

HEARING EXAMINER DECISION

RE: SSDP2016-00414 (ELST Inglewood Segment and Parking Lot)

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complete as of December 13, 2016. (Exhibit 25) The Department issued a Notice of Application on December 28, 2016. (Exhibits 27 - 29)

The East Lake Sammamish Trail (“ELST”) is located between the eastern shore of Lake Sammamish and the East Lake Sammamish Parkway NE/SE (“Parkway”), roughly paralleling both. The Inglewood Segment extends southerly from Kokomo Drive for 426.12 feet ³ to a point just north of the Parkway NE/NE Inglewood Hill Road intersection. (Exhibit 7:B30)

The Sammamish Hearing Examiner (“Examiner”) viewed the subject property on October 29, 2017.

The Examiner was scheduled to convene an open record hearing on October 30, 2017. The Department gave notice of the hearing as required by the Sammamish Municipal Code (“SMC”). (Exhibit 2) The Examiner appeared at the scheduled time and announced on the record that the hearing would have to be postponed for medical reasons to January 24, 2018. The hearing was convened and concluded on January 24, 2018.

Subsection 20.05.100(1) SMC requires that decisions on SSDPs be issued within 120 net review days after the application is found to be complete. The open record hearing was held after the 120th net review day. The SMC provides two potential remedies for an untimely decision: A time extension mutually agreed upon by the City and the applicant [SMC 20.05.100(2)] or written notice from the Department explaining why the deadline was not met [SMC 20.05.100(4)]. The Department provided formal notice of its inability to meet the 120-day requirement. (Exhibits 34 - 36)

The following exhibits were entered into the hearing record during the hearing:

- Exhibits 1 - 58: As enumerated in Exhibit 1, the Departmental Staff Report ⁴
- Exhibit 59: King County response to public comments
- Exhibit 60: King County notice of availability of response to public comments
- Exhibit 61: King County’s Submittal of Exhibits, filed on or about October 16, 2017, consisting of Exhibits 61.1 – 61.6 as enumerated in the cover document accompanying the submittal
- Exhibit 62: Joint Stipulation, presented by the County and approved by the Examiner on January 23, 2018 (incorporating by reference the testimony of Kevin Brown and certain exhibits associated therewith as contained in the hearing record for ELST South Sammamish Segment 2B, SSDP2016-00415 ⁵)

³ The Department Staff Report (Exhibit 1) states that the Inglewood Segment is “an approximate 525-foot long segment of the” ELST. (Exhibit 1:B1 *et al.*) The County and the City now agree that to be an error caused by the Department’s reliance on incorrect length information found on the submitted plan set at Exhibit 7:B30 (in the “Project & Site Information” section) and in the County’s JARPA application at Exhibit 8:B63 (Response to Item 6a).

⁴ Exhibit 42 is incorrectly identified in Exhibit 1 as “Sammamish Plateau Water Notes – March 27, 2017”. Exhibit 42 is apparently (based upon the first full sentence in the document) a set of review notes from the City’s Parks Department dated March 27, 2017.

⁵ Citation format for the incorporated exhibits will be “Segment B Exhibit X.”

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- Exhibit 63: Joint Stipulation, presented by the City and approved by the Examiner on January 23, 2018 (incorporating by reference the testimony of William Schultheiss and Charles Alexander and certain exhibits associated therewith as contained in the hearing record for ELST South Sammamish Segment 2B, SSDP2016-00415 ⁶)
- Exhibit 64: Memorandum, King County to Hearing Examiner, January 24, 2018
- Exhibit 65: Inglewood Hill Road Parking Lot Parcel Map Exhibit
- Exhibit 66: 60% Revised Review Submittal Plan Sheets AL1 & AL2, annotated to highlight depicted utilities (Annotated version of Exhibit 7:B39 & 40)
- Exhibit 67: Copy of Exhibit 7:B39 & 40 with improved contrast
- Exhibit 68: Hearing Presentation, David Pyle, January 24, 2018 ⁷
- Exhibit 69: Letter, Friends of the East Lake Sammamish Trail, signed by Janet “Jan” Bird, January 24, 2018
- Exhibit 70: Comment letter, Mark Cross, January 24, 2018
- Exhibit 71: Statement with four attachments, Mary Wictor
- Exhibit 72: Annotated photograph of a bicycle helmet, Mary Wictor

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner’s knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

A. Overview

- A.1. The record in this proceeding is voluminous, slightly over 2,000 pages: 22 pages of application documents; 14 pages of SEPA documents, 29 plan sheets, 664 pages of critical areas studies, 541 pages of ownership documents, 28 pages of public notice materials, 88 pages of drainage reports, 57 pages of geotechnical reports, over 60 pages of published manuals and excerpts, and over 153 pages of public comments with City and King County responses thereto. Record citations in this Decision will be limited to only the most salient documents.
- A.2. The ELST, ⁸ an overall 11-mile trail linking Issaquah and Redmond, lies between and generally parallels the east shore of Lake Sammamish and the Parkway. ⁹ The ELST has been divided into segments for permitting and construction purposes. From south to north the segments are: Issaquah

⁶ Citation format for the incorporated exhibits will be “Segment B Exhibit X.”

⁷ Mr. Pyle asked that unnumbered Slide 11 (entitled “Recommended Conditions” and having two main bullet points) be struck. The Examiner granted his request. For slide number reference purposes, the slide will remain as a page in the exhibit, but will not be considered a part of the record.

⁸ This Decision employs the following naming convention: Interim Trail means the trail as it exists currently; Master Plan Trail means the trail as proposed to be widened under the current permit; and ELST means the trail in general without distinction between the Interim or the Master Plan version.

⁹ This decision employs the following directional convention: The Lake Sammamish shoreline, the ELST, and the Parkway are all presumed to lie generally in a north-south alignment.

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Segment, South Sammamish Segment 2A, South Sammamish Segment 2B, Inglewood Segment, North Sammamish Segment, and Redmond Segment. The Inglewood Segment, at 426.12 feet, is by far the shortest of the ELST's segments. The Inglewood Segment extends southerly from Kokomo Drive for 426.12 feet to a point just north of the Parkway NE/NE Inglewood Hill Road intersection. (Exhibit 7:B30) Terrain in the area of the Inglewood Segment slopes down towards the lake shoreline from high ground east of the Parkway. The ELST runs cross-slope with high ground to its east and lower ground to its west. (Exhibits 7; 12:B98 and 99) The land over which the ELST crosses is zoned R-4. (Exhibit 1:B4, § II.3)

- A.3. King County proposes to widen and pave the Inglewood Segment of the ELST to 12 feet of travel surface plus a two-foot shoulder and one-foot clear zone on each side, resulting in an 18-foot cross-section. (Exhibit 7; see B37, Typical Section B, for ELST cross-section within this segment)

The County proposes to construct a 30-stall "trailhead" parking lot between the trail and the Parkway. Because of the substantial grade change between the Parkway and the ELST (about 35 feet), the parking lot will be built about 10 feet lower than the Parkway with an ADA-compliant ramp leading from it to the trail surface. The trail, the ramp, and the parking lot will be retained by structural walls having a maximum height of about 30 feet. (Exhibits 7; 12:B98 and 99)

- A.4. Lake Sammamish is designated as a Shoreline of Statewide Significance ("SSS") under the SMA. [SMC 25.02.020(84); 25.05.030] The outer extent of the SMA's jurisdictional area is generally 200 feet from the Lake Sammamish ordinary high water mark ("OHWM").¹⁰ [SMC 25.02.020(77)]
- A.5. The project will extend from ELST Station 468+00 (the north end of Segment B) to ELST Station 472+26.12 (the south end of the North Sammamish Segment), a distance of 426.12 feet. All of the trail itself and most of the parking lot lies within 200 feet of the OHWM of Lake Sammamish. Only the far northeast corner of the parking lot lies beyond the 200 foot line. None of the project work will occur within 50 feet of the lake's OHWM. (Exhibit 7:B39)
- A.6. Each jurisdiction containing shorelines regulated under the SMA is required to adopt a Shoreline Master Program ("SMP"). [RCW 90.58.080] The City amended its SMP by Ordinance No. O2011-308 which became effective on August 31, 2011, after approval by the Washington State Department of Ecology ("Ecology") as required by RCW 90.58.090. The City further amended its SMP by Ordinance No. O2016-410 (Exhibit 19) which became effective after Ecology approval on March 1, 2017. (Exhibit 1:B5, §II.6, ¶ 2)
- A.7. The SMP includes the following restriction as to its applicability: "These regulations shall only apply within the shoreline jurisdiction, and shall not apply to portions of lots extending further landward than the landward extent of shoreline jurisdiction, as specified by Chapter 25.05 SMC." [SMC

¹⁰ The jurisdictional area may be greater where associated wetlands are involved.

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25.06.005] Therefore, the SMP applies to only that portion of the project lying within 200 feet of the lake's OHWM.¹¹

- A.8. The SMA jurisdictional area through which the Inglewood Segment passes is designated Lake Sammamish Shoreline Residential by the SMP. (Exhibit 1:B4, § II.4)
- A.9. An SSDP is required because the fair market value of the proposed improvements exceeds the SSDP threshold. (Exhibit 1: B5, §II.6) An SSDP may be approved “only when the development proposed is consistent with the policies and procedures of Chapter 90.58 RCW, the provisions of Chapter 173-27 WAC, and [the City's SMP].” [SMC 25.08.020(2)] The policies of Chapter 90.58 RCW are incorporated into the SMP at SMC 25.05.030. The SMP incorporates certain sections of the SMC by reference:

SMC Title 13 (Surface Water Management, adopted by Ord. 2011-304 on May 16, 2011), SMC 21.10.120 (Historic resources – Review process, adopted by Ord. 2008-240 on Dec. 16, 2008) and sections of the City's critical areas ordinance as described within SMC 25.01.070 (adopted by Ord. 2005-193 on December 20, 2005, and revised by Ord. 2009-264 on October 6, 2009, Ord. 2009-274 on December 1, 2009, and Ord. O2013-350 on July 9, 2013).

