

**SEPA DETERMINATION OF NON-SIGNIFICANCE (DNS)  
SEATTLE DEPARTMENT OF TRANSPORTATION  
BURKE-GILMAN TRAIL EXTENSION - 11TH AVE NW TO THE BALLARD LOCKS**

**Description of proposal:** The Seattle Department of Transportation (SDOT) proposes to complete the "missing link" between existing segments of the Burke-Gilman Trail. The project will construct a marked, dedicated route for pedestrians and cyclists between 11th Ave NW and the Hiram M. Chittenden Locks, following the route adopted by the Seattle City Council in April 2003. Improvements include landscaping at key locations, storm water drainage controls, and traffic signals at two crossing points along Shilshole Ave NW. The trail is to be constructed in two phases: Phase 1 will construct the trail from 11th Ave NW to 17th Ave NW; Phase 2 will complete the trail between 17th Ave NW to the Locks. Construction will include both interim and permanent routes; interim portions of the trail will be indicated by directional signs.

**Proponent and Lead Agency:** SDOT, P.O. Box 34966, Seattle, WA 98124-4996.

**Location of proposal:** The project is located in the Ballard neighborhood of Seattle, Washington. The trail will generally travel along the south side of NW 45th St and Shilshole Ave NW between 11th Ave NW and the Ballard Locks, with portions of the trail traveling along Ballard Ave NW between 17th Ave NW and NW Vernon Pl and along NW Market St between 24th Ave NW and 28th Ave NW.

SDOT has determined that this proposal will not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information may be examined in the Seattle Department of Planning and Development Public Resource Center at 700 Fifth Avenue, Suite 2000, Seattle. Documents are also available at the Ballard Branch of the Seattle Public Library, 5614 22nd Ave NW, Seattle and on the project website at <http://www.seattle.gov/transportation/ballardcorridor.htm>.

This DNS is issued under WAC 197-11-340(2) and Seattle Municipal Code (SMC) 25.05.340; the lead agency will not act on this proposal for 14 days from the issue date below. **Comments must be submitted by 5:00 p.m. December 10, 2008.**

**Issue Date:** November 26, 2008

**SEPA Responsible Official:** Grace Crunican, Director, SDOT

  
\_\_\_\_\_  
Signature

11-24-08  
Date

**Agency contact:** Kirk Jones, Project Manager

Telephone: (206) 615-0862

Any interested person may appeal this DNS by submitting a Notice of Appeal and a \$50.00 filing fee to the Office of the Hearing Examiner located at 700 Fifth Avenue, Suite 4000, Seattle; mailing address: P.O. Box 94729, Seattle, WA 98124-4729; telephone: (206) 684-0521. **The appeal must be filed no later than 5:00 p.m. December 17, 2008.** The appellant should be prepared to make specific factual objections. See SMC 25.05.680 A(2)(a)(ii) for SEPA appeal procedures.

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December 17, 2008

*Via Legal Messenger*

Alicia Holiwell, Administrative Specialist  
City of Seattle  
Hearing Examiner  
700 Fifth Avenue, Suite 4000  
Seattle, WA 98124-4729

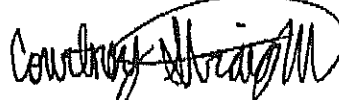
Re: *In Re SDOT, SEPA Determination of Non-Significance, Burke-Gilman Trail Extension - 11<sup>th</sup> Ave NW to Ballard Locks*

Dear Ms. Holiwell:

Enclosed for filing in the above-referenced matter is the Notice of Appeal along with the required \$50 filing fee. Please let me know if you have any questions. Thank you for your assistance.

