

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

3 THE COALITION,

4 Petitioner,

5 v.

6 THE CITY OF SEATTLE ACTING  
7 THROUGH ITS DEPARTMENT OF  
8 TRANSPORTATION AND ITS  
9 DEPARTMENT OF CONSTRUCTION  
10 AND INSPECTIONS,

11 Respondent.

12 v.

13 CASCADE BICYCLE CLUB,

14 Intervenor.

SHB No. 22-010

ORDER ON MOTIONS FOR SUMMARY  
JUDGMENT

15 **I. INTRODUCTION**

16 This case involves the longstanding plan to build a recreational bicycle and pedestrian  
17 trail known as the “missing link” of the Burke-Gilman trail (Project). The Coalition (Coalition)  
18 filed a petition for review with the Shorelines Hearings Board (Board) challenging: 1) the City of  
19 Seattle Department of Construction and Inspections’ (SDCI) issuance of a shoreline substantial  
20 development permit to the City of Seattle Department of Transportation (SDOT) to construct the  
21 Project;<sup>1</sup> and 2) the accompanying Amended Notice of Action for the Project issued under the  
State Environmental Policy Act (SEPA), Ch. 43.21C RCW.

---

<sup>1</sup> SDCI and SDOT will be referred to as “City” unless the context requires the two city departments to be differentiated.

1  
2 After Coalition filed the appeal with the Board, Cascade Bicycle Club moved to  
3 intervene. Following a prehearing conference, the Board issued a Prehearing Order and also  
4 granted Cascade Bicycle Club's petition to intervene. *See, Prehearing Order (Nov. 22, 2022);*  
5 *Order Granting Cascade Bicycle Club's Pet. to Intervene (Dec. 5, 2022).* The parties filed  
6 written waivers stating that they agree to waive the 180-day time period in RCW 90.58.180(3)  
7 (Board must issue decisions on petitions for review challenging a shoreline permit within 180  
8 days of filing petition) to 90 days after the conclusion of hearing or filing of written closing  
9 statements, whichever is later.

10 Coalition moved for summary judgment. The City and Intervenor Cascade Bicycle Club  
11 (Respondents) also filed a combined motion for summary judgment. The Board deciding this  
12 matter was comprised of Board Chair, Carolina Sun-Widrow, presiding, and Members Neil L.  
13 Wise and David Baker. Attorneys Patrick J. Schneider and Joshua C. Allen Brower represented  
14 Coalition. Assistant City Attorney Patrick Downs represented the City. Attorneys Mathew Cohen  
15 and Sean James represented Intervenor Cascade Bicycle Club.

16 In reaching its decision, the Board considered the following pleadings:

- 17 1. Coalition's Motion for Summary Judgment;  
18 2. Declaration of Claudia S. Hirschey in Support of Coalition's Motion for Summary  
19 Judgment, with Exs. 1-2;  
20 3. Declaration of Joshua C. Allen Brower in Support of Coalition's Motion for Summary.  
21 Judgment, with Attach. 1-16 (First Brower Decl.);

- 1 4. Respondents' Motion for Summary Judgment;
- 2 5. Declaration of Jill Macik in Support of Respondents' Motion for Summary Judgment
- 3 (First Macik Decl.);
- 4 6. Declaration of Louisa Miller in Support of Respondents' Motion for Summary
- 5 Judgment;
- 6 7. Declaration of Michael Cawrse in Support of Respondents' Motion for Summary
- 7 Judgment;
- 8 8. Declaration of Patrick Downs in Support of Respondents' Motion for Summary
- 9 Judgment;
- 10 9. Response to the Coalition's Motion for Summary Judgment;
- 11 10. Declaration of Eugene Pike in Support of the Response to the Coalition's Motion for
- 12 Summary Judgment;
- 13 11. Declaration of Louisa Miller in Support of the Response to the Coalition's Motion for
- 14 Summary Judgment;
- 15 12. Declaration of Jill Macik in Support of the Response to the Coalition's Motion for
- 16 Summary Judgment, with Attach. 1 (Second Macik Decl.);
- 17 13. Declaration of Patrick Downs in Support of the Response to the Coalition's Motion
- 18 for Summary Judgment, with Attach. 1;
- 19 14. Declaration of Dustin Dekoekkoek in Support of Response to the Coalition's Motion
- 20 for Summary [Judgment], with Attach. 1-2;
- 21

1 15. Declaration of Michael Cawrse in Support of the Response to the Coalition’s Motion  
2 for Summary Judgment, with Attach. 1-9;

3 16. Errata to City of Seattle’s Response to the Coalition’s Motion for Summary  
4 Judgment;

5 17. Coalition’s Response to Respondents’ Motion for Summary Judgment;

6 18. Declaration of Joshua Brower in Support of Coalition’s Response in Opposition to  
7 Respondents’ Motion for Summary Judgment, with Attach. 1-5 (Second Brower Decl.);

8 19. Reply in Support of Respondents’ Motion for Summary Judgment;

9 20. Second Declaration of Patrick Downs in Support of Respondents’ Motion for  
10 Summary Judgment, with Exs. A-B;

11 21. Coalition’s Reply in Support of Motion for Summary Judgment;

12 22. Decl. of Claudia Hirschey in Support of Coalition’s Reply, with Attach.;

13 23. Reply Declaration of Joshua C. Allen Brower in Support of Coalition’s Motion for  
14 Summary Judgment, with Attach. 1-11; and

15 24. The Board’s file in this matter – *Coalition v. City of Seattle*, SHB No. 22-010 (2022).

## 16 **II. BACKGROUND**

### 17 **A. PROJECT AND SITE**

18 The Burke-Gilman Trail is a regional, mixed-use facility that runs from the Sammamish  
19 River Trail in Bothell to Golden Gardens Park in Seattle. The 20-mile trail is complete except for  
20 a 1.4-mile gap in the Ballard neighborhood known as the “Missing Link” (Project). The purpose  
21 of the Project is to complete the 1.4 mile gap with a comparable multi-use trail. *Decl. of Louisa*

1 *Miller in Support of the Resp. to the Coalition's Mot. for Summ. [J.]*, ¶ 3. The Project would  
2 entail constructing a multi-use trail and buffer; sidewalk, curb and gutters; landscaping;  
3 intersection stop controls; drainage catch basins and culverts; drainage pipe and inlets; road  
4 pavement, including driveway connections; utility pole and guy-wire relocation; and street and  
5 pedestrian illumination. *First Macik Decl.*, ¶ 6.