- A.10. The ELST is located within the former Burlington Northern-Santa Fe (“BNSF”) railroad right-of-way between Issaquah and Redmond. King County acquired the “rail-banked” BNSF right-of-way in 1998 for development into a trail. The right-of-way is generally between 100 – 200 feet wide (some sections are narrower) and was acquired by the railroad through a variety of means dating back to the late 1800s. (Exhibits 1:B5, § II.8; 8:B70, § 9j; 24; and Segment B Brown testimony)

The ELST right-of-way through the Inglewood Segment varies between 75 and 100 feet wide. The trail itself lies wholly within that right-of-way. The parking lot will be constructed on five non-rail-banked parcels, all of which King County owns in fee simple. Kokomo Drive exists as a private road within a 50-foot wide easement across the most northerly of those five parcels. (Exhibits 24; 65; and testimony)

Kokomo Drive provides access to the homes of seven families who live along the lake shore. (Exhibit 33:B1666, 1692, 1768) Kokomo Drive is paved from the Parkway westerly to a short distance beyond the ELST. (Exhibit 33:B1665, 1686, 1727) At that point, Kokomo Drive ends (apparently at least in name) at a “T” intersection. The north leg is a straight-forward turn to the right

¹¹ In 1973 the Washington State Court of Appeals held that a project having an interrelated effect on both uplands (non-shoreline jurisdictional areas) and shorelines could not be segmented for purposes of complying with the SMA. [*Merkel v. Port of Brownsville*, 8 Wn. App. 844 (Div. II), 509 P.2d 390 (1973)] The principle set forth in *Merkel* conflicts with that portion of SMC 25.06.005 quoted above. The Examiner must follow the SMP as contained in the adopted City code. [*Chaussee v. Snohomish County*, 38 Wn. App. 630, 638, 689 P.2d 1084 (1984)] In addition, Ecology is presumably aware of the *Merkel* decision and Ecology approved the City's SMP.

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(north). (Exhibits 18:B276; 33:B1686, 1729) The south leg, however, is divided with two branches heading south which merge in a short distance into one drive. (Exhibits 33:B1659, 1688, 1709, 1727; 65) The easterly branch is the more gently sloped of the two. (Exhibit 33:B1723, *et al.*)

- A.11. Ownership rights to the ELST right-of-way are the subject of current litigation between various property owners along the right-of-way and King County in both state and federal courts. To date, King County has prevailed in each challenge to its ownership of the right-of-way. A federal decision is currently under appeal before the 10th Circuit Court of Appeals. As of the date of issuance of this Decision, the Examiner is not aware of any stays issued by any of the involved courts. King County submitted numerous title documents to the City, based upon which the City Attorney determined that King County had the right to apply for the requested SSDP. (Exhibits 24; 26)
- A.12. The ELST is a link in the County's regional trail system. The ELST extends from Lake Sammamish State Park in Issaquah to Marymoor Park in Redmond, both of which are very popular parks. A Sound Transit light rail station will eventually be located near its northern terminus in Redmond. The ELST provides a connection to the Sammamish River Trail and on to the Burke-Gilman Trail, terminating in Seattle. (Exhibit 51:B1875 and 1876; Segment B 72; and testimony)

The ELST has been an element of the County's Regional Trails Plan since at least 1992. (Exhibit Segment B 73) The 1992 Regional Trails Plan states that the ELST was envisioned to provide a 12-foot paved surface with 2-foot shoulders on each side plus a parallel soft-surface equestrian trail for its entire length. (Exhibit Segment B 73, p. 23) The County's 2004 Regional Trail Inventory and Implementation Guidelines states that the ELST is to provide a 12-foot paved surface with 2-foot shoulders on each side plus a parallel soft-surface equestrian trail "along a[s] much of the route as feasible." (Exhibit Segment B 74, p. 42)

- A.13. King County issued a Final Environmental Impact Statement ("FEIS") pursuant to the State Environmental Policy Act ("SEPA") for an Interim Trail in 2000. (Exhibit 70.9:KCB952) The FEIS was issued under SEPA's phased review procedures: A separate EIS was later prepared for the ELST Master Plan Trail. That FEIS was issued in June, 2010. (Exhibits 1:B7, § II.15; 9)

Because Federal funds are involved in the development of the ELST, a Record of Decision ("ROD"), pursuant to Federal regulatory procedures, was issued on August 4, 2010. In addition to documenting the chosen final ELST alignment, the ROD lists mitigation measures which King County committed to employ in development of the ELST. Those measures address surface runoff and erosion, geologic issues, fisheries, wetlands and vegetation, wildlife, safety, traffic and parking, views, neighborhood concerns, and cultural resources. (Exhibit 9)

- A.14. The Interim Trail is a crushed rock/gravel-surfaced trail whose width varies between 8 and 12 feet. It is constructed on the former railroad roadbed. (Exhibit 13:B158) The centerline of the Interim Trail essentially follows the centerline of the former railroad roadbed. (Exhibits 7; 65) The final segment of the Interim Trail opened for use in April, 2006. (Exhibit 8:B70, § 9j)

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The parcels upon which the parking lot will be built currently contain Kokomo Drive and a City-owned, underground stormwater sand filter vault. The sand filter vault was constructed in 2009 to provide water quality treatment for runoff from Parkway improvements. An unofficial trailhead parking lot has developed above the sand filter vault. (Exhibits 6:B25 and 26; 13:B158; 33:B1727)

- A.15. The preferred alternative in the 2009 FEIS was called the "Corridor Alternative." (Exhibit 9:B76) The Corridor Alternative envisioned a 12-foot wide paved trail with 2-foot gravel shoulders, separated from a 4-foot equestrian/pedestrian soft-surface path by a 3-foot median. The total cross-sectional width of the Corridor Alternative trail, including all clear zones, was 27 feet. [Official notice: Segment B Exhibit 70.9:KCB971 & 972]
- A.16. The Corridor Alternative has been reduced in scope and is now called the Master Plan Trail. The fundamental change is elimination of the separate, soft-surface equestrian/pedestrian trail. The Master Plan Trail cross-section is now 18 feet wide: A 12-foot paved surface plus a 2-foot gravel shoulder and 1-foot clear zone on each side. This is also King County's adopted Regional Trail Standard. (Exhibits 7; 61.5)

The proposed trailhead parking lot will contain 30 stalls, two of which will be designated ADA stalls. A plaza area at the north end of the lot is proposed. A kiosk, covered picnic table area, and public restroom are proposed to be located on the plaza. The site plans show the picnic shelter as a 10' x 16' rectangle and the restroom as a 13' x 16' rectangle. (Exhibit 7:B 39) The County application contains no other information about or depiction of any of those three structures.

The Master Plan Trail and parking lot as depicted in Exhibit 7 is the project for which King County seeks SSDP approval.

- A.17. The Issaquah and Redmond segments of the ELST Master Plan Trail were completed in 2013 and 2011, respectively. Upgrading of the North Sammamish Segment to Master Plan Trail standard was completed in June, 2015. South Sammamish Segment 2A ("Segment A") is currently being upgraded to Master Plan Trail standard. All of those segments were constructed to the adopted Regional Trail Standard (12-foot paved surface with 2-foot shoulder and 1-foot clear zone on each side) with the exception of three short (about 30 feet each) stretches where the trail crossed a bridge: One in the North Sammamish Segment, and two in the Issaquah Segment. (Exhibit 1:B5, § II.8, ¶ 2; Official notice, Segment B testimony)

On January 5, 2018, the Examiner denied without prejudice the County's SSDP application to upgrade Segment B to Master Plan Trail standard (City file number SSDP2016-00415) because the submitted plans were incomplete. The Examiner nevertheless provided a complete analysis of that application in which he concluded that, assuming that a legally complete application would not reveal any fatal issues, the application could be approved subject to conditions. [Official notice]

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- A.18. The parking lot will be one of four ELST “trailheads” within Sammamish, three of which have or will have parking stalls available. The City’s Sammamish Landing project, located in Sammamish near the Redmond city line, provides about 30 parking spaces in a lot on the east side of the Parkway. Sammamish Landing has pedestrian access to the ELST on the west side of the Parkway. A pedestrian access point to the trail from the Parkway is proposed for construction in Segment B to be located near the Parkway/Louis Thompson Road intersection. A parking lot is proposed to be constructed near SE 33rd Street. (Testimony)
- A.19. The Findings of Fact in this Decision are divided into four topical areas: Overview, Proposal, City Recommendations, and Public Participation. The Findings of Fact in this Decision are grouped by topic only for the reader's convenience. Such groupings do not indicate any limitation of applicability to the decision as a whole.
- A.20. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

B. Proposal

- B.1. King County seeks approval of the SSDP based upon Revised 60% Review Submittal project plans (“60% Plans”). (Exhibit 7) The 60% Plans are not final project plans. King County is refining them as it goes along. For example, center-line alignment may shift east or west by a few feet as more detailed engineering and discussions with abutting property owners occur. King County believes the 60% Plans are appropriate for the SSDP process as they allow the County to revise the project plans in response to public comment. (Testimony)

King County refers to its next plan set as the 90% Plans. It intends to produce them after issuance of the requested SSDP and believes that changes that might be depicted therein would not necessitate any formal revisions to the SSDP. (Testimony)

- B.2. The Inglewood Segment does not pass through, over, or near any wetlands or water courses. (Exhibits 7; 18:B276)
- B.3. The Master Plan Trail with a cross-sectional width of 18 feet, will be between 6 and 10 feet wider than the Interim Trail. Since the Inglewood Segment is located on a relatively steep cross-slope, the parking lot and trail will have to be retained by structural walls. (Exhibit 7)