Sincerely,

TUPPER MACK BROWER PLLC



Courtney Straight  
Legal Assistant

Enclosures

cc: Kirk Jones (via legal messenger)  
Paul Nerdrum (via U.S. mail)

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SEATTLE HEARING EXAMINER

IN RE SEATTLE DEPARTMENT OF  
TRANSPORATION, SEPA DETERMINATION  
OF NON-SIGNIFICANCE, BURKE-GILMAN  
TRAIL EXTENSION—11<sup>TH</sup> AVE NW TO  
BALLARD LOCKS

NO. \_\_\_\_\_

NOTICE OF APPEAL

Salmon Bay Sand & Gravel Company (Salmon Bay), the Ballard Chamber of Commerce (Chamber), the Ballard Interbay Northend Manufacturing & Industrial Center (BNMIC), the North Seattle Industrial Association (NSIA), Ballard Oil Company (Ballard Oil), and the Seattle Marine Business Coalition (SMBC) (collectively, the "Ballard Business Appellants"), hereby submit this Notice of Appeal of the November 26, 2008 SEPA Determination of Non-Significance (DNS) issued by the Seattle Department of Transportation (SDOT) for the Burke-Gilman Trail Extension, 11<sup>th</sup> NW to Ballard Locks (the "Project").

**I. Parties**

The Ballard Business Appellants, who are parties to this appeal, each own, operate or represent businesses in Ballard and/or own or lease properties in Ballard located adjacent to or along the proposed alignment of the Project or will be impacted by the Project, including:

- 1.1. Salmon Bay Sand & Gravel Co., whose address 5228 Shilshole Ave NW, Seattle, WA 98107, telephone 206.784.1234;
- 1.2. Ballard Chamber of Commerce, whose address 2208 NW Market St., Suite 100, Seattle, WA 98107, telephone 206.784.9705;
- 1.3. BNMIC, whose address is 604 22nd Ave NW, Seattle, WA 98107-4027;
- 1.4. NSIA, whose address is 604 22nd Ave NW, Seattle, WA 98107-4027, telephone 206.632.0124;

- 1 1.5. Ballard Oil, whose address is 5300 26th Avenue NW, Seattle, WA 98107,  
telephone 206.783.0241; and
- 2 1.6. Seattle Marine Business Coalition whose address 2547 Perkins Lane W, Seattle,  
3 WA 98199, telephone 206.285.1707.

**II. Ballard Business Appellants' Legal Representative**

The above named parties are represented in this matter by Joshua C. Allen Brower and  
4 Tupper Mack Brower, PLLC, 1100 Market Place Tower, 2025 First Avenue, Seattle, WA 98121.  
5 Telephone (206) 493-2300 and fax (206) 493-2310.  
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7

**III. Introduction**

8  
9 SDOT's DNS for the Project fails to comply with the policies and requirements of the  
10 State Environmental Policy Act (SEPA) and its implementing regulations, and fails to comply  
11 with the City of Seattle's (City's) SEPA policies. SDOT's DNS substantively fails to protect the  
12 right of every citizen of the state, and the appellants listed herein, to a safe and healthful  
13 environment. The Project will result in significant and unmitigated adverse impacts to the use  
14 and enjoyment of the environment in this area, as well as the existing structures along the  
15 proposed Project alignment. This portion of Ballard—from 11<sup>th</sup> NW to the Ballard Locks-- is a  
16 critical corridor and an integral part of the maritime and industrial business community in  
17 Seattle. The City's land use policies and goals give special priority to water-dependent uses in  
18 this area; these maritime and industrial uses are supposed to receive the highest priority and  
19 protection from non-compatible and competing uses. Routing a recreational trail such as the  
20 Project through the heart of the maritime/industrial area ignores these policies and goals and will  
21 significantly and adversely impact the appellants. Numerous businesses, employing thousands  
22 of people, are located in this maritime and industrial area in proximity to the proposed Project  
23 alignment. The Project is in almost constant conflict with heavy trucks, an active railroad,  
24 forklift traffic, maritime and industrial traffic and activities, loading docks, commercial parking  
25 and busy arterial streets along its entire alignment. The Project, as currently proposed, will have  
26 substantial adverse impacts to this maritime and industrial community and it is very likely a trail  
user will get hurt or killed. These impacts were not adequately discussed and analyzed in  
SDOT's DNS and SEPA checklist (Checklist). The DNS also is inadequate because SDOT has

1 not adequately investigated or disclosed the impacts from the Project, reasonable alternatives to  
 2 the Project, or reasonable mitigation requirements for Project impacts, all as required under  
 3 SEPA.

