built  
8 environment, create traffic hazards in this area, and eliminate parking utilized by  
9 Teamsters.

10 3.14 Salmon Bay Sand & Gravel Co is a Washington corporation whose address 5228  
11 Shilshole Ave NW, Seattle, WA 98107. Salmon Bay is a water-dependent/water-related  
12 business. Salmon Bay will suffer injury in fact because the Project will limit or block  
13 access to its driveways and facilities; and by creating unsafe conditions by locating a trail  
14 used by vulnerable and inexperienced users directly in front of it.

15 3.15 Salmon Bay supplies concrete, sand, gravel and construction products and has operated in  
16 Seattle for over 115 years. Salmon Bay's business includes both wholesale and retail  
17 operations. It provides numerous jobs, mainly at union-wages.

18 3.16 Salmon Bay is a member of numerous trade associations including the Appellant  
19 organizations herein, the NSIA, BNMIC and SMBC. Paul Nerdrum, Salmon Bay's Vice  
20 President, is a member of and has served in leadership roles in many of these  
21 organizations.

22 3.17 Salmon Bay will suffer immediate, concrete and specific injury-in-fact if the Project is  
23 constructed as proposed because it will be located directly in front of Salmon Bay.  
24 Salmon Bay's operations will be immediately and irreparably impacted negatively by  
25 having to cross the proposed Project, by the unsafe condition created by a contra-flow  
26 multi-user trail, and by the delay involved with having to cross the proposed Project.

1 3.18 Salmon Bay operates five days a week, 10-½ hours per day. Salmon Bay delivers  
2 approximately 140,000 to 175,000 yards of concrete annually in the greater-Seattle  
3 region. Salmon Bay uses approximately 26 concrete mixer trucks and approximately 12-  
4 15 flatbed dump trucks and a pick-up truck for deliveries. Its concrete and delivery  
5 trucks will have to cross the proposed trail approximately 200-300 times per day during  
6 the peak season (summer). Additionally, Salmon Bay's will-call pick-up service  
7 generates another approximately 75-100 truck trips per day, many of which also will have  
8 to cross the proposed trail. Salmon Bay's trucks also use the adjacent roadways,  
9 including roads where the proposed trail will be located, for deliveries.

10 3.19 Locating a recreational trail in an industrial area is inherently unsafe because it will  
11 increase the likelihood of an accident between one of Salmon Bay's trucks and a cyclist  
12 or other trail user.

13 3.20 It is highly unlikely that Salmon Bay could relocate within Seattle. Salmon Bay is a  
14 water-dependent industrial use located on industrially zoned land with water access. It  
15 requires, and has in this location, intermodal access including barge, rail, and truck.  
16 Salmon Bay obtains raw material via truck, rail and barge and delivers finished product  
17 via trucks. Salmon Bay has approximately 5 driveways that will cross the proposed trail,  
18 the rail line Salmon Bay uses will be located adjacent to the trail, and Salmon Bay's  
19 employees and customers will have to cross the trail to access both its wholesale and  
20 retail locations.

21 3.21 BNMIC is an unregistered non-profit trade association, whose address is 604 22nd Ave  
22 NW, Seattle, WA 98107-4027. It was established in 1999 to provide leadership and  
23 coordination amongst stakeholder organizations and groups representing interests in the  
24 Ballard Interbay area. BINMIC and its members are actively involved in public policy,  
25 and public resource and development issues impacting the BINMIC area. The BINMIC  
26 area is home to the majority of the United States North Pacific fishing fleet. BINMIC, as

1 a trade organization, has worked to preserve the largest cluster of maritime and fishing  
2 support services on the West Coast. BINMIC and its members will suffer injury in fact  
3 from the unsafe condition created by locating the proposed trail in this area, by the traffic  
4 and loss of parking impacts, and by injecting an incompatible use into this maritime and  
5 industrial area. Traffic, parking and unsafe conditions from the proposed trail will  
6 undermine BINMIC's members' ability to continue operating businesses that comprise  
7 the North Pacific fishing fleet and the associated support services. As the steward of the  
8 BINMIC neighborhood plan, the BINMIC also will suffer injury because the proposed  
9 trail is inconsistent with the goals and policies in the City's Comprehensive Plan.

