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December 22, 2017

TO: Hearing Examiner Galt
FROM: King County DNRP, Applicant for **SSDP2016-00415**
SUBJECT: KING COUNTY CLOSING BRIEF

I. INTRODUCTION

The Examiner is charged with making the final decision for the City of Sammamish on King County's application for a Shoreline Substantial Development Permit, SSDP 2016-00415. As the Examiner is aware, an SSDP should be approved where it is consistent with the Shoreline Management Act (SMA) and the City's Shoreline Master Plan (SMP). *See* SMC 25.08.020 and RCW 90.58.140. The trail is an outright allowed use in the shoreline, and a preferred water-oriented and water-enjoyment use that is given priority in the SMA and SMP. Ex. 1, at 6. The thousands of pages in the record and four days of hearing on this permit reflect that the trail expansion, as proposed, by King County is consistent with the SMA and SMP.

The County recognizes that some standard conditions will be necessary to ensure continued regulatory compliance as the project moves forward. However, the City's proposed conditions recommend design changes and place limitations on the project that far exceed the City's jurisdiction to impose. Conditions must be reasonable, capable of being implemented and cannot thwart the purposes of the trail expansion and its role as an essential public facility.

Several of the recommended conditions are unlawful, overly burdensome, vague, and grossly unreasonable. The County's November 3, 2017 Memo in Response to the City's Staff Report suggests changes to some recommended conditions and asks that the Examiner set aside several other conditions in their entirety. After presentation of testimony and evidence by the City, the concerns and suggestions set forth in that memo are largely unchanged. The conditions should not be used as tools to alter the applicant's project requirements or change the design of an already compliant project. King County asks that any conditions be crafted narrowly and only as necessary to ensure the project complies with the SMA and the City's SMP.

II. THE PROJECT AS PROPOSED BY THE APPLICANT MEETS THE SSDP APPROVAL STANDARDS

The Examiner makes the City's final decision for an SSDP. To be approved, the SSDP proposal must be consistent with Ch. 90.58 RCW, Ch. 173-27 WAC and the City of Sammamish's SMP. The policy of the SMA, as set forth in RCW 90.58.020, is to "provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses." RCW 90.58.020; SMC 25.08.020(2). Under the City's code, the trail is a Public Recreational Use that is permitted outright. SMC 25.07.010. As the City acknowledges, "the Project is considered a preferred water-oriented and water-enjoyment use that is given priority in both the SMA and the SMP." Ex. 1, at 6. The trail serves the purpose of increasing public access to and enjoyment of the shoreline. "A use that is consistent with specific shoreline use regulations in the SMP is presumed to be consistent with the shoreline policies in the SMA." *The Log Foundation et al, v City of Seattle*, SHB No 15-003c (Aug 17, 2015), citing *Valero Logistics Operation, LP, v. City of Tacoma*, SHB No. 06-001 (July 19, 2006).

The applicant has proposed expansion of the trail to a 12-foot wide paved trail along this 3.5 mile stretch of the corridor, consistent with the other sections of the ELST. The applicant has

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deemed this the minimum width necessary to ensure safe use for multiple user groups on the trail and to meet the anticipated future demand along this regional transportation corridor. There is nothing in the SMA, SMP or other relevant City regulations that would preclude this trail design. Under SMC 21A.50.135, if impacts cannot be avoided because of project requirements, an applicant may turn to minimizing and mitigating impacts. Having a paved 12-foot wide trail is a “project requirement” for King County. Using the 12-foot paved width as the baseline for its project requirements, the County has applied the required mitigation sequencing, avoiding, minimizing and mitigating impacts. Ex. 50; Testimony Nov. 7, at 61 (mitigation sequencing compliant with WAC 173-26-201(2)(e)). Narrowing the trail would not meet the project requirement and preclude the siting of an essential public facility.

As a preferred shoreline use, this project is recognized as an attribute in terms of its shoreline value. Instead of acknowledging the community value of the trail project and “fostering” this imminently reasonable and appropriate use (RCW 90.58.020), the City has gone to great lengths to impose their regulations in a way that fundamentally thwarts the County’s purpose and goals in expanding the trail.¹ The City’s efforts to impose its own design priorities on an allowed, preferred use on the applicant’s own property is unreasonable and unlawful.

The project, as proposed, meets the code’s clearing and grading limit provisions, the mitigation sequencing requirements, the tree code requirements and all relevant shoreline regulations. The use and footprint proposed by the applicant should be approved through the SSDP without additional design or alignment modifications.

¹ For example, in a typical project application, a jurisdiction would request and receive an expert opinion from an applicant on various issues (here, safety and trail width) and use that information as the baseline for the project review. In this case, the City hired its own expert to rebut the applicant’s fully credible analysis in order to interject its own design priorities. This exemplifies the disparate treatment of King County as the applicant for this project.

III. OBJECTED TO CONDITIONS RECOMMENDED BY STAFF SHOULD NOT BE IMPOSED

The City has recommended 16 conditions to be placed on the SSDP. Ex. 1 at 17. The County maintains that several of these are unreasonable as they are not necessary to ensure compliance with the SMA and SMP. Still others, while intending to ensure SMA and SMP compliance are vague, over burdensome, unreasonable and/or unlawful that they should not be adopted by the Examiner. Reiterating and supplementing the issues raised in King County's November 3 Response Memo, this section highlights the applicant's concerns with specific recommended conditions.