King County has shifted the Master Plan Trail centerline about six (6) feet to the west as it passes through the Inglewood Segment to allow for the required ADA access ramp while retaining parking lot capacity. (Exhibits 7; 65)

- B.4. A total of 10 retaining walls, of varying heights, will be employed to construct the parking lot, its access drive, the ADA trail access ramp, and the trail. Safety fences will be installed where walls exceed 4 feet in height. (Exhibit 7:B37 - 39, 44 - 48)

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- B.5. Eight luminaires will provide light for the parking lot. “LEDPOD” lighting will be installed in the ADA ramp’s handrail to provide light for the ramp. The lighting design minimizes off-site light spill. (Exhibits 7:B52 and 53; 53)
- B.6. Extensive ornamental landscaping is proposed to be installed around the parking lot. (Exhibit 7:B54 – 56)
- B.7. No driveways or pedestrian paths cross the ELST in the Inglewood Segment. (Kokomo Drive is north of the segment.) (Exhibit 7)
- B.8. King County and the City entered into a Settlement Agreement dated April 6, 2017, which holds that Segment B is vested to all codes and regulations in effect on March 15, 2017.¹² (Exhibits 1:B13, § IV.3.d; 47:B1852) As such, full compliance with the 2016 King County Surface Water Design Manual (“KCSWDM”), City of Sammamish 2016 Addendum to the KCSWDM, and 2016 Public Works Standards must be demonstrated prior to issuance of the Construction Permit. Best management practices (“BMPs”) for controlling erosion and sedimentation and preventing pollutants from entering lakes must also be implemented through Construction Permit review and implementation. King County is not required to demonstrate full compliance with technical standards in Chapters 15.05 and 21A.50 SMC during SSDP review, but rather must conceptually show that compliance can be achieved through provision of preliminary plans. Full compliance with technical requirements is evaluated through Construction Permit review. (Exhibit 1:B13, § IV.3.d)
- B.9. King County submitted a preliminary drainage report (referred to as a Technical Information Report or “TIR”) and included preliminary drainage plans in the 60% Plans. (Exhibits 7:B39 and 43; 13)
- B.10. The City has extensive tree retention, protection, and replacement standards that apply to “significant” trees.¹³ [Chapter 21A.37 SMC] Chapter 21A.37 SMC basically requires new developments on property zoned R-4 to preserve at least 35% of the significant trees on the development site outside of critical areas and their buffers. [SMC 21A.37.250(1)(c)] Each significant tree legally removed must be replaced by between one and three new trees, depending on the sub-classification of the tree. [SMC 21A.37.280(1)]

Although Chapter 21A.37 SMC has not been incorporated into the City’s SMP [SMC 25.01.060(5)], developments regulated by the SMP “are subject to applicable provisions of the [SMC]”. [SMC 25.01.060(1)] “Removal of any significant tree in public easements and public rights-of-way” is exempt from the permit requirements of Chapter 21A.37 SMC. [SMC 21A.37.230(1)(b)] In addition, “Significant trees located in public utility easements and public rights-of-way” are exempt from the

¹² The Settlement Agreement was not offered as an exhibit. Thus, the Examiner has had no opportunity to review the scope and specifics of the Settlement Agreement.

¹³ A “significant” tree, by definition, is a healthy, native species having a diameter at breast height of 8” or more if a coniferous tree or of 12” or more if a deciduous tree. [SMC 21A.15.1333]

tree retention requirements of Chapter 21A.37 SMC. [SMC 21A.37.230(2)(b)] The ELST right-of-way is a public right-of-way.

Therefore, neither tree retention nor tree removal requirements of Chapter 21A.37 SMC apply to the Master Plan Trail within the ELST right-of-way but they do apply to the portion of the parking lot outside of the ELST right-of-way.

- B.11. King County retained a Certified Arborist to inventory “significant” trees within the Inglewood Segment. The arborist inventoried only significant trees, as defined in Chapter 21A.37 SMC, that are within about 40 feet of the Interim Trail centerline as shown on the 60% Plans. The inventory identified 14 trees within the clearing and grubbing (“C&G”) limits and 10 trees outside those limits that met the size requirement to be a significant tree. Of the 14 trees within the C&G limits, only one was healthy; of the 10 trees outside the C&G limits, 8 were healthy. Thus, there are 9 significant trees, 8 of which are outside the C&G limits. Based on the current 60% Plans, King County proposes to retain the 8 significant trees outside the C&G limits. Five of the significant trees to be saved lie within the ELST right-of-way; 3 lie outside the ELST right-of-way. Six (6) unhealthy trees outside of the ELST right-of-way will be removed; no healthy (significant) trees outside the ELST right-of-way will be removed. No significant trees have to be removed because the trail is being widened; all significant tree removal is associated with the parking lot. (Exhibits 54; 55)

A plan set depicting significant trees to be saved or removed was prepared and filed. (Exhibit 55)

C. City Staff Recommendations

- C.1. In addition to the numerous technical and plan documents submitted by King County, many of which are referenced throughout this Decision, King County submitted a Project Narrative (Exhibit 6) and a Memorandum responding to the Department’s Recommended Conditions (Exhibit 64).
- C.2. The Department reviewed all of King County’s submittals and all public comments which had been received before its Staff Report was issued on October 4, 2017. The Department concluded that the SSDP application met or could be conditioned to meet applicable SMP criteria for approval. The Department recommends that the SSDP be approved subject to nine conditions (the “Recommended Conditions”). (Exhibit 1:B15 and 16)

King County asks “the Examiner [to] modify, clarify or strike in their entirety Recommended Conditions 2, 3, 5, 6 and 9.” (Exhibit 64, p. 1) King County asserts that it “has gone to great lengths and great expense to fully evaluate environmental impacts and the need to facilitate safe trail use, and has designed a project that is code compliant, maximizes safety, avoids environmental impacts wherever possible and mitigates for unavoidable impacts.” (Exhibit 71, p. 2)

During the hearing the Department presented suggested alternative language for Recommended Conditions 2, 4, 5, 6, and 9, mostly in response to the County’s concerns, and in part in reaction to the Examiner’s Segment B Decision. (Exhibit 68; and testimony)

The remainder of this section will address the challenged conditions.

- C.3. The nine Recommended Conditions parallel nine of the 16 conditions that the Department recommended be imposed on the Segment B SSDP:

SSDP2016-00414 Condition	Is the Same as SSDP2016-00415 Condition
1	1
2	2
3	3
4	6
5	7
6	8
7	13
8	15
9	16

[Official notice]

- C.4. Recommended Condition 2 reads in full as follows:

An updated survey (conducted no later than one year prior to submittal or resubmittal of any construction permit applications) must be provided at submittal of the Construction Permit application(s) to show all dimensions and locations of all existing and proposed structures and improvements including but not limited to buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities, as required by WAC 173-27-180(9)(f).

(Exhibit 1:B15)

- C.5. King County suggests that Recommended Condition 2 be revised to read:

Within one year prior to submittal or resubmittal of any clearing and grading permit applications, King County will field verify the accuracy of the existing survey and, where the need for changes is identified, update the site plan to accurately show dimensions and locations of all existing and proposed structures and improvements including but not limited to buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.

(Exhibit 64, p. 4)

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- C.6. The Department responded by offering the following alternative language for Recommended Condition 2:

Within one year prior to submittal or resubmittal of any clearing and grading permit applications, King County will verify the accuracy of the existing survey and update the site plan to accurately show dimensions and locations of all existing and proposed structures and improvements within or immediately adjacent to the construction limits, including but not limited to buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.

(Exhibit 68, Slide 13; and testimony)

- C.7. King County challenged the comparable condition in the Segment B proceedings. The Examiner indicated in his January 5, 2018, Decision in that case that he would revise the condition to read:

Within one year prior to submittal or resubmittal of any clearing and grading permit applications, King County will verify the accuracy of the existing survey and, where the need for changes is identified, update the site plan to accurately show dimensions and locations of all existing and proposed structures and improvements within or immediately adjacent to the construction limits, including but not limited to buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.

[Official notice, SSDP2016-00415 Hearing Examiner Decision, January 5, 2018, Appendix, § 2]

- C.8. Section 173-27-180 WAC addresses “Application requirements for [SMA] substantial development, conditional use, or variance permit[s].” Section 173-27-180 WAC requires that “A complete application for a substantial development, conditional use, or variance permit shall contain, as a minimum, the [] information” listed in its nine subsections. [Emphasis added] Subsection (9) requires “A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale to depict clearly all required information, photographs and text which shall include” the items listed in subsections (a) – (m). [Emphasis added] Subsection (f) requires “The dimensions and locations of all existing and proposed structures and improvements including but not limited to; buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.” [Emphasis added]
- C.9. King County believes that no legal basis exists to require it to prepare “a new comprehensive survey”. (Exhibit 64, p. 3) King County notes (correctly) that the WAC section cited as authority for preparation of a survey lists one of the elements required for a complete SSDP application, but does not require updating the survey once submitted. (Exhibit 64, p. 3)

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King County testified that it continually updates the survey based on on-going field work: When discrepancies between what is found in the field and what is depicted on the survey are encountered, King County has the affected part of the survey updated. The County believes that current survey shows all buildings and utilities within the Inglewood Segment. The County has no objection to submitting the latest version of the survey when it files its clearing and grading applications, but asserts that all requirements of WAC 173-27-180(9)(f) have been met with its submittals. (Exhibit 64, pp. 3 and 4; and testimony)

C.7. The Department's revision matches the Examiner's version of this condition contained in the Segment B Decision.