10 3.22 NSIA is a Washington non-profit corporation, whose address is 3500 1<sup>st</sup> Avenue West,  
11 Seattle, WA 98107. NSIA is a business association of marine and industrial businesses  
12 and property owners. Many of the NSIA member businesses and property owners are  
13 located in the industrially-zoned areas of North Seattle in Fremont, Ballard and the  
14 Interbay. The Association is centered on the Ballard Interbay Northend Manufacturing  
15 and Industrial Center. The Association has been in operation for over twenty-five years.

16 The Association has numerous members who are committed to maintaining a viable and  
17 productive maritime, manufacturing, industrial environment. NSIA and its members will  
18 suffer injury-in-fact because the proposed trail will create unsafe conditions, traffic  
19 hazards and parking impacts, and incompatible land uses.

20 3.23 Seattle Marine Business Coalition is a Washington non-profit corporation, whose address  
21 is 2201 West Commodore Way, Seattle, WA 98199. SMBC represents the interests of  
22 300+ marine industrial land users within the Seattle City limits.

23 3.24 BNMIC, NSIA and SMBC are associations and organizations that they and their  
24 members will suffer injury-in-fact because the proposed trail will substantially and  
25 adversely impact the use and enjoyment of their members' properties by creating traffic  
26 hazards, by limiting access to water-dependent and water-related businesses, and by

1 creating an unsafe combination of pedestrians/cyclists with industrial traffic and  
2 activities.

3 3.25 CSR Marine is a Washington corporation, whose address is 4701 Shilshole Avenue NW,  
4 Seattle, WA 98107. CSR Marine is a full-service boatyard that employs approximately  
5 45 to 60 people and has been repairing, upgrading and keeping boats running smoothly  
6 since 1977. All or nearly all of the large boats and yachts shown at the annual Seattle  
7 Boat Show are delivered to, prepped and processed at CSR Marine. CSR is a water-  
8 dependent industrial use, located on industrially zoned land; it has driveways, loading  
9 areas, and access that require large truck crossings across the Project; and it also requires  
10 intermodal access including barge and truck or water deliveries. The Project will  
11 adversely affect CSR Marine by limiting or blocking its access driveways, by delaying  
12 access to its driveways and facilities, by forcing its drivers, customers and employees to  
13 cross the proposed trail, and by creating an unsafe condition by locating a contra-flow  
14 multi-user recreational sidepath directly in front of a water-dependent industrial business.

15 3.26 Ballard Terminal Railroad, L.L.C. is a Washington company, whose address is 4725  
16 Ballard Avenue NW, Seattle WA 98107. BTRR is a federally-regulated common carrier  
17 operating an active short-line railroad that runs adjacent to nearly the entire length of the  
18 Project. The Project will cross the railroad in at least one location. SDOT's actions to  
19 locate the Project in close proximity to the active railroad track will create an unsafe  
20 environment and traffic hazards. Under SEPA, BTRR is entitled to operate in a safe  
21 environment.

22 3.27 The Coalition will be harmed, collectively and its members individually, by the  
23 significant adverse impacts of the Project, including, but not limited to, safety impacts,  
24 traffic impacts, loss of parking, and inconsistencies with the City's Comprehensive Plan,  
25 zoning and land use regulations. The trade organizations included in the Coalition are  
26 comprised of local business and property owners, many of whom own or operate water-

1 dependent industrial businesses or own property that is industrially zoned and occupied  
2 by such water-dependent or industrial uses. The proposed trail will undermine and  
3 negatively impact these businesses' and property owners' ability to continue operating  
4 industrial and water-dependent/water-related businesses in these locations.

#### 5 IV. FACTUAL BACKGROUND

##### 6 A. Procedural Posture

7 4.1 This Odyssey-esque legal appeal spans over twelve years, including four prior  
8 administrative "trials" (hearings) before the City's Hearing Examiner, two prior appeals  
9 before Judge Rogers, one appeal before Judge Chung and another appeal before Judge  
10 Rogoff all in this Court, motions practice before Judge Parisien in this Court, appeals to  
11 the Division 1 Court of Appeals and a record that is thousands of pages in the making, all  
12 over an ill-conceived bicycle trail in Seattle known as the "Missing Link."