Recommended Condition 2 requires an updated survey at submittal of construction permit applications. The requirements under WAC 173-27-180(9)(f) have been met for providing a survey for a complete SSDP permit application. The County will need additional permits from the City as it moves forward, and, if the Code requires a survey or other detailed plan for those permits then the County will provide what is required for those applications. Ex. 1 at 17 (Recommended Condition 1 requiring compliance with SMC Titles 14 and 16). However, if there is no code requirement for a survey to obtain the "construction permits," then there is no basis for the City to require a new survey as an SSDP condition.

The applicant understands the city's interest in ensuring the accuracy of site plans. And, part of the purpose of SSDP public comment is to bring out omissions in the plans and facilitate updating. As Ms. Bailey testified, the survey is updated as a matter of course through the engineering site review and incorporation of public comments as the plans are moved from 60% to 90%. Testimony Nov. 6, at 21-25; Nov. 20 at 10. This process captures the items such as private drainage structures, utilities and updated property ownership records that would not have been on record or apparent at the time of the original survey. But, as a practical matter, creating

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an entirely new survey is overly burdensome where the vast majority of the existing survey remains accurate. The County will support a condition that requires updating the survey through field verification which would be submitted with the 90% plans for review with relevant clearing and grading permits.

Recommended Condition 3 requires identification of all permitted structures within the Project area that have non-revocable permits, and requires trail redesign to mitigate for conflicts with these structures. This condition is not within the scope of the Examiner's jurisdiction to impose because it not necessary to ensure compliance with SMA and SMP. There is no basis for requiring trail redesign to accommodate private structures within the project area. Any permitted structures within the project area known to the County are already identified in the survey. If there is a conflict with the project as designed and the structure, this conflict would be resolved in another forum with the County and the permittee. This condition should not be adopted.

Recommended Condition 4 is unreasonable, vague and overly burdensome in requiring trail redesign to avoid all development waterward of the current interim trail alignment. First, the SMC clearly has a provision to allow impacts within the shoreline setback. SMC 25.06.020(11). Thus, the proposed alignment and impacts are code compliant. Second, the proposed trail design, as detailed by Ms. Bailey in her testimony, has been conscientiously aligned to account for multiple factors including retaining access to driveways, topography, and retaining significant trees and wetlands. Testimony Nov. 7, at 77-80. Compliance with this overbroad condition would compromise other needs and attributes that the City is overlooking. Third, the recommended condition includes elimination of temporary impacts which, quite simply, is impossible. As Mr. Overton testified, the trail is a narrow corridor and the need to bring in equipment to construct retaining walls, to avoid permanent impacts, necessitates the proposed

clearing and grading limits. Testimony Nov. 3, at 90. Requiring avoidance of all waterward impacts thwarts the ability of the County to undertake the work necessary to construct its facility.

Recommended Condition 5 would require a Vegetation Enhancement Area (VEA), the parameters of which appear overbroad and vague. Some areas that would fall within the VEA scope are already in use, contain structures, and in some cases are used by the community for shoreline access. For example, the County's current design doesn't impact community beaches or beach access. Overton Testimony, Nov. 20 at 43. The VEA would require vegetation in these areas. The County cannot be required to revegetate areas that are in current use. *See SHO et al v. City of Sammamish*, SHB No. 15-012c, at 20. Moreover, this requirement would be duplicative of existing mitigation proposed for the project. The County asks that the Examiner not adopt this condition and similarly modify Recommended Condition 6.

Recommended Condition 7 is overly burdensome in requiring an updated arborist report and tree preservation plan at submittal of future permit application considering these reports were undertaken in July of 2017 and no evidence has been presented that they are inaccurate. Ex. 61; Ex. 62. This condition should not be adopted by the Examiner.

Recommended Condition 8 seeks to impose the tree protection barrier and grading limit reductions in SMC 21A.37.270(5). This requirement ignores that the tree protection standards were already met by the applicant's arborist report and tree preservation plan. Ex. 61; Ex. 62. The City claims that if King County wanted the City to apply SMC 21A.37.270(7), the provision for use of alternative tree protection techniques, it needed to make a formal request. This procedural hurdle has never been required by the City in past segments and was applied in both the Segment A and North Sammamish. The County has complied with the City's request for a tree preservation plan which avoids the need for application of SMC 21A.37.270(5), maximizes

significant tree retention, and establishes compliance with the WSDOT clearing and grubbing standards. *See* Testimony Nov. 6 at 48-50; Ex. 70.2 at 58. Moreover, by requiring application of the tree preservation restrictions in SMC 21A.37.270(5), as Ms. Bailey testified, over 408 additional significant trees would need to be removed. Testimony Nov. 6, at 54. This condition should not be adopted by the Examiner.

Recommended Condition 9 is not necessary to ensure compliance with the SMA or SMP, and is vague, overbroad and unreasonable. As discussed *infra*, this proposed condition makes a general requirement for the applicant to narrow the trail at undefined locations, in undefined quantities to serve the ostensible purpose of reducing impacts to undefined critical areas and significant trees. At no time has the City justified its position that the trail should be narrowed by identifying specific resources that are valuable enough to warrant creating adverse safety impacts and other design obstacles that would result from reducing trail width. The City's inability to identify specific opportunities for impact avoidance exemplifies the thorough job King County has already done in avoiding, minimizing and mitigating impacts wherever possible. This condition should not be adopted by the Examiner.