C.8. Recommended Condition 3 reads in full as follows:

The County shall identify all structures not owned and controlled by the County, and existing within the Trail parcel that were constructed or installed pursuant to a permit that is not revocable by the County ("Permitted Structures"). For each Permitted Structure, if any, the County shall identify where the Trail will be modified, narrowed, or relocated to mitigate for conflicts with Permitted Structures.

(Exhibit 1:B15)

C.9. King County asks that Recommended Condition 3 be stricken in its entirety. The County argues that it "is beyond the scope of the City's regulatory authority, has no nexus to the shoreline issues being reviewed for this SSDP, is arbitrary and overly burdensome." (Exhibit 64, p. 4)

C.10. The Department urges the Examiner to retain Recommended Condition 3 as proposed. The Department said that it did not intend the condition to apply to "revocable development that was illegally installed without permit or that was installed through County issued Special Use Lease Agreement." (Exhibit 68, Slide 14; and testimony)

C.11. King County challenged the comparable condition in the Segment B proceedings. The Examiner indicated in his January 5, 2018, Decision in that case that he would omit this condition. [Official notice, SSDP2016-00415 Hearing Examiner Decision, January 5, 2018, Conclusion of Law C.4]

C.12. King County testified that all structures within proposed clearing and grading limits have been depicted on the 60% Plans. The County testified that it has never been asked by any other city to indicate which of those structures were the subject of permits issued by King County. Further, the County said that there were no structures in this segment that would conflict with the proposal. (Testimony)

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King County argues that no SMA or SMP regulation supports the proposed condition. It further alleges that any conflicts between the proposal and structures within the property owned and controlled by the County is a private dispute outside the City's jurisdiction. (Exhibit 64, pp. 5 and 6)

Finally, the County argues that the term "Trail Parcel" is overbroad, asserting that the term implies the entire ELST right-of-way. The County uses the term "Project Area" to refer to the area within the outer C&G limits, the area that will be affected, either temporarily or permanently, by the project. (Exhibit 64, pp. 5 and 6)

- C.10. The Department contends that it needs to know which private structures within the ELST right-of-way are the subject of irrevocable permits, such as building permits, issued by King County before incorporation of the City or by other entities in order to determine where the trail ought to be realigned or narrowed to avoid existing private, permitted structures. (Testimony)

See Findings of Fact C.37. *et seq.*, below, for discussion of trail width issues.

- C.11. Recommended Condition 4 reads in full as follows:

In accordance with SMC 25.07.090(6), an updated and final landscaping plan shall be provided at the time of Construction Permit(s) submittal to ensure that native, self-sustaining vegetation is utilized throughout the Project area.

(Exhibit 1:B15)

- C.12. In the Examiner's January 3, 2018, Decision on Segment B, the Examiner revised the corollary condition (Recommended Condition 6 in that case) to read:

In accordance with SMC 25.07.090(6), an updated and final landscaping plan shall be provided at the time of Construction Permit application submittal to ensure that native, self-sustaining vegetation is utilized.

[Official notice, SSDP2016-00415 Hearing Examiner Decision, January 5, 2018, Appendix, § 3]

- C.13. The Department offered the following alternative language for Recommended Condition 4:

In accordance with SMC 25.07.090(6), an updated and final landscaping plan shall be provided at the time of clearing and grading application submittal to ensure that native, self-sustaining vegetation is utilized throughout the Project area.

(Exhibit 68, Slide 15) The Department stated that it uses the term "Construction Permit" to refer to all permits covered by Title 16 SMC: Building permits, mechanical permits, plumbing permits, electrical permits, clearing and grading permits, etc. The Department intended Recommended

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Condition 4 to be triggered only by submission of a clearing and grading permit application: Landscape plans are not related to the other types of permits covered under the umbrella term Construction Permit. Thus, the Department recommends that “clearing and grading” replace “Construction Permit.” (Testimony)

C.14. King County did not comment on Recommended Condition 4.

C.15. Recommended Condition 5 reads in full as follows:

The Project proposes to remove Significant trees; therefore, all tree removal shall be in substantial conformance with the arborist report (**Exhibit 54**) and tree preservation plans (**Exhibit 55**) and the City’s tree regulations, Chapter 21A.37 SMC. An updated arborist report and tree inventory will be required at submittal of the Construction Permit(s) to account for any growth that occurred since approval of this SSDP.

(Exhibit 1:B15; bold in original)

C.16. King County suggests that Recommended Condition 5 be revised to read:

The Project proposes to remove Significant trees; therefore, all significant tree removal shall be in substantial conformance with the arborist report (Exhibit 54) and tree preservation plans (Exhibit 55) and, where applicable, the City’s tree regulations, Chapter 21A.37 SMC. If more than two years elapse between the July 7, 2017, arborist report and submission of a clearing and grading permit application, an updated arborist report and tree inventory will be required at application submittal.

(Exhibit 64, pp. 6 and 7)

C.17. The Department offered the following alternative language for Recommended Condition 5:

The Project proposes to remove Significant trees; therefore, all significant tree removal shall be in substantial conformance with the arborist report (Exhibit 54) and tree preservation plans (Exhibit 55). If more than two years elapse between the July 7, 2017, arborist report and submission of a clearing and grading permit application, an updated arborist report and tree inventory will be required at application submittal.

(Exhibit 64, pp. 6 and 7)

C.18. King County challenged the comparable condition in the Segment B proceedings. In the Examiner’s January 3, 2018, Decision on Segment B, the Examiner revised the corollary condition (Recommended Condition 7 in that case) to read:

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The Project proposes to remove Significant trees; therefore, all significant tree removal shall be in substantial conformance with the arborist report (Exhibit [54]) and tree preservation plans (Exhibit [55]). If more than two years elapse between the July 7, 2017, arborist report and submission of a Construction Permit application, an updated arborist report and tree inventory will be required with that application submittal.

[Official notice, SSDP2016-00415 Hearing Examiner Decision, January 5, 2018, Appendix, § 4]

- C.19. King County objects to Recommended Condition 5 on the grounds that Chapter 21A.37 SMC is inapplicable to the trail portion of the project and that the City lacks authority to require an updated arborist's report. (Exhibit 64, p. 6)

The County asserts that the "all tree removal" clause is overbroad as Chapter 21A.37 SMC regulates only removal/retention of "significant" trees as defined. Further, the County asserts that the Master Plan Trail project is exempt from Chapter 21A.37 SMC's tree removal, retention, and replacement regulations. (Exhibit 64, p. 6)

The County also asserts that the City lacks authority to require a new arborist's report, especially given that the current arborist's report was prepared only about six months ago. (Exhibit 64, p. 6)

- C.20. The Department testified that whether or not a permit is required under Chapter 21A.37 SMC, the tree replacement requirements of that chapter apply. Tree replacement must result in no net loss of ecological value. (Testimony)
- C.21. No provision within Chapter 21A.37 SMC requires preparation of an updated tree retention plan between entitlement approval and construction plan submittal.
- C.22. Recommended Condition 6 reads in full as follows:

The Project proposes to remove trees and vegetation. SMC 21A.30.210(3) and SMC 25.06.020(5) require that clearing and grading be the minimum necessary to accommodate the allowed use/development. The proposed Trail width is the primary driver of the amount (width) of clearing and grading required. The extent of clearing and grading directly impacts the quantity of trees to be removed. The County shall provide an updated clearing and grading plan that includes adequate tree protection in accordance with SMC 21A.37.270(5). The Trail can be narrowed in locations to reduce required clearing and grading limits and preserving [*sic*] additional trees. The County shall provide an updated clearing and grading plan that includes adequate tree protection in accordance with SMC 21A.37.270(5). The Trail shall be narrowed as necessary to fully comply with the tree protection barrier and grading/grubbing limit restrictions in SMC 21A.37.270(5). The clearing and grading plan shall properly

reflect adequate and compliant tree protection barriers and grading/grubbing limits for all trees and vegetation to be retained pursuant to Chapter 21A.37 SMC. No grading or grubbing shall be allowed within the prescriptive tree protection areas as defined by SMC 21A.37.270(5)(b). If adequate and compliant tree protection measures in accordance with SMC 21A.37.270(5) cannot be applied, the tree shall not be counted as retained and must be considered as removed.

(Exhibit 1:B16)

C.23. King County asks “that Recommended Condition 6 be stricken in its entirety because it is inapplicable to SSDP2016-00414.” (Exhibit 64, p. 7)

C.24. The Department offered the following alternative language for Recommended Condition 6:

The County shall provide an updated clearing and grading plan that includes adequate tree protection in accordance with SMC 21A.37.270(5). The clearing and grading plan shall properly reflect adequate and compliant tree protection barriers and grading/grubbing limits for all trees to be retained pursuant to Chapter 21A.37 SMC. If adequate and compliant tree protection measures in accordance with SMC 21A.37.270(5) cannot be applied, alternative and adequate tree protection measures shall be provided in accordance with SMC 21A.37.270(7). If acceptable tree protection measures meeting the requirements of SMC 21A.37.270(5 or 7) (sic) cannot be demonstrated prior to clearing and grading permit issuance, all significant trees that cannot be adequately protected must be considered as removed and replaced at a compliant replacement ratio.