6 The Project's west end would begin at the Ballard Locks, and travel along the south side  
7 of NW Market Street, 24th Ave NW, Shilshole Avenue NW, and NW 45th Street until it  
8 connects to the eastern end of the Burke-Gilman trail at 11<sup>th</sup> Ave NW. *Second Macik Decl.*,  
9 *Attach. 1*. Many driveways used by trucks from business members of the Coalition would cross  
10 the Project's Shilshole Avenue NW segment. *First Brower Decl., Attach. 1, pp. 15-16.*<sup>2</sup>

## 11 **B. PROJECT HISTORY**

12 The Coalition, an unincorporated organization comprised of businesses, trade and  
13 business associations, and unions, was formed 19 years ago to oppose building the Project on  
14 Shilshole Avenue and NW 45th Street. *Second Brower Decl.*, ¶¶ 2-3. The Coalition's  
15 membership composition has changed over the years, but many original members remain.  
16 *Second Brower Decl.*, ¶ 3. Currently, the Coalition is comprised of the following members:  
17 MLK Labor, General Teamsters Union Local No. 174, Salmon Bay Sand & Gravel, Co., Ballard  
18 Terminal Railroad Co. L.L.C., Ballard Interbay Northend Manufacturing & Industrial Center  
19

20  
21  

---

<sup>2</sup> Citations to page numbers in exhibits or attachments refer to pdf numbers.

1 (BINMIC), North Seattle Industrial Association (NSIA), CSR Marine, and the Seattle Marine  
2 Business Coalition. *Second Brower Decl.*, ¶ 4; *Pet. for Review at 2.*

3 Many of Coalition’s members are maritime businesses and trade organizations located in  
4 the vicinity of the Project, portions of which are located in the urban industrial shoreline  
5 environment designated under Seattle’s Shoreline Master Program. *MLK Labor v. City of Seattle*,  
6 SHB No. 19-007, p. 3 (Jan. 13, 2020, Order on Mot. to Dismiss and for Partial Summ. J.).  
7 Coalition claims that they will be adversely impacted by the Project since they receive barge  
8 deliveries, repair boats, and operate fishing vessels that will generate truck, rail, forklift, and  
9 commercial parking activity in conflict with the Project’s use by bicyclists, pedestrians, and  
10 skaters. *MLK Labor*, SHB No. 19-007, p. 10; *Pet. for Review at 5-6; Decl. of Claudia Hirschev*  
11 *in Support of Coalition’s Mot. for Summ. J.*, ¶¶ 6, 10; *Ex. 2.* This Board concluded in a challenge  
12 to an earlier Shoreline Substantial Development Permit (SSDP) issued by the City for an earlier  
13 Project design that Salmon Bay Sand & Gravel, Co., CSR Marine, North Seattle Industrial  
14 Association and BINMIC had standing to challenge the SSDP. *MLK Labor*, SHB No. 19-007,  
15 p. 10 (concluding that they alleged injuries to their water dependent businesses from Project such  
16 as limiting or blocking access to driveways and facilities, and creating unsafe condition by  
17 locating a recreational trail in front of their heavily trafficked industrial driveways).

18 The Project’s protracted litigation history includes the prior appeal before this Board,  
19 administrative hearings before the City Hearing Examiner, appeals and motions practice before  
20 King County Superior Court, and two appeals to the Court of Appeals. *See, Coalition’s Mot. for*  
21 *Summ. J. at 3-5.* Key issues in the litigation history include the lack of, or adequacy of, an

1 environmental impact statement (EIS) to analyze the traffic hazards generated by the Project. *Id.*;  
2 *First Brower Decl., Attach. 1, 3, 7.*

3 The Project has also undergone different design versions due to the litigation history. An  
4 earlier version between 2015 and 2019 included not only the 1.4 mile trail, but other  
5 infrastructure improvements (i.e., Metro trolley infrastructure) estimated to cost a total of \$26.4  
6 million. The City renamed the Project the Ballard Multimodal Corridor to reflect the  
7 infrastructure improvements in addition to the 1.4 mile trail. In 2018, the City planned to build  
8 the Project in phases. Phase 1 included 0.4 miles on the western end of the 1.4 mile Project from  
9 NW 54th Street and NW Market Street. Phase 2 included the remaining 1 mile traveling along  
10 Shilshole Avenue NW and NW 45th Street. *See, Errata, Ex. 1 (Decl. of Louisa Miller in Support*  
11 *of the Resp. to the Coalition's Mot. for Summ. J., ¶¶ 4, 5, Attach. 1).*

12 During the pendency of the appellate review of a City Hearing Examiner's decision that  
13 the EIS for an earlier design version of the Project was adequate, the City prepared to start  
14 construction on the Ballard Multimodal Corridor, which as stated, included the previously  
15 designed 1.4 mile Missing Link Project along with infrastructure improvement projects. But the  
16 City states that it later removed the Missing Link Project from the Ballard Multimodal Corridor.  
17 The City redesigned the Project in 2021, which is the version of the Project design that is at  
18 issue. *Decl. of Louisa Miller In Support of Resp't Mot. for Summ. J., ¶¶ 3-5; Second Macik*  
19 *Decl., Attach. 1.*

20 The 2021 Project redesign is at issue here. It contains the following changes, among  
21 others, from the 2012 design that a City Hearing Examiner determined would have significant

1 adverse traffic hazard impacts along the Shilshole Avenue segment: eliminated previously  
2 designed railroad track relocation, reduced street paving and pedestrian improvements, changed  
3 traffic control devices, narrowed trail and buffers between trail and road and driveways,  
4 eliminated fencing and concrete barriers at driveways adjacent to the trail and substituted them  
5 with raised trail to curb height. *Decl. of Louisa Miller In Support of Resp't Mot. for Summ. J.*, ¶¶  
6 7-8; *Decl. of Claudia Hirschey in Support of Coalition's Mot. for Summ. J.*, ¶ 11.  
7 Claudia Hirschey, Coalition's transportation engineer expert, opined that these changes present a  
8 new or increased traffic hazard that was not present in the 2012 Project design. *Id.*

9 **C. SSDP/SEPA PROCESS**

10 In November 2021, as the Project finalized its revised design, the City, acting through  
11 SDOT, determined the Project was categorically exempt from SEPA review and issued a Notice  
12 of Action. SDOT later issued an Amended Notice of Action identifying the Project as exempt  
13 from SEPA review. *First Macik Decl.*, ¶¶ 3, 5. SDOT determined that the Project meets the  
14 SEPA exemption for other minor construction and utility-related actions. *First Macik Decl.*, ¶ 7;  
15 *Second Macik Decl.*, ¶ 3, *Attach. 1*

16 In October 2022, the City, acting through SDCI, issued a decision conditionally granting  
17 a SSDP for the Project. *First Macik Decl.*, ¶ 4. Coalition filed a petition for review, challenging  
18 both the SSDP and the SEPA exemption decision to the Board.