13 4.2 The Missing Link is an unfinished portion of the Burke-Gilman Trail in the heart of  
14 industrial Ballard, a segment of which the City proposes to build on Shilshole Avenue  
15 NW in disregard of nearby alternatives with fewer environmental impacts.<sup>5</sup>

16 4.3 In 2012, the predecessors to the Coalition challenged the adequacy of SDOT's third  
17 Determination of Non-Significance ("DNS") for the Missing Link to the City's Deputy  
18 Hearing Examiner under SEPA.

19 4.4 Deputy Examiner Watanabe again heard the appeal of the adequacy of SDOT's  
20 environmental review, ruling in August 2012 for the Coalition, determining the Project  
21 will have significant adverse environmental impacts in the form of traffic hazards, and  
22 therefore ordering SDOT to prepare an Environmental Impact Statement ("EIS") to  
23 disclose and discuss significant safety and traffic hazards created by locating the Missing  
24 Link along Shilshole Avenue.

25  
26 <sup>5</sup> Shilshole Avenue NW is a "Major Truck Street" under the City's Comprehensive Plan. See  
[https://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web\\_informational/dpdd016641.pdf](https://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web_informational/dpdd016641.pdf).

1 4.5 The City did not challenge Examiner Watanabe's Decision, which has not been  
2 overturned and thus remains the law of this case.

3 4.6 The following table provides an overview of the procedural posture of this matter and  
4 how the City and SDOT refuse to comply with SEPA and other legal doctrines without  
5 being ordered by the courts to do so:

<b>Date</b>	<b>Entity</b>	<b>Event</b>
December 16, 2008	Ballard Businesses	Notice of Appeal to the Examiner, challenging adequacy of SDOT's first DNS for the Missing Link. Hearing Examiner File No. W-08-007.
June 9, 2009	Examiner	Order on appeal, affirming DNS. W-08-007.
June 7, 2010	This Court	Order after appeal, remanding the DNS to the Examiner. Certain issues preserved for appeal. This Court retains jurisdiction. KCSC Cause No. 09-2-26586-1 SEA.
Sept. 16, 2010	Court of Appeals	Order holding that June 7, 2010 order was interlocutory and that this Court retains jurisdiction until a final order on all preserved issues. <i>Salmon Bay Sand &amp; Gravel Co. v. City of Seattle</i> , No. 65572-8-I (Wa. Ct. App., Sept. 16, 2010).
Feb 1, 2011	SDOT	Issues revised DNS for the Missing Link.
July 1, 2011	Examiner	Order on second appeal, affirming revised DNS. Hearing Examiner File No. W-11-002.
Mar. 2, 2012	This Court	Order remanding and directing SDOT to prepare further environmental review on certain issues and retaining jurisdiction over "any actions taken in response to this order, and for entry of a final order upon compliance with this Court's Second Order of Remand." KCSC Cause No.: 11-2-25099-7 SEA.
April 30, 2012	SDOT	Issues a second revised DNS for the Missing Link.
Aug. 17, 2012	Examiner	Order remanding decision on second revised DNS and ordering SDOT to prepare an EIS for the Shilshole Segment only. Hearing Examiner File No. W-12-002.
Sept. 17, 2012	Ballard Businesses	Perfected appeal to this Court, asking it to reverse certain aspects of the 2012 Order, which is not limited to the mere preparation of an EIS. KCSC Cause No.: 12-2-30454-8.
December 12, 2012	This Court	Order consolidating prior pending appeal under Cause No. 09-2-26586 and assigning case to Judge Rogers.