(Exhibit 68, Slide 17, as revised by testimony)

C.25. King County challenged the comparable condition in the Segment B proceedings. The Examiner indicated in his January 5, 2018, Decision in that case that he would omit this condition. [Official notice, SSDP2016-00415 Hearing Examiner Decision, January 5, 2018, Conclusion of Law C.9]

C.26. King County points out that no significant trees will have to be removed for the Inglewood Segment trail *per se*. Thus, it argues that the originally proposed language regarding narrowing of the trail is irrelevant since a narrower trail would not save any significant trees. (Exhibit 64, p. 7)

C.27. King County asserts that if the prescriptive requirement in SMC 21A.37.270(5)(b) is imposed, that clearing be kept at least 5 feet beyond the drip line of significant trees that will be preserved, an additional 4 significant trees would have to be removed. King County’s plans indicate that 41 trees will be planted throughout the Inglewood Segment and parking lot, resulting in a net plus of trees. (Exhibit 61.1:KCB79; and Testimony)

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- C.28. The Department's alternative language allows use of the alternative methods authority of SMC 21A.37.270(7). The Department indicates that plan certainty is necessary as it has had past problems with King County regarding compliance with tree protection plans for other ELST segments within the City. (Exhibit 68, Slide 17; and testimony)
- C.29. The County disputes the existence of problems regarding tree retention in other trail segments. For example, Segment 2A plans indicated that 175 trees were to be saved and 173 were actually able to be saved.
- C.30. Recommended Condition 9 reads in full as follows:

Pursuant to WAC 173-27-090 construction shall be commenced on the proposed Trail and associated activities within two (2) years of the date that the SSDP is issued (or becomes final following any reconsideration or appeal periods, if applicable). Authorization to conduct development activities under the SSDP shall terminate five (5) years after the effective date of this permit. The City may authorize a single extension for a period not to exceed one (1) year based on a showing of good cause to the Director of reasonable factors, if a request for extension has been filed before the expiration date, and notice of the proposed extension is given to parties of record and the City.

(Exhibit 1:B19)

- C.31. King County suggests that Recommended Condition 9 be revised to read:

The time requirements of WAC 173-27-090 shall apply, except that, based on the requirements and circumstances of this project, the authorization to conduct development activities under the SSDP [Substantial Development Permit] shall terminate seven (7) years after the effective date of this permit. All extension and tolling allowances in WAC 173-27-090 will be available to the applicant.

(Exhibit 64, p. 9)

- C.32. The Department offered the following alternative language for Recommended Condition 9:

The time requirements of WAC 173-27-090 shall apply, except that, based on the requirements and circumstances of this project, the authorization to conduct development activities under the SSDP [SSDP2016-00414] shall terminate seven (7) years after the effective date of this permit. All extension and tolling allowances in WAC 173-27-090 will be available to the applicant.

(Exhibit 68, Slide 18)

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- C.33. King County challenged the comparable condition in the Segment B proceedings. In the Examiner's January 3, 2018, Decision on Segment B, the Examiner revised the corollary condition (Recommended Condition 16 in that case) to read:

The time requirements of WAC 173-27-090 shall apply, except that, based on the requirements and circumstances of this project, the authorization to conduct development activities under the SSDP [Substantial Development Permit] shall terminate seven (7) years after the effective date of this permit. All extension and tolling allowances in WAC 173-27-090 will be available to the permittee.

[Official notice, SSDP2016-00415 Hearing Examiner Decision, January 5, 2018, Appendix, § 11]

- C.34. King County requests "modification of Recommended Condition 9" "to clearly incorporate the tolling provisions in WAC 173-27-090(4)" and to extend the normal 5-year duration of an SSDP to "seven (7) years based on the unique nature of this project and the potential for unforeseeable obstacles to prevent completion within the standard five year timeframe." (Exhibit 64, pp. 8 and 9)
- C.35. The Department's alternative language for recommended Condition 9 substantively matches that requested by King County and used by the Examiner in the Segment B Decision.
- C.36. Section 173-27-090 WAC addresses time requirements for permits issued by local government under authority of the SMA:

(1) The time requirements of this section shall apply to all substantial development permits and to any development authorized pursuant to a variance or conditional use permit authorized by this chapter. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and this chapter, local government may adopt different time limits from those set forth in subsections (2) and (3) of this section as a part of action on a substantial development permit.

(2) Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the substantial development permit and to the department.

(3) Authorization to conduct development activities shall terminate five years after the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the

expiration date and notice of the proposed extension is given to parties of record and to the department.

(4) The effective date of a substantial development permit shall be the date of filing as provided in RCW 90.58.140(6). The permit time periods in subsections (2) and (3) of this section do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.

(5) Revisions to permits under WAC 173-27-100 may be authorized after original permit authorization has expired: Provided, That this procedure shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.

(6) Local government shall notify the department in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by RCW 90.58.143 as amended shall require a new permit application.

Subsection (1) allows local governments to adopt different time limits for good cause shown; Subsection (2) requires construction to begin within two years of permit issuance; Subsection (3) requires construction to be completed within five years of permit issuance; Subsection (4) tolls time limits while permits from other agencies are obtained and during appeals; Subsections (5) and (6) do not pertain directly to permit time limits.

C.37. King County and the Department both rely on the American Association of State Highway and Transportation Officials (“AASHTO”) Guide for the Development of Bicycle Facilities (“AASHTO Bike Guide” or simply the “Guide”) for guidance on the proper width of the trail. (Exhibits 1; 52; *et al.*)

C.38. Section 21A.30.210(3) SMC says the following about the width of paved trails:

The width of the cleared area, trail corridor, surface and shoulder should be designed consistent with AASHTO standards for public multi-use paved trails (Guide for the Development of Bicycle Facilities, 1999, as amended, American Association of State Highway and Transportation Officials) Cleared areas shall be the minimum necessary consistent with the standards and requirements in the SMC.

[Emphasis added] The current version of the AASHTO Bike Guide is the Fourth Edition, published in 2012. (Exhibit 61.1:KCB1) Exhibits 61.1, Segment B 108, and Segment B 121 contain excerpts from the Fourth Edition.

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- C.39. The AASHTO Bike Guide “is intended to present sound guidelines that result in facilities that meet the needs of bicyclists and other highway users. Sufficient flexibility is permitted to encourage designs that are sensitive to local context and incorporate the needs of bicyclists, pedestrians, and motorists.” (Segment B Exhibit 121, p. 1-2)
- C.40. The AASHTO Bike Guide recognizes that there are various types of bicycles and riders with varying skill levels. The Guide’s designs assume a “minimum operating width of 4 ft” and a preferred operating width of 5 feet for an upright bicyclist. (Segment B Exhibit 108, p. 3-2) That width allows for the “natural side-to-side movement that varies with speed, wind, and bicyclist proficiency.” (*Ibid.*) Those widths do not include “shy distances from parallel objects”. (*Ibid.*)
- C.41. The ELST is categorized as a “shared use path” by the Guide. (Exhibit 61.1:KCB2)

The appropriate paved width for a shared use path is dependent on the context, volume, and mix of users. The minimum paved width for a two-directional shared use path is 10 ft (3.0 m). Typically, widths range from 10 to 14 ft (3.0 to 4.3 m), with the wider values applicable to areas with high use and/or a wider variety of user groups.

In very rare circumstances, a reduced width of 8 ft (2.4 m) may be used where [bicycle traffic volume will be low, pedestrian use will be only occasional, frequent passing and resting opportunities are available, and maintenance traffic will not damage pavement edges].

In addition, a path width of 8 ft (2.4 m) may be used for a short distance due to a physical constraint such as an environmental feature, bridge abutment, utility structure, fence, and such. Warning signs that indicate the pathway narrows ... should be considered at these locations.

A wider path is needed to provide an acceptable level of service on pathways that are frequently used by both pedestrians and wheeled users. ... Wider pathways, 11 to 14 ft (3.4 to 4.2 m) are recommended in locations 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 in the peak hour).

(Exhibit 61.1:KCB4)

Ideally, a graded shoulder area at least 3 to 5 ft (0.9 to 1.5 m) wide with a maximum cross-slope of 1V:6H ... should be maintained on each side of the pathway. At a minimum, a 2 ft (0.6 m) graded area with a maximum 1V:6H slope should be provided for clearance from lateral obstructions such as bushes, large rocks, bridge piers, abutments, and poles.

(Exhibit 61.1:KCB6)

- C.42. King County and the Department each retained a well respected trail design expert to argue their positions on expected trail user volumes and trail width. The County hired William Schultheiss, P.E. (“Schultheiss;” *curriculum vitae* at Segment B Exhibit 107); the City hired Charles Alexander, P.E. (“Alexander;” *curriculum vitae* at Segment B Exhibit 114).
- C.43. King County collects bicycle user volumes on many of its regional trails. Peak bicycle volumes on weekend days on the northern segment of the ELST in Sammamish are from almost 3,000 to almost 3,500. Corresponding volumes on the Sammamish River and Burke-Gilman Trails are around 3,500. Peak weekday bicycle volumes on the northern segment of the ELST in Sammamish are around 500; corresponding volumes on the Sammamish River and Burke-Gilman Trails are around 2,250. (Exhibit 51, p. 9) Peak hour volumes on the portion of the ELST in Redmond during the past year were about 160 on weekdays and 170 on weekends. (Segment B Exhibit 113, p. 3)

The typical mode split on King County’s regional trails is 50% bicycles and 50% pedestrians. (Segment B Exhibit 113, p. 3) Counting all users, the ELST segment in Redmond had about 900 users in the peak hour during the past year; more than 50 hours during the year saw total user volumes exceeding 300. (*Ibid.*)

- C.44. Schultheiss believes that usage will rise once the entire ELST is improved to Master Plan Trail standard; the addition of a light rail station at the Redmond end of the ELST will further increase usage between Issaquah and Redmond. Schultheiss believes that both peak hour and 30th highest hour (“k factor”) total user volumes will exceed 300 in the not-too-distant future. (Exhibits 51; Segment B 109; Segment B 113; Segment B 130; and Segment B testimony)

Alexander challenges the County’s trail user projections, arguing that they are high. Further, he asserts that since the peak hour user volumes are near the 300 user threshold for a 12-foot minimum width trail cited in the AASHTO Bike Guide, the flexibility inherent in the Guide can safely be employed to allow a narrower trail. (Exhibits Segment B 115; Segment B 124; and Segment B testimony)