19 **D. BOARD PROCEDURE**

20 The parties submitted and agreed to the following legal issues contained in the Prehearing  
21 Order:



1 1. Whether the City erroneously issued the Shoreline Substantial Development Permit  
2 (SSDP) to the Seattle Department of Transportation (SDOT) since SDOT has not  
3 conducted nor completed SEPA review, and the Project is not categorically exempt on  
4 the basis that:

5 a. In 2012, Seattle Deputy Hearing Examiner Watanabe ruled, as a matter of law, that the  
6 Project will cause significant adverse environmental impacts in the form of traffic and  
7 safety hazards, that decision has never been overturned and remains the law of the case,  
8 and thus, by definition the Project cannot be categorically exempt, SMC 25.05.720;  
9 WAC 197-11-720;

10 b. The “redesigned” Project has not eliminated nor ameliorated the 2012 adjudicated  
11 significant adverse traffic making it subject to SEPA, and instead has exacerbated many  
12 of those traffic and safety hazards;

13 c. The “redesigned” Project, as part of a “common plan of development,” disturbs more  
14 than 5 acres and thus is subject to SEPA, WAC 197-11-800(2)(a)(ii), and because the  
15 project is otherwise subject to SEPA pursuant to RCW 43.21C.030(2)(c);

16 d. The “redesigned” Project is subject to SEPA pursuant to SMC 25.05.305.A.2 because  
17 the Project as a whole has been adjudicated to have significant adverse environmental  
18 impacts that require preparation of an EIS, and because SDOT has admitted the Project is  
19 part of the common plan of development that includes the Ballard Multimodal Corridor  
20 project which creates more than five acres of disturbed area;

21 e. The “redesigned” Project, including originally planned improvements in Phase 1 and  
currently planned improvements in Phases 2 and 3, will disturb more than 5 acres;

f. The “redesigned” Project does not meet the definition in SMC 25.05.800(B)(4)(i) of  
“Other minor new construction,” since it is a 1.4-mile-long multi-user recreational trail  
that will cost \$26+MM or more and is the last segment of the 28+-mile long regionally  
significant Burke-Gilman Trail;

g. The “redesigned” Project does not meet the definition in SMC 25.05.800.X, which  
exempts certain limited utility and infrastructure improvements from SEPA compliance,  
since the Project is a multi-user recreational trail; and

h. The “redesigned” Project violates SEPA because SDOT is piecemealing it in an  
attempt to get it below the 5-acre disturbed area threshold.

2. Whether the SSDP is consistent with the policies and procedures of RCW 90.58.020.

3. Whether the SSDP meets the standards in SMC Chapter 23.60A, including: a.  
SMC 23.60A.002.B—if the Project does not implement and instead undercuts and is  
inconsistent with the policies and provisions of the Shoreline Management Act (SMA)  
and the Shoreline Goals and Policies of Seattle’s Comprehensive Plan; b. SMC  
23.60A.002.B.2— if the Project does not encourage water-dependent and water related  
uses in the UI Shoreline Environment; c. SMC 23.60A.004— if the Project will have an

1 adverse impact on the UI Shoreline Environment as it will significantly and adversely  
2 impact adjacent water dependent/water-related uses and in “extreme cases” put those  
3 businesses out of business; d. SMC 23.60A.152— if the Project has not been redesigned  
4 in a manner that minimizes adverse impacts to surrounding land and water uses in the  
5 UI Shoreline Environment and is incompatible with the affected area in the Shoreline  
6 Environment as it will adversely impact or drive out priority water-dependent/water-  
7 related uses; e. SMC 23.60A.213—if there are other reasonable options for locating the  
8 Project outside the UI Shoreline Environment and within just two blocks;  
9 f. SMC 23.60A.220—if the Missing Link is inconsistent with the purpose of the  
10 UI Shoreline Environment as the trail will undermine and substantially impede the use of  
11 industrial shorelines by water-dependent and water-related uses, and will displace water  
12 oriented uses while not achieving other goals of the SMA;  
13 g. 23.60A.213—if the Project does not meet the definition of a permitted “street use”  
14 within the UI Shoreline Environment; h. SMC 23.60A.482— if the Project is a general  
15 park/open space that is not adjacent to the shoreline and is not a permitted use within the  
16 UI Shoreline Environment;  
17 i. SMC 23.60A.932—if the Project does not meet the definition of a “Parks and open  
18 space, shoreline,” permitted in the UI Shoreline Environment;

19 4. Whether the SSDP is consistent with the Goals and Policies listed and discussed in  
20 SDCI’s Decision, including G6, G8, SA P15, and SA G22 if the Goals or Policies do not  
21 apply to the Project or support SDCI’s Decision.

5. Whether the SSDP is consistent with numerous controlling Shoreline goals and  
policies in the City’s Comprehensive Plan, including, without limit, SA G31, SA G35,  
SA G3, SA P1, SA P4, SA P16, SA P18, SA P37, and SA P40, all of which prioritize the  
existing, adjacent water dependent/water-related uses.

6. Whether the City erroneously issued the SSDP if the Project is inconsistent with other  
numerous applicable goals and policies in the controlling neighborhood plan, the  
BINMIC Plan, which is part of the City’s Comprehensive Plan, including, without limit,  
BI-P1, BI-P2, BI-P3, BI-P4, BI-P5, BI-P6, BI-P8, BI-P9, BI-P11, BI-G1, BI-G2, BI-G4,  
BI-G5, BI, G6, BI-G10, Bi-G11, BI-P13, BI-P14, BI-P15, BI-P17, BI-P19, BI-P20,  
BI-P21.

7. Whether the City erroneously issued the SSDP if the Project is inconsistent with other  
applicable goals and policies in the City’s Comprehensive Plan, including, without limit,  
GS 1.16, GS 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, LU 10.26, LU 10.27, T 1.6, TG 5, TG 5.3, TG 5.7, and T 7.5, which prioritize,  
support and encourage retention of existing, adjacent water-dependent/water-related uses  
that will be adversely impacted by locating the Missing Link in this area.

1 8. Whether the City erroneously issued the SSDP if locating the Project on upland  
2 portions of land zoned for water-dependent/water-related industrial uses within the  
3 UI Shoreline Area is inconsistent with this Board’s holding in *Save Our Industrial Land*  
4 *v. City of Seattle and Fred Meyer, Inc.*, 1996 WL 660476, wherein the Board held that  
such land within the UI environment is to be protected from encroachment by  
incompatible uses.

5 9. Whether the Missing Link is categorically exempt from SEPA.

6 10. Whether the Petitioner has standing.