Recommended Condition 12 is unnecessary as the submitted plans establish that wildlife passage is adequate using existing driveways. Overton Testimony, Nov. 3 at 97. Removal of this proposed condition is necessary to avoid ambiguity moving forward.

Recommended Condition 14's broad authorization for an on-call consultant to review annual mitigation monitoring reports is unreasonable, overly burdensome and gives the City broad discretion to impose unnecessary costs on the applicant. *Id.* at 98. Annual mitigation monitoring should be done by the City without the need for an on-call consultant. If outside

resources are necessary, any condition should narrowly define the costs that would be incurred by the applicant.

IV. RESPONSES TO SPECIFIC ISSUES RAISED DURING THE HEARING

The Examiner raised several issues that were of particular concern in his review. The County has addressed each of these below.

A) Can the Examiner approve an SSDP where specific design and engineering detail has not been finalized?

The answer is an unambiguous, yes. “Generally SSDP applications do not provide final engineering detail in their applications. This level of specificity is generally reserved for building permit applications rather than environmental applications such as shoreline permits.” *SHO et al v. City of Sammamish*, SHB No. 15-012c at 12 (2016), *citing Iddings v. Mason Co.*, SHB No. 08-031, FF 10 (June 22, 2009)(stating that “[f]inal engineering detail is not provided on the proposal drawing because that level of specificity is typically provided in connection with building permit applications rather than environmental permits, such as a shoreline permit.”). The City acknowledges in its Staff Report that “an applicant is not required to demonstrate full compliance with technical standards such as Building Codes, Public Works Standards, or Stormwater Requirements, but rather must conceptually show that compliance can be achieved through provision of preliminary plans.” Ex. 1, at 6. “Review of Construction Permits associated with the Project will entail review for compatibility with the existing built environment, such as legally and irrevocably permitted structures.” *Id.*

Moreover, the facts of this case support approval of the SSDP where testimony reflects that the use and footprint of the proposal will not be significantly altered in final design. Bailey Testimony Nov. 20, at 32. The remaining changes that will be incorporated into the plans are “fine tuning” for access, driveway grading, wall design. Bailey Testimony Nov. 6, at 84-85. Ms.

Bailey also testified that utilities and drainage that are added to the site plans as the design moves to 90% should not change the basic footprint of the trail. *Id.* at 77; Nov. 20 at 32.

During the hearing, the Examiner referenced *Friends of Seaview v. Pacific County*, SHB No. 05-0517, in which the Shoreline Hearings Board concluded the SSDP application was incomplete because there was “virtually no information” on “critical aspects” of the application. The instant application comes nowhere near the factual scenario reviewed in that case. In *Friends of Seaview*, the application lacked basic information such as “a site development plan with elevation drawings to scale” or “dimensions and locations of proposed structures.” The application materials submitted by King County are voluminous and detailed, far exceeding the basic standard that they “contain sufficient detail to enable meaningful review for consistency with chapter 90.58 RCW and the implementing regulations.” *Friends of Seaview*, at 6. The 60% plans submitted with the application show elevations, dimensions and locations of the proposed trail. As was highlighted by the Examiner’s questioning of Ms. Bailey, the plans are so detailed that they have different designations to show rest areas with a bench or those with a picnic table, and even show where a picnic table is shortened for handicapped access. Testimony, Nov. 6, at 86. There can be no reasonable conclusion that the plans submitted for this application are insufficient for SSDP review.

While it may be tempting to craft conditions that assure home owners along the trail will not be impacted by the trail footprint, these types of conditions would be unlawful for two reasons. First, as the Examiner and the City have acknowledged in its Staff Report and in testimony during the hearing that property rights issues are not within the jurisdiction of the Examiner or properly reviewed as part of the SSDP process. Ex. 1. To the extent there is a

dispute over who owns property underlying encumbrances along the trail and whether they may lawfully be retained, these disputes are properly decided in another forum.²

Second, the design and engineering offered for SSDP review was not arbitrary or haphazard. As was made exceedingly clear during the hearing, the trail design has been painstakingly developed to address a multitude of competing and limiting factors, including safety, access, topography, critical areas, and significant trees. Design changes imposed as a condition of SSDP approval would not only exceed the scope of lawful SSDP review, they would run the risk of creating other unintended and adverse impacts.

The applicant understands the Examiner's concerns with the scope of what is being approved and how the approval will impact adjacent property owners. But the SSDP approval is not authorization to "go build." Testimony Nov. 7, at 39. The Examiner should not overlook the additional permits that will be required of the applicant. The SSDP process determines the consistency of the proposed project with the SMA and SMP, approves the use and footprint, leaving the construction details to approval through later required permits. Ex. 1 at 6. Conditions 1, 10, 11, 13, 14 and 15, the substance of which are unchallenged by the applicant, require permitting and compliance with specific code requirements that address safety, critical areas, and drainage.³ See e.g. SMC 16.15.070. This will be the appropriate time for the City to review detailed plans and final engineering for compatibility with the existing built environment and the City's regulations. Ex. 1.