- C.45. Schultheiss basically asserts that to be in conformance with the AASHTO Bike Guide the trail should be 12 feet wide because peak hour volumes exceed 300 users and pedestrians comprise more than 30% of the users. He opposes reducing the width to 10 or 8 feet for the same reasons. (Exhibit 60; testimony) Schultheiss concludes that “we should err on the side of caution ... and maintain a minimum trail width of at least 12 ft throughout the trails [*sic*] length.” (Segment B Exhibit 113, p. 6; in general, see Segment B Exhibits 113 and 130)

Alexander asserts that “context-sensitive design” supports using a narrower trail width. He posits that a 10-foot wide trail would have only a “marginal effect” on trail level of service. (Segment B

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Exhibit 115, Slide 27; Segment B Exhibit 124, p. 29) He asserts that given a peak hour user volume of approximately 300, the AASHTO Bike Guide supports “a 12-foot paved trail where physical constraints do not exist” and “a narrower trail where physical constraints do exist.” (Segment B Exhibit 115, Slide 35; Segment B Exhibit 124, p. 37; in general, see Segment B Exhibits 115 – 117, 120, 121, 122, and 124)

D. Public Participation

D.1. The hearing record contains 51 comments from the public (Exhibits 33 (consisting of comments IP-1 – IP-27 and comments TJ1 – TJ20); and 69 - 72) and comments from reviewing agencies/departments (Exhibits 39 – 42; 44; 48; 49). The Department catalogued and summarized the public comments comprising Exhibit 33. (Exhibit 32) The Department also provided a more concise summary of the public comments that had been received before preparation of its Staff Report. (Exhibit 1:B8 - 10, § II.17) King County provided a tabular response to the comments in Exhibit 33. (Exhibit 59)

D.2. About 40% of the Exhibit 33 comments are from the seven families who are served by Kokomo Drive. Their primary concerns are the effect of the proposal on their access. They are especially opposed to elimination of the easterly of the dual southerly access drives. Some are concerned about lighting impacts. (Exhibit 33, Comments IP-1, 2, 7 - 14, 16, 18, 19, and 24 – 26; TJ-1, 5, and 18)

King County testified that while it had originally planned to eliminate the easterly of the split drives because of the acute approach angle that it provides to the trail, it understood the residents’ concerns and was actively seeking a design solution that would allow both southerly access drives to be preserved. (Testimony)

D.3. The remainder of the comments are almost entirely from Sammamish residents, most of whom own property adjacent to or encumbered by the ELST right-of-way. Virtually none of these comments address the codified criteria for approval of an SSDP. Most commenters, even those who oppose the County’s Master Plan Trail proposal, state support for and appreciation of the ELST; many state that they use the Interim Trail and expect to use the Master Plan Trail even more.

LEGAL FRAMEWORK ¹⁴

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

A Shoreline SSDP is a Type 4 procedures. A Type 4 land use application requires an open record hearing before the Examiner. The Examiner makes a final decision on Type IV applications which is subject to the

¹⁴ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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right of reconsideration and appeal to the State Shorelines Hearings Board (“SHB”). [SMC 20.05.020, 20.10.240, 20.10.260, and 25.35.080(1)]

The Examiner’s decision may be to grant or deny the application or appeal, or the examiner may grant the application or appeal with such conditions, modifications, and restrictions as the Examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations, including Chapter 43.21C RCW and the regulations, policies, objectives, and goals of the interim comprehensive plan or neighborhood plans, the development code, the subdivision code, and other official laws, policies and objectives of the City of Sammamish.

[SMC 20.10.070(2)]

Review Criteria

Section 20.10.200 SMC sets forth requirements applicable to all Examiner Decisions:

When the examiner renders a decision . . . , he or she shall make and enter findings of fact and conclusions from the record that support the decision, said findings and conclusions shall set forth and demonstrate the manner in which the decision . . . is consistent with, carries out, and helps implement applicable state laws and regulations and the regulations, policies, objectives, and goals of the interim comprehensive plan, the development code, and other official laws, policies, and objectives of the City of Sammamish, and that the recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

Subsection 25.08.020(2) SMC requires that a proposed Substantial Development be “consistent with the policies and procedures of Chapter 90.58 RCW, the provisions of Chapter 173-27 WAC, and [the City of Sammamish Shoreline Master Program].”

Vested Rights

Sammamish has enacted a vested rights provision.

Applications for Type 1, 2, 3 and 4 land use decisions, except those that seek variance from or exception to land use regulations and substantive and procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all the requirements of this chapter. The department’s issuance of a notice of complete application as provided in this chapter, or the failure of the department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[SMC 20.05.070(1)] Therefore, the majority of this application is vested to the development regulations as they existed on December 13, 2016, the day the application was complete; stormwater management vesting

is controlled by the Settlement Agreement. (See Conclusions of Law A.3 *et seq.*, below, for an explanation of this statement.)

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [SMC 25.08.050(4) and City of Sammamish Hearing Examiner Rule of Procedure 316(a)]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

A. Overview

- A.1. Like the Findings of Fact, the Conclusions of Law in this Decision are grouped by topic only for the reader's convenience. Like the Findings of Fact, such groupings do not indicate any limitation of applicability to the decision as a whole.
- A.2. The first question that must be addressed is: Is the Project application complete? The Department states rather clearly that it is not. (Exhibit 1:B14 and 15, § IV.6) But the Department then goes on in the same paragraph in Exhibit 1 to ignore its own finding and require King County to provide the missing information after issuance of the SSDP. (Exhibit 1:B15, § IV.6)

The Department had a similar position in the Segment B case. In its Closing Argument in the Segment B hearing the Department suggested that the Examiner could deny the application due to its incompleteness. (Segment B Exhibit 131, p. 10, ll. 12 – 15) Counsel for the City opined during the Segment B hearing that the Examiner has the authority to remand the application to require compliance with application completeness requirements. (Statement of counsel in the Segment B hearing on November 7, 2017)

- A.3. The SMP states that the provisions within Chapter 173-27 WAC apply to all development within SMA jurisdiction in the City. [SMC 25.08.070] (WAC provisions would apply even if the SMP didn't say so.) WAC 173-27-180(9)(f) clearly states that an SSDP application must contain a site plan which depicts "all existing and proposed structures and improvements including but not limited to; buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities." [Emphasis added] The 60% Plans depict the kiosk, picnic shelter, and restroom solely as two-dimensional figures, building footprints, if you will. (Exhibit 7)
- A.4. In its closing argument King County explained its position regarding SSDP plans. According to King County the purpose of shoreline review is

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to look at the footprint of a proposed use and the use itself and determine whether or not those will have an impact on the shoreline. And whether those are consistent with no net loss. Once that determination has been made, at that point the more specific information about exactly what the nature of the facility is, is provided at the construction permitting phase,”

[Transcription by the Examiner of a portion of the audio recording of the January 24, 2018, hearing. Transcription errors, if any, are the sole responsibility of the Examiner.] During testimony, the County said that the amount of detail it felt obliged to provide for SSDP review was a judgmental question: If a little building is proposed, only a schematic footprint is required; if a large building is proposed, then it would provide a depiction of the building envelope: Footprint, elevations, etc. (Testimony)

- A.5. The Examiner is mindful of one of the tenets of statutory construction: “A reviewing body may not add words where the legislature has chosen to exclude them.” [*Kitsap County v. Central Puget Sound Growth Management Hearings Board*, 138 Wn. App. 863, ___ P.3rd ___ (Div. II, 2007), Slip opinion at 13 and 14, citations omitted]

King County would have the Examiner add words to WAC 173-27-180(9)(f). The WAC provision does not say that a complete SSDP application must include “building footprints,” nor does it say that a complete application must include “building footprints for small buildings, but building depictions for large buildings.” It simply requires that proposed “buildings” be depicted on the application plans. The Examiner declines to insert the words that would be necessary to support the County’s position.

Further, the County’s position starts one down a very slippery slope: At what point does one have to provide something more than a schematic building footprint? King County suggests that the answer is judgmental. But a judgment like that in the context of determining when an application is complete leaves an applicant in the unenviable position of not ever knowing what will be required for a complete application. And it leaves the municipality in the equally unenviable position of having an extremely imprecise standard by which to determine application completeness. The Examiner does not believe that the WAC intended that such judgment calls to be required at application intake, nor should they be.

The Examiner concludes that when the WAC says “buildings,” it means depictions of proposed buildings: footprints, elevations, and placement. The Examiner fully agrees with the County that structural, technical, and interior details are not required for SSDP application completeness.¹⁵

¹⁵ It is worth noting that the County’s 60% Plans include not only plan and elevation views of the Master Plan Trail and its proposed walls, but also basic structural details for those walls, for the ADA access ramp, for parking lot drainage, for proposed lighting instruments, etc. The County itself has provided more than a mere footprint for most of its proposal. The County may say that those details are necessary because those features have the potential to affect the shoreline. But

Therefore, the 60% Plans do not conform with the content requirement of WAC 173-27-180(9)(f). On the surface of it, the 60% Plans are incomplete and, thus, the SSDP application was incomplete. The application should never have been processed by the Department until the plans had been revised to contain all required information.

- A.6. It would be wrong to defer compliance with a requirement that must be fulfilled to have a complete SSDP application until after issuance of an SSDP. But here, the picture becomes a little muddled. Section 25.08.080 SMC states that all provisions of Chapter 20.05 SMC apply in processing SSDP applications. Subsection 20.05.040(3) SMC authorizes the Department Director to “waive any of the specific submittal requirements listed herein that are determined to be unnecessary for review of an application.” That provision unquestionably gives the Department Director the authority to waive a submittal requirement contained in SMC 20.05.040, but does it also give the Director the authority to waive a WAC SSDP application completeness requirement? Ultimately, that question need not be answered here any more than it needed to be answered in the recent Segment B Decision..

