

THE MISSING LINK

An Odyssey-esque Saga to Build a Recreational Multi-Use Trail Through the Heart of Seattle's Maritime/Industrial Community

NSIA Legal Update

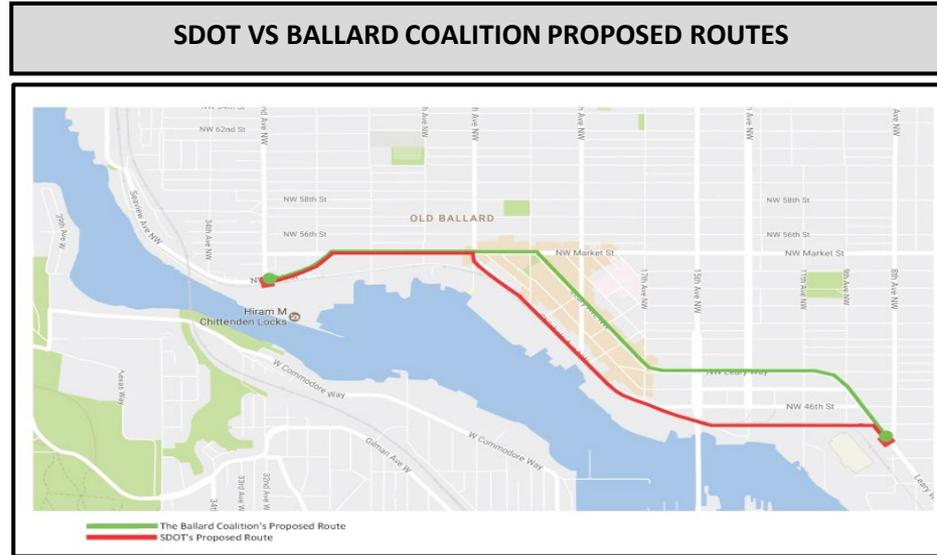
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Joshua Brower

Brower Law PS

josh@browerlawps.com

Two Blocks and Twenty-Five Years



The Coalition continues obtaining successful results in the courts in 2020 and the outlook remains favorable through 2021 and beyond.

SDOT and the Missing Link will be tied up in the Court's for years and years to come.

Three cases:

- **Seattle v. Ballard Terminal Railroad**
- **EIS/Appearance of Fairness Doctrine challenges**
- **Shoreline Permit**

Seattle v. Ballard Terminal Railroad—King County Superior Court Lawsuit

- In early 2019, Seattle sued the Railroad to stop its Petition to the Surface Transportation Board (STB) asking it to preemptively prohibit Seattle from ordering the Railroad to remove and relocate nearly 1/2-mile of rail tracks to accommodate the Missing Link.
- In response to Seattle's lawsuit, the STB held the Railroad's Petition in "abeyance" while the King County Superior Court heard the City's contract claims under the Operating Agreement and Franchise.

Seattle v. Ballard Terminal Railroad

- Between 2020 to early 2021, the Court heard and decided ***five motions*** for summary judgment—***ruling for the Railroad in three of the five.***
- In the fourth, in June 2020, the Railroad won a huge victory when the Court ruled Seattle ***cannot use the Franchise to require BTRC to remove and relocate 1/2-mile its railroad tracks to accommodate the Missing Link on Shilshole and 45th NW St.***
- Because of that, SDOT either has to once again (third time) ***redesign the Missing Link*** or appeal and get a court to overturn the Superior Court.

Seattle v. Ballard Terminal Railroad

- At the outset of this case, the Railroad counter-sued Seattle claiming its lawsuit violated the Railroad's Constitutional rights to petition its government for redress.
- In early January, the court granted Seattle's motion and dismissed the Railroad's counterclaims for damages against the City.

Seattle v. Ballard Terminal Railroad

- Current Status:
 - In late February 2020, parties file cross appeals to the Court of Appeals.
 - 18-24+ months for the Court of Appeals to hear/resolve cross-appeals.
 - The Court of Appeals will ultimately uphold the Superior court's ruling prohibiting Seattle from ordering the Railroad to remove and relocate its tracks to accommodate the Missing Link because the Superior Court's Order is very thoughtful and well-reasoned.

Coalition v. Seattle

EIS and Appearance of Fairness Challenge

- This case involves the Coalition's challenge to the adequacy of SDOT's EIS for the Missing Link, which the Coalition originally filed in 2017 and which remains unresolved four years later.
- Took SDOT five years to write and issue the EIS (2012-2017).

Coalition v. Seattle

EIS and Appearance of Fairness Challenge

- **2017:** EIS challenge-- City's Deputy Hearing Examiner holds 6-day trial.
- **Early-2018:** Deputy Examiner issues decision ruling 100% for SDOT *one-day* before City hires him as its new Hearing Examiner.
- **2018:** Coalition appeals Examiner's decision to Superior Court and alleges Appearance of Fairness Doctrine challenge.
- **2018-early 2019:** Court dismisses Appearance of Fairness challenge but rules for Coalition, saying EIS is inadequate-- failed to fully disclose the Missing Link's economic impacts on Ballard businesses.
- **Early 2019:** SDOT tries to "fix" EIS by hastily issuing an "Addendum."
- **Early 2019:** Coalition challenges the Addendum and wins—Court rules SDOT cannot use an addendum to fix the EIS and has to reissue the EIS.
- **Late 2019:** Coalition and SDOT appeal to the Appellate Court.
- **January 2021:** Court of Appeals finally holds hearing on the cross-appeals.
- **2021 ????:** Court of Appeals will issue decision

Coalition v. Seattle

EIS and Appearance of Fairness Challenge

- At argument in early January 2021, the Court of Appeals focused heavily on two issues:
 - SDOT's claim the Missing Link was ***exempt from SEPA review because in 2015 the City changed its laws***; and
 - The Appearance of Fairness violation.

Coalition v. Seattle

EIS and Appearance of Fairness Challenge

- Following oral argument and further briefing, SDOT withdrew its SEPA exemption argument claiming its “just discovered” the Department of Ecology issued a permit for the Missing Link making it no longer exempt.
- This issue is no longer before the Court of Appeals.

Coalition v. Seattle

EIS and Appearance of Fairness Challenge

- The Appellate Court will likely decide the case on the Appearance of Fairness issue—ruling Seattle violated it.
- If it does, it would order we re-do the 2017 trial and would not reach the EIS issues as moot since they are the fruit of a tainted trial.
- Seattle will be back at “square one:”
 - It will have to redesign the Missing Link (again); and
 - We will have to redo the EIS challenge/trial.
- Both would take years.

Shoreline Permit for the Missing Link

- SDOT applies for and obtains a shoreline permit from SDCI for *just the portions of the Missing Link within the Shoreline Environment—not the entire 1.4 miles—claiming the trail is a “linear transportation project.*
- In 2020, the State Shorelines Hearings Board invalidated SDOT’s shoreline permit because it is not a LTP.
- SDOT has it to reapply for a permit for the entire 1.4-mile route, not just the portions within the City’s Shoreline environment.

Shoreline Permit

- SDOT has applied for the new permit, it is unclear whether it can proceed based on the now-rejected design and based on SEPA which is under appeal.
- Even if SDCI issues a new shoreline permit, the Coalition will again appeal it to the SHB because a recreational trail is inconsistent with the priority water-dependent uses.

THE MISSING LINK

Ending where we began: The Coalition continues obtaining successful results in the courts and the outlook remains favorable.

SDOT and the Missing Link will be tied up in the Court's for years and years to come.

Solution: Move the Missing Link to Leary.

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