² In *Hornish v. King County*, No. 2:15-cv-00284-MJP, Judge Pechman entered a Judgment Quieting Title to King County holding that King County holds a portion of the corridor in fee and the remainder is till entitled "to the exclusive use and possession of the area on, above and below the surface of the Corridor for railroad purposes and incidental uses permitted by Washington law, including use as a recreational trail."

³ The Examiner raised specific concerns with edge hazards and safety along the trail. Fencing and safety requirements will be part of the design for future permits that focus on construction detail and will be code compliant. See Overton Testimony, Nov. 20 at 44.

B) Are conditions requiring undefined design changes appropriate where they do not identify a specific location, type or scope of action by the applicant?

Put simply, no. As discussed above, SSDP conditions must be reasonable and capable of being implemented. Many of the conditions recommended by the City do not contain enough specificity to be implemented by the applicant. The County has previously found itself in this situation with the City, attempting to satisfy unclear requests which ultimately give the City discretion to deem the County's efforts inadequate and make additional requests for design changes or new analysis. Recommended Conditions 9 and 4 highlight these fatal flaws.

Recommended Condition 9 seeks to require narrowing of the trail "in locations" to reduce and minimize critical area impacts. The City's condition does not point to any specific locations along the trail where wetland impacts are significant enough that they should override the applicant's proposal to maintain a 12-foot wide paved path to ensure trail user safety. Ms. Berg acknowledged that although she could identify areas where wetland impacts could be reduced by narrowing the trail, she did not have expertise or an opinion on the balancing of minimizing wetland impacts with the safety risks to trail users if the trail were narrowed. Testimony, Nov. 7, at 98. She testified that in gauging whether adequate avoidance and minimization had been done, "that decision is reliant on more than just critical area considerations such as safety and, you know, access, geometry, things that are beyond my expertise. Those components all have to be reviewed where they conflict to see what has the highest priority." *Id.*

The County's highest priority is safety for trail users. The City code includes mitigation as an option for this exact scenario: where complete avoidance and minimization of impacts is not an option because it would reduce trail safety or create other significant design obstacles. The applicant's substantial efforts to avoid and minimize impacts are more than adequate to meet the

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SSDP approval criteria while balancing the priority of creating a safe, user-friendly trail and considering additional design constraints such as topography and access points. Unlike impacts to trees and wetlands, if the trail is constructed with a narrower paved width, the impacts to safety and user-experience cannot be easily mitigated without widening the trail. This is highlighted by Mr. Brown's testimony that the County is now seeking to widen some 10-foot paved trails that have proven inadequate for realized user volumes. Testimony Nov. 3, at 59.

Recommended Condition 4 seeks to preclude any and all impacts waterward of the current interim trail alignment along numerous stretches of the trail. This condition is not only overly vague, it is overbroad and unreasonable. There is no apparent link in the plans or in testimony provided by the City as to what specific resources would be retained by avoiding temporary and permanent impacts in these areas. On the contrary, Ms. Bailey testified extensively about the various factors that determined the proposed alignment in each of these areas, including retaining driveway access, wetland avoidance, slope, topography, and avoiding permanent impacts. Testimony Nov. 7 at 78; Nov. 20 at 22. In fact, she testified that shifting the alignment as contemplated by the City could increase the number of significant trees that would need to be removed. Testimony Nov. 6 at 32-36; Ex. 7 at 967.

Moreover, many of the temporary impacts proposed within the shoreline setback are specifically for the purpose of avoiding any permanent impacts and preserving access to adjacent homeowners. Testimony Nov. 6 at 32-36. Ms. Bailey's testimony established the intentional and detailed efforts to minimize all impacts that the project will create and establish compliance of the proposed project with the City's regulations, the SMP and the SMA. *See* Ex. 10, Ex. 54, Ex. 55. And any impacts, whether permanent or temporary, are adequately mitigated. Ex. 55.

The City's lack of detail in the recommended conditions as to what specific resource impacts should be avoided evidences the absence of any specific resource that warrants retention at the expense of trail safety. The City seemed to argue that the survey needed to be updated before these specific areas could be identified. But, this confuses critical area impacts with private encroachments and utilities. There was no evidence or testimony that critical areas or significant trees were inaccurate in the survey. On the contrary, the City's wetland expert confirmed the wetland delineation done by the applicant. Ex. 43. The City's efforts to narrow the trail do not appear to be for the benefit of a particular high-value critical area, but for the benefit of adjacent property owners who may have private property disputes with the County which are not within the Examiner's jurisdiction here. *See* Ozbolt Testimony Nov. 7, at 36-37; Ex. 1 at 17 (Recommended Condition 3).

A very significant concern for the County is that the conditions be clear and limited in scope to what is required under the SSDP framework. The permitting process with the City of Sammamish has been arduous and both jurisdictions will benefit from minimizing the potential for disagreement as to how the conditions should be implemented. Adopting conditions that give the City discretion to require additional studies and make subjective decisions at a later time will provide fodder for further disagreement and potential litigation. The applicant seeks to avoid any such opportunity.

C) Is the Applicant entitled to retain a 12-foot wide paved path throughout the Segment B corridor?

Yes. There is no legal basis for requiring trail narrowing. The proposed 12-foot width is consistent with the County's planning documents and standards, the needs identified by the applicant, AASHTO guidelines adopted as standards by the City, and with the FEIS for the

ELST. Because the proposed width can meet the goals and standards in each of these areas while also meeting SMA and SMP requirements, no narrowing should be required.