1	September 30, 2013	This Court	Order Setting Case Schedule setting hearing date for December 12, 2014 unless SDOT has not issued the Final EIS, in which case the Hearing date is keyed off any "City Decision" regarding the adequacy of the Final EIS. KCSC Cause No.: 09-2-26586.
2			
3			
4	September 3, 2014	This Court	Stipulation and Agreed Order to Revise Case Schedule, resetting the hearing date to October 14, 2016 to give SDOT time to finish the Final EIS and, if it has not done so by that date, again keying the Hearing date off any "City Decision" regarding the adequacy of the Final EIS. KCSC Cause No.: 09-2-26586.
5			
6			
7			
8	July 7, 2016	This Court	Stipulation and Agreed Order to Rescind Revised Case Schedule deleting the October 14, 2016 hearing date and again keying the hearing date off any "City Decision" regarding the adequacy of the Final EIS. KCSC Cause No.: 09-2-26586.
9			
10			
11	May 18, 2017	This Court	Order Denying City's Motion to Dismiss appeal pending under KCSC Cause No.: 09-2-26586.
12	May 25, 2017	City	Issues FEIS.
13	June 2017	Coalition	Files appeal of the adequacy of the FEIS with the Examiner, File No. W-17-004.
14	November 27- December 6, 2017	Examiner	Conducts evidentiary hearing for Coalition's challenge to the adequacy of the FEIS.
15	July 19, 2018	This Court	Order granting City's motion for summary judgment dismissing Coalition's appearance of fairness challenge against Examiner Vancil.
16			
17	January 31, 2018	Examiner	Issues Decision denying Coalition's challenge to the adequacy of the FEIS.
18	December 21, 2018	This Court	Order granting in part Coalition's challenge to the adequacy of the EIS, holding the EIS "does <u>NOT</u> adequately disclose adverse economic impacts associated the potential risks from vehicle to bicycle/pedestrian traffic conflicts."
19			
20			
21	January 18, 2019	This Court	Order denying the City's Motion for Reconsideration and barring the City/SDOT from building the first phase of the Project on Market Street as requested.
22			
23	April 23, 2019	This Court	Order denying Coalition's Motion for Contempt and further Ordering that "SDOT shall not conduct any construction under the FEIS considered by Judge Chung unless that construction can stand on its own, or has independent utility beyond further the Missing Link Trail Project. If SDOT does construction which would be useless or without benefit absent their
24			
25			
26			

COMPLAINT - 14

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		hoped-for Missing Link Trail Project, such construction would violate Judge Chung’s orders.”
July 2, 2019	This Court	Order granting Coalition’s Motion to Enforce, barring the City and SDOT from using an Addendum to correct the judicially-adjudicated inadequacies in the FEIS, ordering the City/SDOT to re-issue the FEIS pursuant to SEPA and subject itself to the “SEPA appeals process,” and barring the City/SDOT from doing any construction on the Missing Link Project until it complies with SEPA.
March 29, 2021	Division 1 Court of Appeals	Reversing the trial court’s summary judgment in favor of the City, granting summary judgment for the Coalition, holding Examine Vancil violated the appearance of fairness doctrine, and remanding for a new hearing on the adequacy of the FEIS.
October 1, 2021	This Court	Order granting Coalition’s motion and issuing a new Case Schedule Order in Cause No. 18-2-04988-1 SEA thereby retaining jurisdiction over the City’s/SDOT’s compliance with this Court’s prior orders.

4.7 The Superior Court retained jurisdiction in Cause No. 18-2-04988-1 SEA over the City’s/SDOT’s compliance with this Court’s prior Orders.

**B. Factual Background and Allegations**

4.8 The Hearing Examiner’s 2012 Decision concluded 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.”

4.9 The Hearing Examiner’s 2012 Decision was based upon a 20% - 30% level of Project design.

4.10 In the FEIS, SDOT admits it based its entire SEPA evaluation for the Project “on designs at approximately 10% level of design for each of the build alternatives.”

1 4.11 SDOT further admits that the Preferred Alternative for the Project, which it did not select  
2 until the FEIS, was still at 10% design when the FEIS was issued and includes a segment  
3 that was never included in any prior alternatives or SEPA evaluation.

4 4.12 In its Second Order of Remand issued March 2, 2012, in Cause No. 09-2-26586-1 SEA  
5 (consolidated), the King County Superior Court determined that a 10% level of design  
6 was not sufficient to identify the adverse impacts of the Project under SEPA.