7 The parties filed cross motions for summary judgment on several legal issues which are  
8 discussed below.

### 9 III. ANALYSIS

#### 10 A. SUMMARY JUDGMENT STANDARD

11 Summary judgment is a procedure available to avoid unnecessary trials where there is no  
12 genuine issue of material fact. *Am. Express Centurion Bank v. Stratman*, 172 Wn. App. 667,  
13 675-76, 292 P.3d 128 (2012). The summary judgment procedure is designed to eliminate trial if  
14 only questions of law remain for resolution, and neither party contests the facts relevant to a  
15 legal determination. *Rainier Nat’l Bank v. Security State Bank*, 59 Wn. App. 161, 164,  
16 796 P.2d 443 (1990), *review denied*, 117 Wn.2d 1004 (1991). A party is entitled to summary  
17 judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file,  
18 together with the affidavits, if any, show that there is no genuine issue as to any material fact and  
19 that the moving party is entitled to a judgment as a matter of law.” CR 56(c); *Magula v. Benton*  
20 *Franklin Title Co., Inc.*, 131 Wn.2d 171, 182, 930 P.2d 307 (1997). A material fact in a  
21 summary judgment proceeding is one affecting the outcome under the governing law. *Eriks v.*

1 *Denver*, 118 Wn.2d 451, 456, 824 P.2d 1207 (1992). If the moving party satisfies its burden,  
2 then the nonmoving party must present evidence demonstrating that material facts are in dispute.  
3 *Atherton Condo Ass'n v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990). Bare  
4 assertions concerning alleged genuine material issues do not constitute facts sufficient to defeat a  
5 summary judgment motion. *SentinelC3, Inc. v. Hunt*, 181 Wn.2d 127, 140, 331 P.3d 40 (2014).  
6 When determining whether an issue of material fact exists, all facts and inferences are construed  
7 in favor of the nonmoving party. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068  
8 (2002). The Board will enter summary judgment for a non-moving party under appropriate  
9 circumstances. *Impecoven v. Dep't of Revenue*, 120 Wn.2d 357, 365, 841 P.2d 470 (1992).

## 10 **B. BOARD JURISDICTION**

11 The Board has jurisdiction to review a local government's approval or denial of a SSDP  
12 under the Shorelines Management Act (SMA), ch. 90.58 RCW. RCW 90.58.180. Where there is  
13 an appeal of a decision on a SSDP for a project along with an appeal of a SEPA determination  
14 for the same project, the Board generally has sole jurisdiction over both appeals.  
15 RCW 43.21C.075(7). The scope and standard of review for this appeal are *de novo*. WAC 461-  
16 08-500(1).

17 As a quasi-judicial agency created by RCW 90.58.170, the Board may exercise only  
18 those powers expressly granted to it by statute or necessarily implied from the statutory grant of  
19 jurisdiction. *Skagit Surveyors and Engineers, LLC v. Friends of Skagit County*, 135 Wn.2d 542,  
20 558, 958 P.2d 962 (1998).

1 **C. STANDING (ISSUE 10)**

2 Issue 10 asks whether Coalition has standing. Respondents move for summary judgment  
3 on Issue 10, contending that Coalition’s petition should be dismissed because Coalition fails to  
4 meet representational standing requirements. *Resp’t Mot. for Summ. J. at 8-13*. Coalition opposes  
5 the motion.

6 As the party asserting standing, the Coalition bears the burden of establishing that each  
7 element of standing has been satisfied. *Save a Valuable Env’t (SAVE) v. Bothell*, 89 Wn.2d 862,  
8 866, 576 P.2d 401 (1978); *KS Tacoma Holdings, LLC v. Shorelines Hrg’s Bd.*, 166 Wn. App.  
9 117, 127, 272 P.3d 876 (2012). “The Board generally construes the SMA broadly when parties  
10 attempt to raise legitimate, shoreline-related environmental issues.” *Canyon Park Bus. Center*  
11 *Owners’ Assoc. v. Dep’t of Ecology*, SHB No. 21-006, p. 11 (Feb. 13, 2023, Order on Summ. J.).  
12 Consistent with the Board’s past decisions, this broad construction encompasses the  
13 determination of who has standing to bring SMA cases. *Puyallup Tribe of Indians v. City of*  
14 *Tacoma*, SHB No. 16-002, p. 37 (Jul. 18, 2016).

15 In addition to general standing requirements,<sup>3</sup> an organization seeking to establish  
16 representational standing must show (1) that the members of the organization would have  
17 standing to sue in their own right and (2) that the interests the organization seeks to protect are  
18 germane to its purpose. *Snohomish Cnty. Farm Bureau v. Snohomish Cnty.*, SHB No. 14-002,

19 \_\_\_\_\_  
20 <sup>3</sup> Respondents’ Motion for Summary Judgment does not concern the general standing elements  
21 of showing that a party suffered an injury in fact, that the injury falls within the zone of interests  
protected by the statute at issue, and that the injury is redressable. *See Resp’ts Mot. for Summ. J.*  
at 9.

1 pp 6-7 (Jan. 15, 2015, Order on Mots. for Summ. J.) (citing *Int’l Ass’n of Firefighters, Local*  
2 *1789 v. Spokane Airports*, 146 Wn.2d 207, 213-214, 45 P.3d 186 (2002)).<sup>4</sup> The second prong of  
3 this test has rarely been raised before the Board, “likely because for most groups that come  
4 before this Board, the interest they are protecting (typically environmental interests) is the  
5 obvious reason for which they are organized.” *See, Hale v. Island Cnty.*, SHB No. 04-022/023,  
6 p. 6 (Jan. 27, 2005, Decision on Mot. to Dismiss). The City challenges only the second prong of  
7 this test, regarding germaneness, contending that the Coalition has not shown that it “is a  
8 membership organization, that it has an organizational purpose, that this appeal advances the  
9 Coalition’s organizational purpose or that the governing body of the Coalition authorized the  
10 Coalition to appeal Missing Link permits.” Resp’ts Mot. for Summ. J. at 10.

11 The Board concludes that the interests the Coalition seeks to protect are germane to its  
12 purpose, satisfying the second prong. As the Coalition’s counsel states in a declaration, he has  
13 “represent[ed] the Coalition since 2003 in opposition to the City’s plan to build the Missing Link  
14 Project on Shilshole Avenue and NW 45th Street in Seattle.” *Second Brower Decl.*, ¶ 2.  
15 Consistent with counsel’s statements, the same Coalition members before the Board in this  
16 appeal previously appeared as individual litigants in a separate appeal that concerned the Missing  
17 Link. *Compare* Pet. for Review at 3 (identifying the Coalition members) *with MLK Labor*,

---

18  
19 <sup>4</sup> The third prong of the organizational standing test—that neither the claim asserted nor the relief  
20 requested requires the participation of the organization’s individual members—most often proves  
21 a hurdle in cases where an association seeks monetary damages on behalf of individual members.  
*See, Hale v. Island Cnty.*, SHB No. 04-022/023, p. 5 (Jan. 27, 2005, Decision on Mot. to  
Dismiss). This prong typically has little relevance to cases before the Board, and does not apply  
here, because appellants cannot seek monetary damages. *Id.* at p. 6, n.3.