1. The ELST is identified as an important regional recreational and transportation facility in regional planning documents including King County's Comprehensive Plan

King County's Regional Trail System ("RTS") is a critical component of the County's recreation and nonmotorized transportation system. King County's Comprehensive Plan ("2016 Plan") refers to and incorporates the RTS into two chapters: Chapter 7 at 7-5 to 7-7 (Parks, Open Space and Cultural Resources) and Chapter 8 at 8-20, 8-22, T-231, T-233 and T-235 (Transportation). The 2016 Plan describes the RTS as "the foundation for King County and other agencies shared use path networks that reach broadly throughout the county linking cities, other counties and the state, and offering extensive recreation opportunities." 2016 Plan, at 7-2. The RTS is "an essential part of King County's multimodal transportation system, providing interconnected nonmotorized travel options" and it "functions as a spine of the County's nonmotorized system." *Id.* Included as part of the 2016 Plan is the Regional Trails Needs Report. 2016 Plan, Appx C.2. This report lists the ELST, and South Segment B in particular, as a high priority project.

In addition to the 2016 Plan, the ELST is recognized as a critically important recreation and transportation facility in other King County planning documents. Ex. 70.9, at 949. In 1992, the King County Council adopted the King County Regional Trails Plan which describes regional trails as "major arterials" of the trail system. Ex. 73, at 3. A goal of the RTS is to provide "a continuous network of *high volume*, safe, pleasurable north-south and east-west trails." *Id.* (emphasis added). The RTS describes the ELST as a 12-foot paved wide trail with 2-foot wide soft shoulders, sufficiently wide to accommodate a high volume of users. *Id.* at 23.

Over a decade later, in 2004 King County published the Regional Trail Inventory and Implementation Guidelines for the RTS (2004 Guidelines). Ex. 74. This document also identified the ELST as a 12-foot paved high volume trail facility. *Id.* at 42. The 2004 Guidelines discussed user conflicts occurring on existing ten-foot wide trails and recommended a standard of 12-foot paved width for trails with 2000 or more users on a peak day. *Id.* at 24.

The idea that the hearing was the first time the City considered the ELST a high volume transportation facility is belied by the extensive information in the record referencing the regional trail network and the role of ELST as a high volume nonmotorized transportation corridor. Ms. Ozbolt testified that she was unaware of the light rail connection planned for Redmond and that this could create “mass influx” in this vicinity. Testimony Nov. 7, at 101. Not only does this directly support the County’s rationale for retaining a 12-foot wide trail, the City provided no response when asked how review of the project would have changed, if at all, with the information about the light rail connection. In the County’s view, the criteria for SSDP review would have been unchanged and the light rail connection provides another solid indicator that maximizing trail-width is the appropriate design to ensure long-term, safe use of the trail.

In short, the County has been planning to build the ELST as a high volume facility for decades. As discussed below, a paved width of ten feet is not sufficiently to accommodate the applicant’s intended use and conditions requiring narrowing would result in a trail facility that cannot safely accommodate a high volume of users. The City’s Recommended Conditions that require narrowing, if adopted by the Examiner, would have the effect of precluding the County from constructing this essential public facility.

2. 10-foot wide trails have proven to be insufficient, leading King County to adopt 12-foot wide baseline in its Regional Trail Standards

As Mr. Kevin Brown testified, several trails within the RTS have a paved width of ten feet. These trails are often overcrowded at peak times and the user experience is degraded. Testimony Nov. 3, at 59. Many trail users have reported conflicts and have urged the County to widen these paved trails. *Id.* In response to the reported user conflict, growth in the region and the increasing popularity of the RTS, King County Parks recently adopted standards requiring newly constructed regional trails to have a paved width of 12-feet. *Id.*; Ex. 70.5. The County intends to replace some of the existing 10-foot wide trails with 12-foot trails as soon as funding becomes available. The trail design for Segment B meets the County's 12-foot wide standard and is consistent with the width of the already constructed segments of the ELST. If conditions requiring narrowing are adopted, the ELST will not comply with the County's own standard.

3. The FEIS adopted a 12-foot paved width and concluded that 10-feet was too narrow.

In 2010, the East Lake Sammamish Master Plan Trail and its Final Environmental Impact Study (FEIS), undertaken jointly by King County, the Washington State Department of Transportation and the Federal Highway Administration, determined that improving the regional trail along the existing railroad right-of-way corridor with a 12-foot paved width was the preferred alternative. Exs. 1; 9; 10; Ex. 70.9 at 0971. The FEIS rejected a narrower paved width, deeming this "not a reasonable alternative because of...the failure to safely accommodate the variety of users because it fails to meet accepted design guidelines for a multi-use trail." Ex. 70.9, at 0964. The directive under the FEIS is unambiguous. The trail's purpose is to accommodate "(1) the regional need for alternative transportation corridors between major business centers, (2) the need for non-motorized recreational trails to support a growing population, and (3) the need to make connections among other existing and planned trails." Ex. 9 at 76. The trail design accommodates the "continuing increase in population" and provides

options for commuters “between business centers.” *Id.* With these goals in mind, the FEIS reflects the regional decision to construct a 12-foot wide paved trail.