4 **IV. DNS Inadequacies**

5 The DNS and SDOT's Checklist fail to adequately discuss and disclose the purpose and  
 6 need for the Project, reasonable alternatives and reasonable alternative alignments, the impacts of  
 7 the Project, and mitigation necessary to avoid significant adverse impacts from the Project on the  
 8 affected environment. These include, without limitation, air quality impacts, water quality and  
 9 drainage impacts, inconsistencies with the City's Comprehensive Plan, neighborhood plans and  
 10 land use regulations, impacts to water-dependent uses, economic impacts, impacts to critical  
 11 areas, transportation impacts, displacements and relocation of existing land uses, impacts from  
 12 increased demand for public services, public safety, cumulative impacts and construction-related  
 13 impacts. The inadequacies of the DNS and Checklist in these areas include, but are not limited  
 14 to, the following:

15 4.1 The DNS and the Checklist do not adequately disclose or discuss the impacts of the  
 16 Project on air quality in this area caused by trail-induced traffic changes.

17 4.2 The DNS and the Checklist do not adequately disclose or discuss the impacts of the  
 18 Project on water quality caused by major reconstruction of existing surface water  
 19 drainage systems and alteration of existing natural systems.

20 4.3 The DNS and the Checklist do not adequately disclose or discuss the Project's  
 21 inconsistencies with the City's Comprehensive Plan, neighborhood plans and land use  
 22 regulations because SDOT failed to review and analyze the current zoning and  
 23 Comprehensive Plan designations for this area.

24 4.4 The DNS and the Checklist do not adequately disclose or discuss the Project's  
 25 inconsistencies with the goals and policies in the City's Comprehensive Plan,  
 26 neighborhood plans and land use regulations including, but not limited to the following:  
 UVG-22, UVG-23, UVG-24, UV-19, UV-21, UV-23, UV-24, BI-P12, BI-G1, BI-G2,  
 BI-G4, BI-G5, BI-G6, BI-G11, BI-P16 and ED-G5.

- 1 4.5 The DNS and the Checklist do not adequately disclose or discuss the Project's  
2 inconsistencies with the City's duty to protect existing industrial water-dependent uses in  
3 this area by not locating incompatible uses such as a recreational trail in this area.
- 4 4.6 The DNS and the Checklist do not adequately disclose or discuss the Project's  
5 inconsistencies with the State Shoreline Management Act and the City's Shoreline  
6 Master Program, which direct the City to protect water-dependent uses.
- 7 4.7 The DNS and the Checklist do not adequately disclose or discuss the Project's  
8 inconsistencies with the City's Critical Areas land uses regulations, specifically its  
9 liquifaction area policies and regulations.
- 10 4.8 The DNS and the Checklist do not adequately disclose or discuss the Project's traffic  
11 impacts, including but not limited to impacts to LOS and property access.
- 12 4.9 The DNS and the Checklist do not adequately disclose or discuss proposed mitigation to  
13 avoid significant adverse impacts arising from Project-induced traffic and changes to  
14 traffic patterns.
- 15 4.10 The DNS and the Checklist do not adequately disclose or discuss proposed mitigation  
16 to avoid significant adverse impacts arising from lost parking resulting from the Project.
- 17 4.11 The DNS and the Checklist do not adequately disclose or discuss the Project's  
18 impact, incompatibility and conflict with the development of a streetcar on Ballard  
19 Avenue.
- 20 4.12 The DNS and the Checklist do not adequately disclose or discuss the Project's  
21 construction-related impacts to businesses located along Shilshole Avenue and in Ballard,  
22 and on property owners and people who live, work and shop in this area.
- 23 4.13 The DNS and the Checklist do not adequately disclose or discuss alternative  
24 alignments that would minimize impacts from the Project.
- 25 4.14 The DNS and the Checklist fail to adequately disclose and discuss proposed  
26 mitigation to avoid significant adverse impacts arising from property owners being

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unable to perform building maintenance because of the Project's alignment's and proximity to existing structures.