1 SHB No. 19-007, p. 1 (identifying individual appellants in prior Missing Link appeal).  
2 Furthermore, the Coalition has provided copies of emails from its lobbyist requesting to speak  
3 with the City about Burke Gilman trail issues that also relate to this appeal. *See, Second Brower*  
4 *Decl.*, ¶ 9, *Attach. 2*. These facts support the determination that the interests the Coalition seeks  
5 to protect in this appeal are germane to its purpose.

6 The authority provided by Respondents does not refute the determination that the  
7 interests the Coalition seeks to protect are germane to its purpose. Respondents cite *Hale v.*  
8 *Island County*, which involved “an association of labor unions ... seeking standing to protect off  
9 the job recreational interests of some of its members.” *Hale*, SHB No. 04-022/023, p. 6. The  
10 Board considered the germaneness prong because, unlike most groups that come before the  
11 Board, “[i]t is not so obvious in this situation that the association is seeking to protect interests  
12 germane to its purpose.” *Id.*; *see also Spokane Rock Prods., Inc. v. Spokane Cty. Air Pollution*  
13 *Control Auth.*, PCHB No. 05-127, pp. 2, 8 (Nov. 16, 2005, Order Dismissing Spokane Rock  
14 Products, Inc.) (concluding that company operating asphalt plant did not show germaneness  
15 because there was no evidence “that general protection of air quality in Spokane, or the  
16 protection of employees from air quality impacts” was germane to its corporate purpose). Here,  
17 in contrast, it is evident that in this appeal the Coalition is seeking to protect interests germane to  
18 its purpose—indeed, the Coalition’s members have been litigating the subject of this appeal for  
19 years, and no other purpose for the Coalition is apparent from the record. Moreover, while  
20 Respondents are correct that the Board in *Hale* allowed the association additional time to show  
21 that its executive board had approved participation in the appeal, that was based on evidence

1 indicating that such approval was required for the association to act on behalf of its constituents  
2 on environmental matters. *Hale*, SHB No. 04-022/023, pp. 7-8. There is no evidence here that  
3 the Coalition is bound by a similar requirement.

4 To the extent Respondents’ standing challenge is based on the Coalition’s lack of  
5 corporate formalities, it fails as well. The Washington Supreme Court has noted a “lack of  
6 concern over the precise form of organization” when considering representational standing;  
7 courts focus instead on the “central concern that a specific and perceptible injury to a member of  
8 the organization be alleged.” *SAVE*, 89 Wn.2d at 867. Indeed, “[i]ndividuals with a common  
9 interest which they seek to further may choose any one of a number of forms through which to  
10 act in concert.” *Id.* at 866. The Board has previously found that several of the Coalition’s  
11 individual members satisfy the elements of standing—including showing injury-in-fact—and  
12 Respondents do not challenge that conclusion here. *See, MLK Labor*, SHB No. 19-007, p. 10; *see*  
13 *also*, Resp’ts Mot. for Summ. J. at 10. Thus, the “central concern” of representational standing  
14 has been satisfied.

15 Accordingly, the Board holds that the Coalition has standing to bring this appeal. The  
16 Board denies summary judgment to Respondents on Issue 10, and grants summary judgment on  
17 the same issue in favor of Coalition as the non-moving party. *Impecoven*, 120 Wn.2d at 365.

18 **D. SEPA CATEGORIAL EXEMPTIONS (ISSUES 1.a-1h)**

19 Both sides move for summary judgment on whether the SEPA exemptions relied by the  
20 City applies to the Project. The parties’ cross motions on the SEPA exemption implicate Issues  
21



1 1.a-1.h. Issue 1 asks whether the City’s decision to issue the SSDP without SEPA review was  
2 erroneous for various claimed bases listed in subsections a through h in Issue 1. The City’s  
3 determination that the 2021 redesign of the Project was exempt from SEPA review is given  
4 substantial weight. *See, Citizens v. City of Port Angeles*, 137 Wn. App. 214, 224-25, 151 P.3d  
5 1079 (2007) (citing RCW 43.21C.110(1)(a)). The “substantial weight” requirement  
6 directs review of the City’s decision under a “clearly erroneous” standard. *Citizens*, 137 Wn.  
7 App. at 224-25. A finding is clearly erroneous when, although there is evidence to support it, we  
8 are left with the definite and firm conviction that a mistake has been made. *Id.*

9 SEPA is a procedural law that ensures government agencies and other decision makers  
10 consider environmental impacts and alternatives before taking certain actions. *Cornelius v. Dep’t*  
11 *of Ecology*, 182 Wn.2d 574, 598, 344 P.3d 199 (2015). The Department of Ecology has  
12 delegated authority to adopt and amend rules interpreting and implementing SEPA to provide  
13 statewide uniform rules and guidelines. RCW 43.21C.110(1); ch. 197-11 WAC; *Wild Fish*  
14 *Conservancy v. Dep’t of Fish & Wildlife*, 198 Wn. 2d 846, 855, 860, 502 P.3d 359 (2022).  
15 Accordingly, Ecology promulgated the SEPA regulations in Ch. 197-11 WAC (SEPA rules).

16 When a proposed agency action requires SEPA environmental review, a lead agency  
17 responsible for the environmental analysis and procedural steps under SEPA must evaluate the  
18 proposal’s likely environmental impacts. *Wild Fish Conservancy*, 198 Wn.2d at 856. The  
19 evaluation includes the “threshold determination” of whether the action will result in “probable  
20 significant adverse environmental” impacts. WAC 197-11-330(1)(b); RCW 43.21C.031. If the  
21 agency determines the proposal is not likely to have significant adverse impacts on the

1 environment, it will issue a determination of nonsignificance (DNS), and no further  
2 environmental review is required. *Id.*; WAC 197-11-340. If the agency finds the proposal will  
3 likely have significant adverse impacts, it will issue a determination of significance (DS) and  
4 prepare an EIS. *Id.*; RCW 43.21C.031(1). An EIS is an impartial discussion and analysis of a  
5 proposal’s probable, significant adverse environmental impacts and the reasonable alternatives  
6 that would avoid or minimize adverse impacts or enhance environmental quality. WAC 197-11-  
7 400, -402; RCW 43.21C.031.