The nature of this trail is a regional recreation and transportation facility. Thwarting the purposes of the trail expansion by narrowing the trail will preclude the siting of an essential public facility. *See Cascade Bicycle Club and King County v. City of Lake Forest Park*, CPSGMHB Case No. 07-30010c (Final Decision and Order) at 21-22; *Central Puget Sound Regional Transit Authority v. City of Tukwila*, CPSGMHB Case No. 99-3-0003 (Final Decision and Order); 2016 King County Comprehensive Plan, Nonmotorized Transportation Program, T-231-233; Essential Public Facilities, F-229. The City cannot impose unreasonable conditions that render an EPF impracticable. *Cascade v. City of Lake Forest Park*, at 21-22 (City cannot “thwart improvement of the Trail.”).

In similar cases, Boards have discussed the limited role of a local jurisdiction in conditioning an EPF.

Before a regional decision is made, a city may attempt to influence [a choice] by means such as providing information to the regional body, commenting on the alternatives under consideration, or expressing its local preference in its comprehensive plan. However, after the regional decision is made, the city then has a duty to accommodate the essential public facility, and the exercise of its land use powers may only impose reasonable conditions and mitigations that will not effectively preclude the [EPF] by rendering it impracticable.

Cascade v. City of Lake Forest Park, at 14, citing *Sound Transit v. Tukwila (Tukwila)*, CPSGMHB No. 99-3-0003, Final Decision and Order (Sept. 15, 1999), at 6. In *Cascade*, the Board raised concerns with the City’s ability to “unilaterally decide to realign, reduce width, and impose screening/fencing requirements.” *Cascade v. City of Lake Forest Park*, at 17. Here, the City had the opportunity in the FEIS process to provide comments, which it did. The City did not raise any concerns in its comments about the proposed paved width of the ELST.

The FEIS directive and relevant EPF case law provide clarity that the trail width decision has already been made and that the City may not impose narrowing requirements without running afoul of the preclusions on thwarting the purpose and construction of an EPF.

4. A 12-foot wide paved trail is consistent with AASHTO and the City Code

The American Association of State Highway and Transportation Officials Guide for the Development of Bicycle Facilities, 2012 (AASHTO) is a nonprofit organization comprised of members from state departments of transportation and other experts on design. Schultheiss Testimony, Nov. 6 at 99. AASHTO provides design guidance for jurisdictions developing bicycle facilities, including shared use paths like the ELST.⁴ *Id.* SMC 21A.30.210(3) provides that the width of “the cleared area, trail corridor, surface and shoulder should be designed consistent with AASHTO standards for multi-use paved trails.”⁵

Bill Schultheiss, one of the preeminent experts on the design of bicycle facilities in the United States, and a contributing author of AASHTO, testified that the design submitted by the County for an eighteen foot wide trail, including a twelve foot paved trail with two feet of soft shoulder on each side and a one foot clear zone, is consistent with AASHTO. Ex. 109. Mr. Schultheiss further testified that a 10-foot wide paved trail would not be adequate for this facility under AASHTO. Under AASHTO, the appropriate width for shared use paths depends on the “context, volume and mix of users.” Ex. 70.1, 4-7; Testimony Nov. 6 at 117-18. Paths should be wider than 10-feet in areas “that are anticipated to serve a high percentage of pedestrians (30 percent or more of the total pathway volume) and high user volumes (more than 300 total users

⁴ AASHTO defines a shared use path as a bikeway that is physically separated from motorized vehicle traffic by an open space or barrier and either within the highway right-of-way or within an independent right-of-way. Ex. 70.1, 2.

⁵ Much of the City’s analysis and arguments regarding width focused on the fact that AASHTO are guidelines not standards. Ex. 1 at 8; Ex.66 at 5675. AASHTO does provide guidelines which jurisdictions then may adopt as standards which is precisely what the City of Sammamish has done in its code.

in peak hour).” *Id.* When either factor is present – high volume or high percentage of pedestrians - shared use paths should be wider than 10 feet paved. Both of these factors are present here. Ex. 70.4; Ex. 59.

First, it is undisputed that the estimated percentage of pedestrians using the ELST ranges from 36 to 50 percent of total users, well above the 30 percent threshold that triggers the need for a wider paved trail. This alone supports approval of a 12-foot wide design.

On the issue of high volume use, the County presented overwhelming evidence that the ELST will meet or exceed 300 total users in peak hour. This includes 1) FEIS volume estimates; 2) the direct demand analysis; 3) user data from completed sections of the ELST; 4) an analysis of the 30th highest hour or “k” factor.

The FEIS contains volumes estimates for the ELST. Ex. 70.9 at 1250. The daily trail user volumes were estimated at 2500 on a peak weekday to 4000 on a peak weekend day. Ex. 70.9 at 1250. This estimate equates to over 300 users per peak hour on a weekend day based on user counts from the nearby Sammamish River Trail. The FEIS states that “[t]rail usage on the East Lake Sammamish Trail is expected to be similar to usage on the Burke-Gilman/ Sammamish River Trail since both trails are major continuous regional trails.” Ex. 70.9 at 1250.