4.15 The DNS and the Checklist fail to adequately disclose and discuss proposed mitigation to avoid significant adverse impacts related to restricted access to existing structures along and adjacent to the Project alignment.

4.16 The DNS and the Checklist fail to adequately disclose and discuss proposed mitigation necessary to avoid or minimize adverse impacts from the proximity of the Project to existing structures.

4.17 The DNS and the Checklist fail to adequately disclose and discuss impacts from increased demand for public services because the Project is not safe since it crosses numerous, active industrial driveways and will be located next to an active railroad.

4.18 The DNS and the Checklist fail to adequately disclose and discuss compliance with federal safety standards and guidelines.

4.19 The DNS and the Checklist fail to adequately disclose and discuss who is liable for injuries that occur on the Project.

4.20 The DNS and the Checklist fail to adequately disclose and discuss mitigation measures to make the Project safe.

The Ballard Business Appellants reserve the right to file a Petition for Review with the Office of Appeal to state additional challenges to the adequacy of the DNS and mitigation of the Project and reasonable alternatives to the Project.

**V. Injury and Harm to Ballard Business Appellants**

The Project discussed in the DNS will have substantial adverse impacts on the use and enjoyment of properties along the proposed alignment. The Project will substantially and adversely impact the use and enjoyment of properties and businesses along the proposed alignment, will harm businesses and people employed by those businesses, and will create an unsafe combination of pedestrians/cyclists and industrial traffic and activities, thereby causing injury and harm to the appellants. The Ballard Business Appellants also will suffer injury and harm since the DNS fails to provide an adequate analysis of anticipated impacts and reasonable

1 alternatives. The above-named appellants are collectively, individually, and as to each party for  
 2 the property they own or interests they represent, harmed by the significant adverse impacts from  
 3 the Project and the failure of the DNS to comply with the State Environmental Policy Act and its  
 4 implementing regulations, and the failure to comply with the City's SEPA policies.

5 **VI. Relief Requested**

6 The Ballard Business Appellants respectfully request the Hearing Examiner determine  
 7 the DNS inadequate and direct SDOT to prepare an EIS to fully address the inadequacies and  
 8 issues set forth above.

9 DATED this 16<sup>th</sup> day of December 2008.

10 Tupper Mack Brower, PLLC

11 

12 Joshua C. Allen Brower, WSBA No. 25092  
 13 Attorneys for Ballard Business Appellants

14 Salmon Bay Sand & Gravel Co.

15 \_\_\_\_\_  
 16 Ballard Chamber of Commerce

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 18 Ballard Interbay Northend Manufacturing & Industrial Center (BNMIC)

19 \_\_\_\_\_  
 20 North Seattle Industrial Association (NSIA)

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 22 Ballard Oil Company

23 \_\_\_\_\_  
 24 Seattle Marine Business Coalition

1 unsafe combination of pedestrians/cyclists and industrial traffic and activities, thereby causing  
 2 injury and harm to the appellants. The Ballard Business Appellants also will suffer injury and  
 3 harm since the DNS fails to provide an adequate analysis of anticipated impacts and reasonable  
 4 alternatives. The above-named appellants are collectively, individually, and as to each party for  
 5 the property they own or interests they represent, harmed by the significant adverse impacts from  
 6 the Project and the failure of the DNS to comply with the State Environmental Policy Act and its  
 7 implementing regulations, and the failure to comply with the City's SEPA policies.

8 **VI. Relief Requested**

9 The Ballard Business Appellants request the Examiner determine the  
 10 DNS inadequate and direct SDOT to prepare a new DNS that addresses the inadequacies and  
 11 issues set forth above.