8           However, the legislature also directed Ecology to promulgate administrative rules in part  
9 nine of the SEPA rules setting forth numerous types of actions that are not considered to be  
10 major actions, and are thus categorically exempt from threshold determination and EIS  
11 requirements. *Dioxin/Organochlorine Ctr. v. Pollution Control Hrg’s Bd.*, 131 Wn.2d 345,  
12 932 P.2d 158 (1997) (*Dioxin*); RCW 43.21C.031(1); WAC 197-11-800 through -875. These are  
13 referred to as SEPA administrative exemptions (contrasting with SEPA statutory exemptions).  
14 The City adopted Ecology’s SEPA rules in chapter 25.05 of the Seattle Municipal Code. *See*  
15 Seattle Municipal Code (SMC) 25.05.010.<sup>5</sup>

16           The SEPA rules define “categorical exemption” as

17           a type of action, specified in these rules, which does not significantly affect the  
18 environment (RCW 43.21C.110(1)(a)); categorical exemptions are found in Part  
19 Nine of these rules. Neither a threshold determination nor any environmental  
document, including an environmental checklist or environmental impact

---

20 <sup>5</sup> The SMC states that the purpose of its SEPA rules is to adopt the uniform requirements of chapter 197-11 WAC  
21 for compliance with SEPA and to establish local procedures where permitted. It also states that many sections of  
chapter 197-11 WAC are adopted verbatim or nearly so, and that the City’s SEPA rules, chapter 197-11 WAC and  
SEPA itself are to be read together as a whole in order to comply with the spirit and letter of the law. SMC  
25.05.020.

1 statement, is required for any categorically exempt action (RCW 43.21C.031).  
2 These rules provide for those circumstances in which a specific action that would  
3 fit within a categorical exemption shall not be considered categorically exempt  
4 (WAC 197-11-305).

5 WAC 197-11-720; *see also*, SMC 25.05.720. As stated, the City determined that the Project  
6 meets the exemption criteria under SMC 25.05.800.B (other minor new construction) and  
7 SMC 25.05.800.X (utility related actions).

8 Coalition’s eight challenges to the City’s determination that the Project is categorically  
9 exempt from SEPA can be grouped as follows:

- 10 • Project cannot meet general categorical exemption definition in SMC 25.05.720 and  
11 WAC 197-11-720 (Issues 1.a, 1.b) because it was determined to create significant  
12 adverse environmental impacts in related litigation;
- 13 • Project is not categorically exempt because it does not meet the definition of “other minor  
14 construction” (Issue 1.f) and minor utility improvements (Issue 1.g); and
- 15 • Exceptions or limitations to the categorical exemption apply to make the Project subject  
16 to SEPA. These exceptions are the functionally related exception, common plan of  
17 development, disturbs more than 5 acres, and piecemealing (Issues 1.c, 1.d, 1.e and 1.h).

18 **1. Prohibited As Applied Challenge in Issue 1.b**

19 A preliminary issue is whether Coalition may challenge in Issue 1.b the City’s decision to  
20 exempt the Project from SEPA review. Specifically, Respondents argue that Coalition’s Issue 1.b  
21 fails as a matter of law because it is an “as applied” challenge prohibited by *Dioxin*, 131 Wn.2d

1 at 363, 365. *See, Resp't Mot. for Summ. J. at 19; Response to Coalition's Mot. for Summ. J. at*  
2 *18, n. 78.* The Board agrees with Respondents.

3 In *Dioxin*, the Washington Supreme Court considered whether the categorical exemption  
4 for reissuance of waste discharge permits applies when the permit at issue allows activity  
5 constituting a major action having a probable significant adverse environmental impact. *Dioxin*,  
6 131 Wn.2d at 356. The Court held that individual actions which are categorically exempt from  
7 SEPA review are in fact exempt, and disallowed a case-by-case, ad hoc factual inquiry into  
8 categorically exempt activities as inconsistent with RCW 43.21C.110(1)(a). *Id.* at 356, 363. The  
9 Court reasoned that allowing such case-by-case challenges would be inefficient and costly. *Id.* at  
10 364; *see also, Citizens*, 137 Wn. App. at 222. But courts may still decide whether a specific  
11 proposed action actually fits within the particular categorical exemption. *Dioxin*, 131 Wn.2d at  
12 365.

13 The Board agrees with Respondents that *Dioxin* precludes challenging the City's decision  
14 under Issue 1.b. The gravamen of Coalition's argument in Issue 1.b is that the Project redesign  
15 still results in significant traffic hazards constituting significant adverse impacts requiring an  
16 EIS. Coalition relies mainly on the report of its transportation engineer expert, Claudia Hirschey,  
17 who concluded that the Project redesign not only includes many of the same 2012 traffic hazards,  
18 but also increases the traffic hazards that a City hearing examiner had determined to create  
19 significant adverse impacts in 2012. *Hirschey Decl.*, ¶¶ 6, 10-11; *Ex. 2*. Coalition's claim would  
20 require the Board to engage in a case specific review of the traffic hazard impacts of the Project  
21 determined by the City to be categorically exempt. In other words, the Board would be looking

1 beyond the claimed categorical exemption to determine whether the Project was indeed a major  
2 action subject to SEPA review. Such review is prohibited by *Dioxin*. Thus, the Board does not  
3 consider Coalition’s claim in Issue 1.b that the City’s SEPA exemption determination was  
4 erroneous on the basis that the redesigned Project has not eliminated or ameliorated the 2012  
5 adjudicated significant adverse traffic impacts.

6 Accordingly, the Board denies Coalition’s summary judgment on Issue 1.b, grants  
7 summary judgment in favor of Respondents in the same issue, and dismisses Issue 1.b.

8 **2. Project Does Not Fit Within Definition of Claimed SEPA Exemptions for Other**  
9 **Minor New Construction or Utility Relation Action (Issues 1.f and 1.g)**

10 Both Coalition and Respondents move for summary judgment on Issues 1.f and 1.g. As  
11 stated, the City determined that the project meets the exemption criteria under SMC 25.05.800.B  
12 (other minor new construction including the addition of bicycle lanes) and SMC 25.05.800.X  
13 (utility related activities). Issues 1.f and 1.g ask, respectively, whether the Project meets the  
14 SEPA exemptions for other minor new construction and utility related activities. Coalition  
15 argues that the Project does not meet the definition of either exemption as a matter of law, while  
16 Respondents argue that it does. The Board agrees with Coalition.