The paragraph in Exhibit 1 that discusses application completeness does not state or even imply that the Director waived compliance with WAC 173-27-180(9)(f). That paragraph could be interpreted either of two ways: The Director must have implicitly waived inclusion of the parking lot accessory structures on the SSDP plans, thus making the application complete as submitted; or the Department chose to simply ignore the application content requirement for the time being, with compliance to be required at a later date, after the quasi-judicial SSDP process had been completed.

The Department’s Recommended Conditions lead to the conclusion that the latter happened. The Department’s approach would have issues that are supposed to be subject to quasi-judicial review being decided administratively after the permit had been issued.

- A.7. The SHB denied an application on appeal because the site plans that the applicant had submitted did not contain all the information required by WAC 173-27-180(9). In its Order Granting Summary Judgment in *Friends of Seaview v. Pacific County et al.*, SHB No. 05-017, October 19, 2005, the SHB held that SSDP applications had to be “sufficiently detailed.” The Board said “Permit applications must contain sufficient detail to enable meaningful review for consistency with chapter 90.58 RCW and the implementing regulations.” The Board expressed concern that the plans in that case lacked “elevation drawings to scale, dimensions and locations of proposed structures and septic facilities” The Board emphasized that the application content requirements of WAC 173-27-180 represented “a minimum”. The Board rejected the notion of supplying a “typical” structure plan: “‘Typical’ does not meet the level of detail required for review of a substantial development permit.” The Board granted summary judgment to the appellants and vacated the SSDP that had been issued by Pacific County.

there again, the County would create a very subjective, slippery slope determination that would have to be made for every SSDP (and Shoreline Conditional Use Permit and Shoreline Variance) application.

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- A.8. The Examiner concludes that the County's application was incomplete because the site development plans (Exhibit 7) lack all information required for a complete application under WAC 173-27-180(9)(f). Specifically, they do not depict with any specificity the kiosk, picnic shelter, and restroom building proposed to be located on the parking lot plaza. An incomplete application cannot be processed. An incomplete application creates no vested rights. An incomplete application cannot be cured by imposing a condition on the requested SSDP.
- A.9. The above is the same conclusion that the Examiner reached in the recent Segment B case. But here, the situation is markedly different from the situation in Segment B. There, utilities throughout the 3.5 mile segment that could have an impact on the project were not depicted on the plans. Here, three accessory uses proposed to be located on the parking lot's plaza are not adequately shown. There, the missing information could affect the ability to construct the project as proposed. Here, the parking lot and its plaza could be built without the three accessory features. The three accessory features are not central to the integrity of the Project.

Therefore, whereas the Examiner felt compelled to deny Segment B without prejudice, a less draconian alternative is readily available here: The three accessory uses (kiosk, picnic shelter, and restroom) will simply be omitted from consideration. The Examiner encourages the County to return with an SSDP application for those items when it has developed plans (footprint, elevations, and placement) that sufficiently describe that which is being proposed.

- A.10. The remainder of this Decision will review the SSDP application excluding from that review the kiosk, picnic shelter, and restroom.
- A.11. The Inglewood Segment of the Project proposes conversion of about 426 feet of the Interim Trail into the Master Plan Trail. The proposed conversion will widen the trail from its present 8 – 12 feet of gravel surface to an 18 foot wide section: 12 feet of paved trail surface with a 2-foot gravel shoulder and 1-foot clear zone on each side. That is the trail portion of the Project.

The Department potentially wants the County to reduce the width of the Master Plan Trail in unspecified areas by an unspecified amount. Justification for a reduced trail width in the Inglewood Segment is not apparent in this record: A reduced width would have no effect on critical areas impacts because there are no wetlands or streams within or immediately adjacent to the segment; there are no buildings within the segment. It seems to this Examiner that such a request, presented in the open-ended fashion as here, is akin to arguing that the Port of Seattle could have further reduced impacts of its Third Runway project if only it had shortened or narrowed the runway. Or that the state could reduce wetland impacts of an interstate highway project if only it would reduce the width of the travel lanes.

Shifting the alignment of a proposal to avoid impacts is one thing. Even reducing the width of a proposal for a short segment to avoid a critically important feature could be reasonable. The Examiner is inclined to agree with the County that the primary reason the Department wants the

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Master Plan Trail width reduced is to reduce the impact of the trail on private improvements located within the ELST right-of-way –most, if not all, of which occur outside of the Inglewood Segment. That is not a sufficient or legally sound reason to try to change a fundamental aspect of the proposal.

A.12. Once application completeness is removed from consideration, evaluation of the Project becomes fairly simple and straight-forward. The Conclusions of Law which follow demonstrate that the proposal as currently configured (excluding the kiosk, picnic shelter, and restroom), properly conditioned, complies with all applicable requirements of the SMP. Therefore, it can be approved with appropriate conditions.

A.13. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

B. SMP Compliance

B.1. Subsection 25.08.020(2) SMC requires that a proposed Substantial Development be “consistent with the policies and procedures of Chapter 90.58 RCW, the provisions of Chapter 173-27 WAC, and [the City of Sammamish Shoreline Master Program].”

B.2. “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, citing *Valero Logistics Operation, LP, v. City of Tacoma*, SHB No. 06-001]

B.3. Since Lake Sammamish is a Shoreline of Statewide Significance, compliance with SMC 25.05.030 is required. The evidence demonstrates compliance with all six provisions in SMC 25.05.030. Completion of this segment of the regional trail will recognize and protect statewide interest over local interest. [SMC 25.05.030(1)] The trail will not actually abut the lake shoreline at any point; there is no evidence that it will adversely affect the ecology of the shoreline area. [SMC 25.05.030(2) and (4)] Completion of the Master Plan Trail will be a long-term benefit to the region by providing another segment of regional trail for use by the area’s many residents. [SMC 25.05.030(3)] While the Master Plan Trail will not provide direct physical access to Lake Sammamish, it’s completion will make it easier for more people to enjoy the lake vistas that are available along its length. [SMC 25.05.030(5)] Improving the ELST by definition will increase recreational opportunities along the Lake Sammamish shoreline corridor. [SMC 25.05.030(6)]

B.4. A trail is considered a “transportation use” under the SMP. [SMC 25.02.010(89)] Transportation uses are permitted uses in the Lake Sammamish Shoreline Residential Environment. [SMC 25.07.010, Table 25.07.010-1] The ELST would also be considered a “Water-Enjoyment Use,” a sub-category of “Water-Oriented Uses.” [SMC 25.02.010(93) and (94)]

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- B.5. All proposals within the SMA jurisdictional area must comply with the requirements of Chapter 25.06 SMC. Sections 25.06.005, .010, and .040 SMC do not contain review compliance requirements applicable to the Project.¹⁶
- B.6. Section 25.06.020 SMC contains environmental protection requirements. Subsection (1) contains the same mitigation sequencing requirements as are contained in SMC 21A.50.135(1). There are no critical areas in this short segment for which impacts must be mitigated; the County has eliminated the parallel equestrian trail and used retaining walls to minimize impact on adjacent wetlands elsewhere in the ELST Corridor. The proposal complies with subsection (1).

Subsections (2), (3), (4), (8), (12), (13), and (16) clearly do not apply to the proposal.

The proposal complies with subsection (5) by minimizing its clearing limits as much as practicable given the need to build walls in a narrow, linear corridor. The walls are specifically intended to minimize the amount of grading and clearing required to improve the Interim Trail to the Master Plan Trail standard.

The The proposal complies with subsection (6) by utilizing a lighting design for the parking lot and ADA access ramp which minimizes off-site light spill.

The proposal complies with subsection (7) because the record contains no evidence that the proposal will have a negative impact on Lake Sammamish or its shoreline.

The proposal complies with subsection (9) because no portion of the Project lies within 50 feet of the Lake Sammamish OHWM.¹⁷

The proposal complies with subsection (10) because the VEA requirement is intended to apply to a project that “affects applicable shoreline setbacks.” [SMC 25.06.020(10)(a)(i)] Since the shoreline setback is not affected, the VEA does not apply.

The proposal complies with subsection (11) because no reduction in the shoreline setback has been requested.

The proposal complies with subsection (14) because King County has not sought any buffer reduction, averaging, or truncation under Chapter 21A.50 SMC.

¹⁶ Section 25.06.005 SMC contains no project review requirements. Section 25.06.010 contains an “inadvertent discovery” requirement, but that is not a review requirement. Section 25.06.040 SMC pertains to restoration projects; the proposal is not a restoration project.

¹⁷ The shoreline setback requirements of subsection (9) would not apply to the proposal in any event because, by definition, setback requirements apply to structures [SMC 25.02.010(76)] and a trail is not a structure by definition [SMC 25.02.010(87)].

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Subsection (15) seems by omission to prohibit trails within critical areas in SMA jurisdictional areas. The Department made no mention of this apparent problem when it concluded that the proposal complied with SMC 25.06.010. (Exhibit 1:B13, §IV.3.b) The term “critical area” is not defined in the SMP, but is defined in Title 21A SMC: Critical areas include wetlands and streams, but not their buffers. [SMC 21A.15.254] Section 25.01.070 SMC unequivocally states that virtually all provisions in Chapter 21A.50 SMC are considered part of the SMP. Subsection 21A.50.300(1) SMC allows alterations to wetlands if certain requirements are met. Thus, trails could impact wetlands under Chapter 21A.50 SMC. Since impacts to critical areas and their buffers within SMA jurisdiction are to be regulated pursuant to Chapter 21A.50 SMC, it would make little sense to conclude that a trail could not impact a wetland. Such impact most certainly must be minimized as much as possible, but to hold that such impact is not allowed would be inconsistent with the rest of the SMC.

This discussion is, of course, essentially moot as there are neither wetlands nor streams within the Project area.