12 DATED this \_\_\_\_ day of December 2008.

13 Tupper Mack Brower, PLLC

14  
 15 Joshua C. Allen Brower, WSBA No. 25092  
 16 Attorneys for Ballard Business Appellants

17 Salmon Bay Sand & Gravel Co.

18 Paul E. Anderson  
 19 Ballard Chamber of Commerce

20 Richard Miller

21 John Kan  
 22 Ballard Interbay Northend Manufacturing & Industrial Center (BNMIC)

23 Erin C. Wasson

24 North Seattle Industrial Association (NSIA)

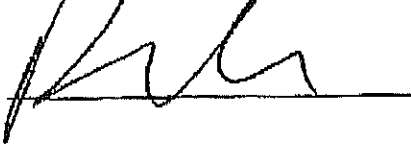
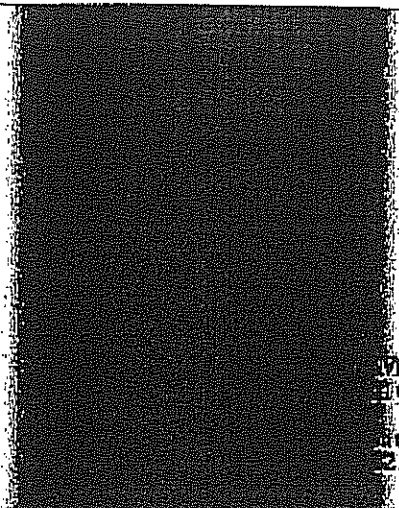
25 Erin C. Wasson

26 Ballard Oil Company

Wendy

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Seattle Marine Business Coalition

SEPA NOTICE OF APPEAL

**Black Brower PLLC**  
 200 Market Place Tower  
 2025 First Avenue  
 Seattle, Washington 98121  
 2300 FAX 206.493.2310

**RESOLUTION \_\_\_\_\_**

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A RESOLUTION stating the City's recommendations related to the SR 520 Bridge Replacement and High Occupancy Vehicle Project and commenting on the outcomes of the mediation process under ESSB 6099.

WHEREAS, the Washington State Department of Transportation (WSDOT), Sound Transit (ST) and the Federal Highway Administration (FHWA) continue to advance the SR 520 Bridge Replacement and High Occupancy Vehicle (HOV) Project; and

WHEREAS, SR 520 is a vital transportation corridor for the region, the City of Seattle and its residents; and

WHEREAS, in 2007, the Washington State Legislature adopted Engrossed Substitute Senate Bill (ESSB) 6099 creating a facilitated stakeholder mediation process to identify impacts and mitigation measures related to the west side of the project corridor; and

WHEREAS, the Executive and a member of the City Council have participated in the stakeholder mediation process along with dozens of representatives from Seattle neighborhoods, Eastside communities, the Arboretum Foundation, the University of Washington, resource agencies and advocates of other impacted interests; and

WHEREAS, the goal of the mediation process was to develop and submit a Project Impact Plan (PIP) to the Governor and State Legislature by the end of 2008; and

WHEREAS, ESSB 6099 states that "before the mediator may submit the project impact plan, it must be reviewed by the mayor of Seattle and the Seattle city council. The project impact plan must reflect whether the mayor and council concur or do not concur"; and

WHEREAS, the City Council previously adopted Resolution 30777, which stated guiding principles for the project, and Resolution 30974, which outlined design criteria and mitigation measures to be incorporated into the preferred alternative for the corridor; and

WHEREAS, with the emergence of new alternatives as part of the ESSB 6099 stakeholder mediation process and other project developments since the Council's last formal action related to SR 520, it is appropriate for the City to make additional project recommendations at this time; and

WHEREAS, the Governor and State Legislature will be reviewing the PIP in the first quarter of 2009 and are expected to make decisions on several aspects of the project before the end of the 2009 legislative session; and

WHEREAS, the PIP recommends that three new corridor alternatives (titled as Options A, K and L) be evaluated as part of WSDOT's Supplemental Draft Environment Impact Statement (SDEIS); and

WHEREAS, at present the environmental and transportation analysis related to each new alternative is incomplete and the potential tradeoffs have not been fully evaluated or analyzed; and