17 SMC 25.05.800 contains SEPA categorical exemptions and provides that:

18 The proposed actions contained in this Section 25.05.800 are categorically exempt  
19 from threshold determination and environmental impact requirements, subject to  
20 the rules and limitations on categorical exemptions contained in WAC 197-11-305.  
21

1 SMC 25.05.800.<sup>6</sup> The code provision then lists a broad range of government agency actions  
2 exempt from SEPA review, including “other minor new construction” and “utility-related  
3 actions,” which are at issue. *Id.* The “other minor new construction” exemption states, in relevant  
4 part:

5 B. Other *minor* new construction.

6 1. The exemptions in this subsection 25.05.800.B apply to all licenses required to  
7 undertake *the following types of proposals . . .* except when the project:

- 8 (i) Is undertaken wholly or partly on lands covered by water;  
9 (ii) Requires a license governing discharges to water that is not exempt under  
10 RCW 43.21C.0383;  
11 (iii) Requires a license governing emissions to air that is not exempt under  
12 RCW 43.21C.0381 or 25.05.800.H or subsection 25.05.800.I; or  
13 (iv) Requires a land use decision that is not exempt under WAC 197-11-800(6)  
14 subsection 25.05.800.F

15 . . .  
16 3. Construction or installation of *public signs and signals, including those for*  
17 *traffic control and wayfinding;*

18 4. The construction or installation of *minor road and street improvements . . .*  
19 that include the following:

- 20 . . .  
21 b. Transportation corridor landscaping . . .  
f. street lighting . . .  
g. Installation of catchbasins and culverts for the purposes of road and street  
improvements;  
h. Reconstruction of existing roadbed . . .  
i. Addition of bicycle lanes, paths and facilities, and pedestrian walks and paths  
including sidewalk extensions, but not including additional automobile lanes;

SMC 25.05.800.B.1 (emphasis added); *see also* WAC 197-110-800(9).

The City’s SEPA exemption memorandum stated that the Project qualifies for the “other  
minor new construction” exemption because certain Project components met the exemption

---

<sup>6</sup> SMC 25.05.800 basically mirrors part nine of the SEPA categorical exemption rules in WAC 197-11-800.

1 criteria for the various subparts listed above: landscaping, signs and signals, catchbasins and  
2 culverts, reconstruction of existing roadbed, street lighting, and addition of bicycle lanes and  
3 pedestrian paths. *Macik Decl.* ¶ 7.

4 But the Project does not fit within the definition for other minor new construction when  
5 all the subparts of SMC 25.05.800.B are read together and given effect. *G-P Gypsum Corp. v.*  
6 *Dep't of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010) (exemptions, as with all statutory  
7 provisions, must be interpreted so that all language used is given effect with no portion rendered  
8 meaningless or superfluous). The main heading of subsection B is entitled “Other minor new  
9 construction,” and subpart B.1 explains that exemptions in subsection 25.05.800.B “apply to all  
10 licenses required to undertake the following types of proposals.” Two such types of proposals  
11 relied on by the City are “construction or installation of public signs and signals” (subsection  
12 B.3) and “construction or installation of minor road and street improvements” (subsection B.4).  
13 Subsection B.4 further lists landscaping, street lighting, catchbasins and culverts, reconstruction  
14 of existing roadbeds and addition of bicycle lands and pedestrian paths as examples of minor  
15 road improvements.

16 A plain reading of all the subsections shows that other minor new construction exemption  
17 in SMC 25.05.800.B applies to, among other types of proposals: 1) *minor* new construction  
18 involving construction or installation of signs and signals, and 2) other *minor road and street*  
19 *improvements* that includes the examples listed. This reading of the section is also informed by  
20 SEPA being an overlay statute intended to complement other legal frameworks such as the SMA  
21 to ensure that environmental impacts and alternatives are properly considered by the decision

1 makers. *Dep't of Nat. Res. v. Thurston County*, 92 Wn.2d 656, 664, 601 P.2d 494 (1979) (“As we  
2 have repeatedly pointed out, SEPA is an overlay of law which supplements existing statutory  
3 authority.”). And in construing overlapping statutory schemes, courts must, when possible,  
4 construe such statutory schemes harmoniously. *Columbia Riverkeeper v. Port of Vancouver*  
5 *USA*, 188 Wn. 2d 80, 95-96, 392 P.3d 1025 (2017). Here, the SMA statutory exemptions are  
6 construed narrowly. *Dep't of Ecology v. City of Spokane Valley*, 167 Wn. App. 952, 964,  
7 275 P.3d 367 (2012) (exemptions from the substantial development permit process are  
8 construed narrowly).

9         The Project is construction of a 1.4 mile multi-use trail that is a segment of the 28 mile  
10 long Burke-Gilman trail in order to bridge the current 1.4 mile gap of the Burke-Gilman trail.<sup>7</sup>  
11 The 1.4 mile Project itself costs approximately \$26 million. *Decl. of Louisa Miller in Support of*  
12 *the Resp. to the Coalition's Mot. for Summ. [J.]*, ¶ 4. Part of the Project is located in the urban  
13 industrial shoreline environment and will cross a railroad and many driveways of water  
14 dependent adjoining businesses. *MLK Labor v. City of Seattle*, SHB No. 19-007, p. 10 (Jan. 13,  
15 2020, Order on Mot. to Dismiss and Mot. for Partial Summ. J.). Viewed in its entirety, rather  
16 than its individual, discrete components, the Project is neither a minor new construction of signs  
17  
18

---

19 <sup>7</sup> The parties do not dispute that all portions of the 1.4 mile Project are physically and functionally related and thus a  
20 single project. *See, Reply in Support of Resp't Mot. for Summ. J.* at 6 (“The City agrees that all portions of the  
21 Project are physically and functionally related[.]”), 9 (“City agrees that the 1.4 mile Missing Link trail is a single  
project for purposes of SMA . . .”). And the Board considers all segments and phases of the 1.4 mile Project as a  
single project in its SEPA categorical exemption analysis. *Cf., Jarvis v. Kitsap County*, SHB No. 08-001 (Apr. 8,  
2008, Order on Partial Summ. J.) (citing *Merkel v. Port of Brownsville*, 8 Wn. App. 844, 847, 509 P.2d 390 (1973)).



1 and signals, nor a minor street improvement that happens to entail landscaping, addition of bike  
2 lanes, or other examples of minor street improvement listed in SMC 25.05.800.B.4.

3 Respondents' claim that the Project is also exempt as a utility-related action under  
4 SMC 25.05.800X also suffers from the same approach of breaking the Project into smaller,  
5 fragmented units.<sup>8</sup> Again, focusing on discrete Project components such as constructing culverts  
6 and relocating utility poles to assert that the Project meets the SEPA exemption criteria for utility  
7 related actions overlooks the Project for what it is – a 1.4 mile multi-use trail with multiple  
8 components. *Second Macik Decl.*, ¶¶ 4-5, *Attach 1*, p. 6. Although certain individual components  
9 of the Project may qualify for a specific SEPA exemption, the Project as a whole does not fit  
10 within the definition of a utility related action that is categorically exempt from SEPA review.