During the administrative hearing process for Segment A, City representatives questioned the basis for and the validity of the volume estimates in the FEIS. In response, the County sought additional information to provide the City with more data on estimated volumes. Mr. Schultheiss and his firm, the Toole Design Group, conducted an analysis to estimate volume on the ELST using the best available practices: a direct demand model applying the procedures outlined in the National Cooperative Highway Research Program (NCHRP) Report 770. The demand analysis was first conducted in May of 2016 and was updated in June of 2017. Ex. 70.4; Ex. 60. The

results showed estimated peak hour volumes ranging from 386 to 445 in 2020 to 603 in 2025, significantly higher than 300 users per peak hour. Ex. 70.4 at 74; Ex. 59 at 5591.

The City then hired its own expert to challenge the County's demand analysis. Mr. Alexander argued that the number of days experiencing peak volumes would be low. This was rebutted by evidence showing total user volumes on nearby trails, including the Redmond section of the ELST, which had over fifty hours of user volumes over 300. Ex. 113. Mr. Alexander also argued that the County's demand analysis did not conform to the guidelines set forth in the NCHRP Report 770. Specifically, he asserted that the County's model omitted certain variables that are often used, like population. In response, Mr. Schultheiss explained that the process for testing and evaluating variables was outlined in the May 19, 2015 report and he explained why population was not included in the predictive models. November 30, 2017 Memorandum. The City's expert has not cast doubt on the accuracy of the County's demand analysis. On the contrary, it highlights the conservative variables that Mr. Schultheiss included in his analysis and leads to the reasonable presumption that population growth would be an additional factor that would create increased trail user volumes.

In addition to the volume estimates from the FEIS and the direct demand analysis, the County also presented data of user volumes from the completed Redmond section of the ELST for a one year period between September 17, 2016 and September 16, 2017. Ex. 113. The Redmond section of the ELST "experienced over 50 hours with more than 300 path users per hour despite limited trail connectivity with pedestrians consistently exceeding 50% of the trail traffic." Ex. 113. Mr. Schultheiss pointed out that these actual volumes "do not represent the total volumes that can be anticipated once the trail extension is complete due to the added connectivity that this extension will allow, making it a viable transportation corridor." Ex. 113 at

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2. This current user data is highly relevant to estimating future volume and provides substantial evidence that the future volume of Segment B will frequently exceed 300 users per hour.

Finally, the County's analysis of the "k factor" or 30th highest hour provides additional evidence that the ELST will experience high user volumes. While this analysis is relevant to future volume estimates, it is important to note that AASHTO defines high volumes as "more than 300 total users in peak hour" not the 30th highest hour. Nevertheless, the "k factor" analysis is additional evidence of user volumes for the Examiner's consideration. As Mr. Schultheiss explained, "it is common engineering practice to take the 30th highest hour of roadway traffic as a reasonable hour to represent typical conditions to base the design of a roadway." Ex. 113 at 5. As explained above, actual trip counter data from the Redmond section of the ELST showed total hourly user volumes well above 300 users. Ex. 113 at 3, Figure 3. In order to estimate the "k factor" for the ELST, Mr. Shultheiss examined detailed volume findings from other similar trails in the region, and determined the average ratio of peak hour to 30th highest hour of bicycle traffic. Mr. Schultheiss then applied this ratio to the peak hour forecasts for the ELST to approximate potential 30th highest hour volumes. Ex. 113. The results of this conservative analysis were estimated user volumes from 300 to 340 users, meeting and exceeding the AASHTO 300 user threshold. Ex. 113 at 6.

The County presented substantial evidence that the ELST will be a "high volume" facility with pedestrians comprising over 30 percent of users and justifying a path wider than 10-feet under AASHTO. Additionally, AASHTO points to other factors warranting a wider trail, including trail use by maintenance vehicles and the presence of users such as inline skaters and children. Ex. 70.1 at 4. These factors also weigh in favor of a 12-foot paved width for the ELST.

In addition to estimating volume, Mr. Schultheiss was asked to exercise his engineering judgment and provide an opinion on the appropriate design width for the ELST. Ex. 60; Testimony Nov. 7 at 141. Mr. Schultheiss's opinion is that the paved width of the ELST should be a minimum of 12-feet and that narrowing the trail to 10-feet paved would have a negative impact on safety for trail users. *Id.* In addition to the above analysis, his opinion was based on the quality, location and regional nature of the ELST, the population and workforce density near the trail, and the planned extension of light rail to Redmond at the end point of the ELST. Ex. 60; Ex. 113 at 6. Moreover, the fact that cities along the ELST are improving overall trail connectivity and the ELST is connected to Marymoor regional park with over a million visitors per year are significant factors that suggest higher volumes. Ex. 59; Ex. 113.

Mr. Schultheiss also explained the relationship between volume and trail safety. Pointing to figures 5-1 and 5-2 in AASHTO, Mr. Schultheiss explained the concept of operating space, and that if a trail is only ten feet wide, it is difficult for a bicycle to pass another bicycle at the same time that a pedestrian is on the trail. Testimony Nov. 7 at 109. This is because 10-feet does not provide enough space for three lanes of travel and results in a higher rate of accidents and injuries on trails. *Id.*, Ex. 70.1 at 5. However, a 12-foot wide trail provides enough passing space as it allows three lanes of travel. He also testified to the importance of consistency, a concept referred to as continuity of design. Ex. 60 at 5599. "Continuity of design, including trail width, is critical for trail safety and should be consistent throughout the corridor, providing a predictable experience for trail users." *Id.* Essentially, trail users develop expectations for a consistent trail design and changing the width of trail facility is the fifth and final segment of the ELST. Since all of the other segments of the ELST are 12-feet paved, Segment B should be consistent with this width to ensure continuity of design. Testimony Nov. 3, at 149.