7 4.13 The Court remanded the matter to SDOT “for the limited purpose of more fully designing  
8 the Shilshole Segment so that the impacts of the proposal on the adjoining land uses, and  
9 any proposed mitigation of those impacts, may be identified.”

10 4.14 SDOT admitted that it disregarded Judge Roger’s Order in preparing the EIS for the  
11 Project.

12 4.15 The Notice of Action does not acknowledge nor disclose the Project’s probable  
13 significant adverse impacts that the Deputy Hearing Examiner, in her 2012 Decision,  
14 determined to exist based upon SDOT’s 20% - 30% level of design.

15 4.16 The Notice of Action vaguely asserts that the “project meets the exemption criteria under  
16 SMC 25.05.800.B and SMC 25.05.800.X” without any support or analysis.

17 4.17 The Notice of Action affirmatively conceals rather than discloses the Project’s significant  
18 adverse environmental impacts.

19 4.18 The Notice of Action does not “provide an impartial discussion of significant  
20 environmental impacts” and does not “inform decision-makers and the public of  
21 reasonable alternatives.”

22 4.19 The Project will cross numerous industrial driveways (approximately 55) and roadways  
23 along its nearly mile-and-a-half stretch—*on average one driveway/roadway every 144*  
24 *feet* – in the middle of an industrial area where numerous Coalition member businesses  
25 provide hundreds if not thousands of family- and union-wage jobs at businesses directly  
26 adjacent to or in the immediate vicinity of the Project.

1 4.20 The Project will be a contra-flow, multi-user recreational attraction for children and  
2 families but will have limited sight distances and inherent safety issues.

3 4.21 Peer-reviewed literature from around the United States and the world consistently  
4 concludes that contra-flow multi-user trails/sidepaths are at least two- to three-times more  
5 dangerous compared to riding in the street in the same direction of travel.

6 4.22 The Project will bring vulnerable users into direct conflict with industrial and maritime  
7 traffic and activities.

8 4.23 The Project will be in almost constant conflict with heavy trucks, an active railroad,  
9 forklift traffic, maritime and industrial traffic and activities, loading docks, commercial  
10 parking, and busy arterial streets along its entire alignment.

11 4.24 It is very likely a trail user will get hurt or killed.

12 4.25 The Notice of Action fails to explain how the redesigned Project—in the same location  
13 and just slimmed down to remove many of the prior “safety” features—addresses the  
14 Project’s significant adverse safety and traffic hazards Examiner Watanabe determined  
15 warranted preparation of an EIS.

16 4.26 The Notice of Action fails to adequately evaluate and/or confirm the Project’s  
17 consistency with the following:

- 18 a. Washington state department of transportation (WSDOT) design manual  
19 (WSDOT Manual);
- 20 b. SDOT’s own right-of-way improvements manual (ROW Improvement Manual);
- 21 c. WSDOT’s city and county design standards for all Alternatives or design  
22 standards;
- 23 d. The design standards contained in the AASHTO “guide for the development of  
24 bicycle facilities”;
- 25 e. The design standards contained in the National Association of City Transportation  
26 Officials (NACTO) urban bikeway design guide; and

1 f. The Federal Highway Administration Bicycle and Pedestrian Program  
2 (collectively hereafter, the “Design Standards”).

3 4.27 The Notice of Action fails to identify the Project’s inconsistency with the Design  
4 Standards, including, without limit, multi-user trail location, trail width, design speed;  
5 sight distances; crossing designs, intersection designs, and other standards articulated in  
6 and contained within the Design Standards;

7 4.28 The Notice of Action fails to disclose and discuss how the Project’s failure to conform to  
8 the Design Standards causes, among other things, traffic hazards, obstacles, shy-distance  
9 violations, increased conflicts between motorized and non-motorized users, and  
10 dangerous sight distance concerns;

11 4.29 “[E]xceptions to statutory provisions are narrowly construed in order to give effect to  
12 legislative intent underlying the general provisions.”<sup>6</sup>

13 4.30 The SEPA categorical exemption at SMC 25.05.800(B)(4)(i) provides: “(4) The  
14 construction or installation of minor road and street improvements by any agency or  
15 private party that include the following:...(i) Addition of bicycle lanes, paths and  
16 facilities, and pedestrian walks and paths including sidewalk extensions, but not  
17 including additional automobile lanes.”