11 Respondents only argue that the other minor new construction criteria in SMC  
12 25.05.800.B applies and is described in its SEPA exemption memorandum. But as Coalition  
13 points out, the memorandum is devoid of analysis of how the Project actually fits within the  
14 exemption, and simply states that listed Project components (bicycle lanes, sidewalk, curb and  
15

---

16 <sup>8</sup> SMC 25.05.800X states in relevant part:

17 Utilities. The utility-related actions listed below shall be exempt, except for installation, construction, or  
18 alteration on lands covered by water. The exemption includes installation and construction, relocation when  
required by other governmental bodies, repair, replacement, maintenance, operation, or alteration that does  
not change the action from an exempt class:

- 19 . . .  
20 2. All stormwater, water and sewer facilities, lines, equipment, hookups or appurtenances including,  
utilizing or related to lines 12 inches or less in diameter;  
21 3. All electric facilities, lines, equipment or appurtenances, not including substations, with an associated  
voltage of 55,000 volts or less . . .

1 gutter, etc.) meet the SEPA exemption criteria. The City also relies on a conclusory statement in  
2 the declaration of Jill Macik, SDOT’s environmental manager, stating that “[a]ll parts of this  
3 project are exempt, and the Project is not part of a larger proposal.” *Second Macik Decl.*, ¶ 7.

4 In sum, the Board concludes that the Project does not fit within the categorical exemption  
5 for other minor construction and for utility related actions, and is convinced that the City  
6 erroneously determined to the contrary. The Board thus grants summary judgment in favor of  
7 Coalition in Issues 1.f and 1.g, and denies summary judgment to Respondents on the same  
8 issues. Because the Board rejects these two bases of SEPA categorical exemption relied by the  
9 City, the Board need not consider Coalition’s other challenges to the City’s SEPA exemption  
10 determination. Specifically, the Board need not consider Issues 1.a and 1.b because they present  
11 additional challenges to the City’s SEPA exemption determination. Issues 1.c, 1.d, 1.e, and 1.h  
12 also need not be considered because they relate to whether various exceptions or limitations to a  
13 claimed SEPA exemption apply to nonetheless make the Project subject to SEPA review.

14 **3. Claimed Exemption for Land Use Decision for Exempt Project (Issue 9)**

15 Respondents also separately move for summary judgment in Issue 9, which asks whether  
16 the Project is categorically exempt from SEPA review. *Resp’t Mot. for Summ. J. at 17-18.*

17 Respondents argue that the SSDP is a land use decision and therefore exempt from SEPA review  
18 under WAC 197-11-800(6)(a).<sup>9</sup> That categorical exemption states, in relevant part:

19 \_\_\_\_\_  
20 <sup>9</sup> Respondents presented this argument in its motion for summary judgment under the subheading that no exceptions  
21 to SEPA’s categorical exemptions applies, referring to the exception that when a project requires a land use decision  
that is not exempt, then the following SEPA categorical exemptions do not apply: WAC 197-11-305, SMC  
25.05.305 (outlining same general exceptions as WAC 197-11-305), WAC 197-11-800(2)(a) (other minor new

1 (6) Land use decisions. The following land use decisions shall be exempt:  
2 (a) *Land use decisions for exempt projects*, except that rezones must comply with  
(c) of this subsection.

3 WAC 197-11-800(6)(a) (emphasis added). Thus, for this SEPA exemption to apply, Respondents  
4 must show that the SSDP is a land use decision for a project that is SEPA exempt.<sup>10</sup> They fail to  
5 so show.

6 SSDPs are not land use decisions subject to review under LUPA. *See, e.g., Samuel’s*  
7 *Furniture v. Dep’t of Ecology*, 147 Wn. 2d 440, 460, 54 P.3d 1194 (2002) (LUPA fills a void left  
8 by the SMA by providing an avenue for appealing decisions not appealable under SMA);  
9 *Davidson v. City of Burien*, SHB No. 21-003 (Sept. 15, 2021, Order Granting City of Burien’s  
10 Mot. for Summ. J.). And even if SSDPs fit within LUPA’s definition of “land use decision,” that  
11 fact alone does not establish that they are exempt under SEPA. Moreover, as analyzed above,  
12 Respondents fail to demonstrate that the SSDP is for a project that is exempt from SEPA. On this  
13 point, Respondents only state that because the Project is SEPA exempt, so is the SSDP. *See*  
14 *Resp’t Mot. for Summ. J. at 17*. Accordingly, the Board denies Respondents’ motion for  
15 summary judgment in Issue 9 and dismisses the issue.

16 **E. NON-SEPA ISSUES (ISSUES 2-8)**

17  
18  
19 \_\_\_\_\_  
20 constructions), -800(23) (utilities), SMC 25.05.800B.1 (other minor new construction), and SMC 25.05.800X  
(utilities). *See, Resp’t Mot. for Summ. J. at 15, n. 67*. So presented, the argument is also encompassed in legal issue  
21 1, which the Board has already resolved.

<sup>10</sup> As stated, this Board ruled in 2019 that the Project required an SSDP for the entire 1.4 mile length, and not just  
portions of the Project located in the shoreline environment. *MLK Labor*, SHB No. 19-007, p. 15.

1 Remaining Legal Issues 2-8 are Coalition's non-SEPA issues that challenge the SSDP's  
2 validity based on alleged noncompliance with the SMA, the local SMP, and the City's  
3 comprehensive plan. Coalition argues that the Board need not reach the non-SEPA issues  
4 because the SSDP is void where it was issued in violation of SEPA. The Board agrees. Because  
5 the Project is not categorically exempt from SEPA review, the City's SEPA exemption  
6 determination is void, along with the resulting SSDP. *Bhatia v. Kitsap County*, SHB No. 95-034,  
7 COL XVIII (1996) (consequence of failing to comply with SEPA's procedural requirements is  
8 nullification of underlying action; thus shoreline permits issued in violation of SEPA are void);  
9 *Barrie v. Kitsap County*, 93 Wn.2d 843, 861, 613 P.2d 1158 (1980); *King County v. Wash. State*  
10 *Boundary Review Bd.*, 122 Wn.2d 648, 667, 860 P.2d 1024 (1993) (decisions based on a void  
11 determination are also void); *see also, Quinault Indian Nation v. City of Hoquiam*, SHB No. 13-  
12 012c, pp. 42-43 (Dec. 9, 2013, Order on Summ. J. as Amended on Recons.) (SSDP reversed  
13 based on invalidity of underlying MDNS).

14 Based on the above analysis, the Board enters the following:

#### 15 IV. ORDER

16 1. Summary judgment is DENIED to Respondents on Issue 10 (standing) and  
17 GRANTED in favor of Coalition as the non-moving party.

18 2. Summary judgment is DENIED to Coalition on Issue 1.b (as applied SEPA exemption  
19 challenge), GRANTED in favor of Respondents, and DISMISSED.

20 3. Summary judgment is GRANTED to Coalition on Issues 1.f and 1.g (SEPA categorical  
21 exemptions), and DENIED to Respondents on Issues 1.f and 1.g.