The County has presented substantial evidence that a 12-foot wide paved trail is necessary to ensure trail safety and user experience consistent with AASHTO, Ex. 60 at 5599. “Anything less than 12 feet will compromise safety and the ability to meet projected demand and would not be a defensible use of ‘good engineering judgment.’” *Id.*

5. No physical constraints or significant resource impacts have been identified that would justify trail narrowing.

There are no physical constraints that justify deviation from the AASHTO and City standard. The City’s expert opined that a 12-foot paved trail is consistent with AASHTO and that narrowing the trail to 10-feet is also consistent if there are “physical constraints” that require it. Ex. 66 at 5670. He goes on to state that he is “supportive of striving for a paved width of 12 feet where constraints do not exist or can be easily mitigated” but states that “lesser paved width are reasonable where constraints exist that are challenging to mitigate.” Ex. 66 at 5670. The City’s expert made general references to investments made by adjacent property owners and impacts to environmental resources but he failed to identify specific environmental resources that would benefit from a two-foot trail narrowing.⁶ Mr. Alexander also neglected to support his assumption that low-grade wetlands are the type of resource that would be considered a “physical constraint” warranting trail narrowing. Prior ELST segments have had wetland impacts but the City has never identified them as a physical constraint that would warrant trail narrowing. Moreover, there was no discussion by the City’s experts of what value would be gained in avoiding wetland impacts and what the costs would be to safety, significant trees, or other design constraints if the trail were narrowed. In the absence of a valid, fact based analysis for narrowing the trail, deviation from the 12-foot AASHTO standard is not justified in this case.

⁶ Mr. Alexander also refers to the impact of trail width on private property. Ex. 66 at 5675. It is unclear what he is referring to as there is no evidence in the record that narrowing the trail by two feet will preserve any private property. Moreover, since the trail facility is being built entirely on County property, the disposition of any private property within the clearing and grading limits is a matter between the County and the private property owners.

Ms. Berg testified that realigning or narrowing the trail could avoid impacts to wetlands that abut the trail. But she acknowledged that there are several factors that need to be “weighed and considered” in assessing whether the benefit of narrowing would be worth the cost to safety and other design challenges. Testimony Nov. 6 at 203. It is also undisputed that the relevant wetlands are low quality. No showing was made that narrowing would result in an environmental benefit that would exceed the benefit offered by the County’s mitigation plan. Moreover, the fact that the Code provides for mitigation of wetland impacts suggests that wetlands are not the kind “physical constraints” that AASHTO was referring to that would justify narrowing the trail.

Because the City’s experts did not identify any physical constraints or significant environmental benefits that would be achieved by deviating from the City and AASHTO standard, the FEIS, or the County Regional Trail standard, there is no basis for trail narrowing.

D) What effect, if any, does the *Potala Village* case have on the vesting of this SSDP application?

The Examiner expressed interest in discussion of whether *Potala Village* impacted the vesting rights in this case. *Potala Village v. City of Kirkland*, 183 Wn. App. 191 (2014).

Although *Potala Village* held that state vesting statutes do not apply to SSDP permits, the City of Sammamish Code has an independent provision for vesting of all land use permit applications, including SSDPs. SMC 20.20.070(1). Moreover, the City and County have agreed that the SSDP vested at the time of complete application, subject to compliance with the updated stormwater design manual. The County’s position is that the SSDP is vested and, as such, the regulations applicable to the SSDP are to those in effect at the time a complete application was filed and as modified by further agreement with the City.

IV. CONCLUSION

The County recognizes the wide-range of impacts that will result from the proposed project and has gone to great lengths, as evidenced by the record, to comprehensively balance and avoid, minimize or mitigate these impacts. With trail safety as a priority, the County's proposed project requires a 12-foot paved trail. Proposed trail alignment then took into consideration avoidance of critical area impacts, significant tree retention, points of access for property owners, topography, existing driveways and the built environment. There is copious evidence in the record establishing the County's thorough analysis of these factors and rationale for the proposed alignment.

The City's recommended conditions apply code requirements to this allowed, preferred use in an unreasonable and overly burdensome manner, inconsistent with the SMA and SMP's intent to foster public use and enjoyment of the shoreline. In light of the absence of any fact-based analysis by the City showing particular resources that warrant trail narrowing, there is no justifiable basis for creating conditions that narrow the trail. Moreover, any such condition would conflict with AASHTO, the City's Code, the King County Regional Trail standards, the FEIS and EPF case law. Nor is there a basis to apply the tree preservation requirements in SMC 21A.37.270(5) where the County has provided a tree retention plan that would save more than 400 significant trees and is code compliant under SMC 21A.37.270(7). Nor is there a basis for precluding all impacts in the shoreline setback where the proposed impacts are the minimum necessary under SMC 25.06.020(5). And conditions that conflate private property disputes with shoreline impacts are not within the scope of SSDP review.

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King County asks that the Examiner approve the SSDP with the footprint proposed by the applicant. We further ask that any conditions be limited to what is necessary to ensure SMA and SMP compliance as the project moves forward.

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