18 4.31 SMC 25.05.800.X exempts certain, limited utility and infrastructure improvements from  
19 SEPA compliance.

20 4.32 The Project is a 1.4-mile-long recreational trail, is the last segment of the 28+-mile long  
21 Burke-Gilman Trail, requires significant utility and infrastructure relocation,  
22 reconstruction and installation, all of which will cost at least \$26+MM or more.<sup>7</sup>

23 4.33 The City and SDOT have failed to adequately disclose how the Project “actually fits  
24 within” the claimed categorical exemptions. *Dioxin/Organochlorine Ctr. v. Pollution*  
25 *Control Hearings Bd.*, 131 Wn.2d 345, 365, 932 P.2d 158, 167 (1997).

26 <sup>6</sup> *R.D. Merrill Co. v. State, Pollution Control Hearings Bd.*, 137 Wn.2d 118, 140, 969 P.2d 458, 470 (1999).

<sup>7</sup><https://www.seattle.gov/transportation/projects-and-programs/programs/bike-program/ballard-multimodal-corridor>.

1 4.34 A project may only be “categorically exempt” if it “...does not significantly affect the  
2 environment....”<sup>8</sup>

3 4.35 The City and SDOT have failed to explain how the Project can be categorically exempt in  
4 light of Examiner Watanabe’s 2012 Decision holding it will create significant adverse  
5 traffic hazards and impacts requiring preparation of the EIS.

6 4.36 A project that requires a NPDES Construction Stormwater General Permit is subject to  
7 SEPA pursuant to RCW 43.21C.0383 and WAC 197-11-800(2)(a)(ii). Projects that  
8 disturb less than five acres may be exempt from SEPA unless the project is part of a  
9 common plan, in which case the total land area disturbed must be less than five acres.

10 4.37 On March 23, 2018, SDOT obtained “Coverage under the Construction Storm General  
11 Permit (CSWGP)” from the Washington State Department of Ecology (“Ecology”) under  
12 Permit number WAR305992 for the “Burke Gilman Trail Missing Link.”

13 4.38 In Permit number WAR305992, SDOT confirmed the Missing Link would disturb 7.28  
14 acres.

15 4.39 Despite knowing this in 2018, the City and SDOT, between 2019 to early 2021, argued to  
16 the Division 1 Court of Appeals in Cause No. 79543-1 that the Missing Link was  
17 categorically exempt from SEPA for the same reasons articulated in the Notice of  
18 Appeal.

19 4.40 On February 4, 2020, and only after submission of supplemental briefing to the Court of  
20 Appeals on the City’s and SDOT’s claim of categorical exemption, the City and SDOT  
21 withdrew this argument and claim, admitting that the Missing Link “does not qualify for  
22 the exemption the City has invoked” because “the Project [will have] 7.28 acres of  
23 ground disturbance.”

24  
25 <sup>8</sup> WAC 197–11–720; see also SMC 25.05.720; also *Pub. Util. Dist. No. 1 of Clark Cty. v. Pollution Control*  
26 *Hearings Bd.*, 137 Wn.App. 150, 158, 151 P.3d 1067, 1070 (Div. 2, 2007)(“SEPA requires that a government entity  
prepare an [EIS] for proposals or actions that are likely to have a significant, adverse environmental impact.”).

1 4.41 In 2019, SDOT applied to Ecology to amend Permit number WAR 305992 to reduce the  
2 amount of disturbed acres for the Missing Link from 7.28 acres to 2.85 acres.

3 4.42 On July 30, 2019, Ecology granted SDOT's request.

4 4.43 SDOT did this after it had split the Missing Link into "Phases" and sought permission  
5 from the King County Superior Court to construct Phase 1 on Market Street through the  
6 Ballard neighborhood of Seattle, which permission the Court denied.

7 4.44 All of the Phases of the Missing Link are part of a common plan—to complete the 1.4-  
8 mile Missing Link segment of the Burke Gilman Trail.

9 4.45 The City and SDOT have failed to adequately disclose how the City/SDOT can proceed  
10 with design and construction of the Project since the City/SDOT have not applied for nor  
11 obtained necessary permits.

## 12 **V. ASSIGNMENTS OF ERROR AND ADDITIONAL FACTS**

13 5.1 Plaintiffs/Petitioners hereby assign error to the Actions and Decisions of the City and  
14 SDOT that are summarized above, which are not based on substantial evidence, are an  
15 error of law, are clearly erroneous, or are arbitrary and capricious.

## 16 **VI. CAUSES OF ACTION**

17 Based on the Factual Summary and Assignments of Error stated above,  
18 Plaintiffs/Petitioners challenge the underlying Actions and Decisions, the adequacy of SDOT's  
19 Notice of Action, and the City's/SDOT's claim the Project is categorically exempt from SEPA  
20 compliance pursuant to the following causes of action.

### 21 **A. Direct Review Under SEPA**

22 6.1 "SEPA authorizes judicial review of an agency's compliance with its terms."<sup>9</sup>

23 6.2 Plaintiffs/Petitioners bring this appeal under RCW 43.21C.075, which creates a cause of  
24 action for challenging the Actions and Decisions, challenging the adequacy of SDOT's  
25

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26 <sup>9</sup> *Conservation Nw. v. Okanogan Cty.*, 194 Wn.App. 1034 (Div. 3, 2016)(Unpublished opinion cited pursuant to GR 14.1).

1 Notice of Action and the City's/SDOT's claim the Project is categorically exempt from  
2 SEPA compliance on the ground that both are not in compliance with SEPA's substantive  
3 and procedural provisions, are clearly erroneous, are a manifest error of law, and are not  
4 based on substantial evidence.

5 **B. Declaratory Judgment**

6 6.3 In addition to or in lieu of direct review under SEPA and a statutory writ,  
7 Plaintiffs/Petitioners seek a declaratory judgment pursuant to Chapter 7.24 RCW.

8 6.4 The facts set forth above demonstrate an actual, present, existing dispute between the  
9 parties

10 6.5 The parties have genuine and opposing interests, which are direct and substantial and not  
11 merely potential, theoretical, abstract, or academic.

12 6.6 There is a justiciable controversy between the parties, and judgment in Plaintiff's favor  
13 would terminate the controversy giving rise to this proceeding.

14 **C. Constitutional Writ**

15 6.7 In the event that this Court determines that none of Plaintiffs/Petitioners statutory causes  
16 of action are available to review the subject decisions, then Plaintiffs/Petitioners invoke  
17 this Court's inherent constitutional jurisdiction to review the subject actions.

18 **D. Injunction**

19 6.8 In the event that the City should proceed with construction of the Project during the  
20 pendency of this challenge, in violation of the Court's Orders to the contrary, then  
21 Plaintiffs/Petitioners are entitled to a temporary restraining order and preliminary and  
22 permanent injunctions pursuant to Chapter 7.40 RCW and CR 65 in order to prevent  
23 irreparable harm from construction of the trail before its adverse environmental impacts,  
24 and the impacts of reasonable alternatives, have been properly and adequately identified  
25 and analyzed by the decision-maker(s).

1 **VII. RELIEF REQUESTED**

2 7.1 Plaintiffs/Petitioners request this Court order the City/SDOT to withdraw the Notice of  
3 Action and comply with SEPA’s procedural and substantive requirements.

4 7.2 Plaintiffs/Petitioners request this Court determine the Project does not fit within the  
5 claimed categorical exemptions and order the City/SDOT to comply with SEPA’s  
6 procedural and substantive requirements.

7 7.3 Plaintiffs/Petitioners request this Court order the City/SDOT to obtain all necessary  
8 permits for the Project, including a CSWGP and shoreline substantial development  
9 permit.

10 7.4 Plaintiffs/Petitioners request appropriate injunctive relief prohibiting the City/SDOT from  
11 constructing the proposed trail during the pendency of this appeal; and

12 7.5 Plaintiffs/Petitioners request such other relief as is just or equitable.

13 Dated this 7<sup>th</sup> day of December, 2021.

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