- B.7. To the extent that SMC 25.06.030 applies, the proposal will comply because it provides some visual access to the Lake Sammamish shoreline.
- B.8. The proposal will comply with SMC 25.06.050 because King County has agreed to meet the City’s current stormwater control regulations. The preliminary drainage materials in this record indicate that the proposal is able to meet those regulations.
- B.9. Transportation uses must meet the requirements of SMC 25.07.100(2)–(9). (Subsection (1) contains no requirements.) The proposal will meet subsection (2) because the plans indicate that stormwater will be managed in accordance with the City’s 2016 stormwater regulations, the most current adopted stormwater regulations in the City. (Subsection (3) does not apply to trails.) Even though subsection (4) applies only to “New roads,” not to trails, the proposal would meet its requirements even if they did apply because stormwater will be managed in accordance with the City’s 2016 stormwater regulations, the most current adopted stormwater regulations in the City. The proposal will meet subsection (5) because it does not touch the actual shoreline at any point and shoreline stabilization is not necessary. The proposal will meet subsection (6) because the Parking Lot is an accessory to the ELST, a permitted shoreline use. The proposal will comply with subsection (7) because the Master Plan Trail is to be developed on the existing railroad roadbed using retaining walls to minimize topographic alterations; the trail’s width cannot be further reduced without adversely affecting its safety and utility. The proposal will meet subsection (8) because the Parking Lot is located in a previously disturbed area (above a stormwater filter vault), will provide stormwater control in accordance with the City’s most recent stormwater regulations, will be nestled into the slope between the Parkway and the ELST, and will serve as a trailhead for the ELST. The proposal will meet subsection (9) because it will be located well more than 50 feet from the Lake Sammamish OHWM.

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- B.10. Even though trails are, by definition, transportation uses, the Master Plan Trail could also be considered as a “Public Recreational Use.” (That term is not defined in Chapter 25.05 SMC.) Public Recreational Uses are also permitted uses in the Lake Sammamish Shoreline Residential Environment. [SMC 25.07.010, Table 25.07.010-1]
- B.11. Public recreational uses must meet the requirements of SMC 25.07.090(1) – (6). Subsection (1) requires compliance with underlying zoning; compliance with subsection (1) will be addressed beginning with Conclusion of Law B.13, below. The proposal will comply with subsection (2) because it is, by definition, a water-oriented use and it will provide visual access to the shoreline. The proposal complies with subsection (3) because any “structures” in the Project will be located well outside the shoreline setback. (Subsection (4) applies only to non-water-oriented uses.) The proposal will comply with subsection (5) because it provides a pedestrian connection between the Parkway and the ELST via the Parking Lot and ADA access ramp. The proposal will comply with subsection (6) because proposed landscaping will include native, self-sustaining vegetation.
- B.12. The Department included a brief review of Project compliance with the utilities regulations in SMC 25.07.110. (Exhibit 1:B14, § IV.4.c) Subsections (4), (7), (8), (10), and (11) clearly do not apply to the proposal.

Subsection (1) indicates that such review is required because electrical, water, and sewer service will be needed for the Parking Lot lighting and accessory uses.¹⁸ The proposal complies with subsection (2) because the service utilities will be located within the Kokomo Drive and ELST rights-of-way. The proposal complies with subsection (3) because the service lines will be located within existing rights-of-way and/or within the subject property itself. The proposal complies with subsection (5) because the service facilities will be located outside the shoreline setback. The proposal complies with subsection (6) because the service facilities will be located outside the shoreline setback. The proposal complies with subsection (9) because virtually no clearing will be required to install the service lines.

- B.13. Zoning regulations for trails are contained in SMC 21A.30.200 - .220. Section 21A.30.200 does not apply: It requires that trail easements be provided within certain types of land developments.
- B.14. The proposal will comply with SMC 21A.30.210(1) because it is using an existing railroad roadbed and is clearing only that area minimally needed to construct the proposal. This section also refers to consistency with Chapter 21A.50 SMC, which will be addressed in a subsequent Conclusion of Law.
- B.15. The proposal will comply with SMC 21A.30.210(2). Because the trail will be retained through the entire segment by a wall with safety railing, there is no concern about users trespassing on adjacent properties in this short segment.

¹⁸ Even though the accessory uses themselves cannot be approved with this SSDP, the water, sewer, and electrical services to serve them can be included because adequate plans depicting those services have been presented.

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- B.16. The proposal complies with SMC 21A.30.210(3). Essentially, that subsection provides that trails “should be designed consistent with” the AASHTO Bike Guide and that clearing should be the minimum necessary. First, the requirement regarding the AASHTO Bike Guide is phrased as a “should,” not a “shall.” “Should” does not mandate, it suggests. Therefore, compliance with the Bike Guide is not mandatory. Second, even though the subsection refers to “AASHTO standards,” the Bike Guide contains guidelines, not rigid standards. Adopting guidelines does not convert “shoulds” to “shalls.” The City has adopted guidelines, not standards. The very language of the Bike Guide makes it clear that its contents are not rigid standards.

Having said that, the Master Plan Trail design is consistent with the AASHTO Bike Guide. The Guide recommends a 12-foot paved trail where volumes will exceed 300 users in the peak hour and where pedestrians comprise more than 30% of the users. Both situations apply here. The peak hour use factor is at or very near 300. Alexander is splitting hairs: It makes no sense to build a trail to a standard that will be outdated within a short time after completion. Further, the evidence indicates that user complaints are leading King County to widen existing 10-foot trails to 12-feet. Given the Inglewood Segment’s placement in the regional trail system and its extremely short length, it should be built to a 12-foot standard to begin with – just as were the segments to the north and south, both within the City and in Issaquah and Redmond.

Clearing limits have been reduced to a practical minimum. There simply must be adequate space beside the trail for workers to safely construct the retaining walls that are necessary to reduce the width of the trail’s footprint.

- B.17. Subsection 21A.30.210(4) SMC does not apply because there are neither wetlands nor streams affecting the Inglewood Segment or the Parking Lot.
- B.18. Subsection 21A.30.210(5) does not apply because the ELST is located on an existing corridor.
- B.19. Assuming that the proposal complies with Chapter 21A.50 SMC, it will also comply with SMC 21A.30.210(6).
- B.20. The proposal complies with SMC 21A.30.210(7): Impervious paving is warranted given that the ELST is a high volume, regional trail. Infiltration of stormwater is proposed along the east side of the Inglewood Segment. (Exhibit 7:B39 and 43; 13:B161)
- B.21. Section 21A.30.220 SMC pertains to maintenance of the completed trail; it does not establish a review criterion or development standard.
- B.22. As has been noted, most provisions of Chapter 21A.50 SMC, Environmentally Critical Areas, are considered to be part of the SMP. A small portion of the Parking Lot closest to the Parkway is located within the Erosion Hazard Near Sensitive Water Bodies (“EHNSWB”) overlay; see SMC 21A.50.225. Additionally, the majority of the proposal is located within a mapped Critical Aquifer

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Recharge Area (“CARA”); see SMC 21A.50.280. The EHNSWB and CARA overlays do not preclude development of a trail or parking lot but rather include technical standards that are applied through Construction Permit review. During construction permit review, compliance with both regulations will be verified. Aside from restrictions placed on the Project by the presence of the EHNSWB and CARA overlays, the Project site is not encumbered by other Critical Areas regulated under SMC 21A.50. (Exhibit 1:B7, § II.14)

B.23. The project as it is currently proposed, excluding the kiosk, picnic shelter, and restroom, will comply with the SMP’s requirements.

C. Conditions

C.1. King County did not challenge Recommended Conditions 1, 4, 7, and 8. The “subject to applicable conditions of approval specified by the Hearing Examiner” in Recommended Condition 1 would be unnecessary as the decision will be listing the conditions of approval. Recommended Condition 1 should also reference the illumination plan (Exhibit 53) and the tree retention plan (Exhibit 55) along with Exhibit 7. Those three plans collectively represent the Project for which approval is being granted.

The Examiner understands and agrees with the Department’s justification for changing the term “Construction Permit(s)” in Recommended Condition 4 to “clearing and grading application” as it proposed in Exhibit 68: Of the many permit types included under the heading “Construction Permits,” only the clearing and grading permit relates to landscaping.

Otherwise, those four Recommended Conditions are reasonable, capable of accomplishment, and reasonably related to SMA concerns. They will be imposed as conditions of approval with the changes noted herein.

C.2. Recommended Condition 2. Contrary to King County’s assertion in Exhibit 64, this condition does not require the County to prepare “a new comprehensive survey”. The language says that an “updated survey” not more than one year old is to be provided when Construction Permit plans are submitted. “Updated” does not inherently mean “new comprehensive.”

However, given the County’s objection to the wording, it would seem that the Department’s originally proposed wording is amenable to misinterpretation. King County’s suggested alternative, the Department’s alternative, and the version the Examiner used in Segment B use nearly identical wording. The Examiner will use his Segment B wording.

C.3. Recommended Condition 3. This condition inserts the City into possible property rights disputes between the County and owners of improvements that have been constructed within the County’s ELST right-of-way. The SSDP should not be concerned with those private property disputes.

The Examiner will omit Recommended Condition 3.

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- C.4. Recommended Condition 5. King County's proposed version, the Department's alternative version, and the Examiner's Segment B version of this Recommended Condition are nearly identical. Given that this application, as compared to the Segment B application, includes project development outside the ELST right-of-way, the Examiner concludes that the wording proposed by King County is the best of the three.

The Examiner will use King County's alternative.

- C.5. Recommended Condition 6. The Department's alternative for this Recommended Condition is a significant departure from its original proposal. Most importantly, it has eliminated all references to trail narrowing and has eliminated the demand that prescriptive tree protection requirements be employed.

The question now is whether the condition is needed at all. The situation here is different than in Segment B because part of the Project lies outside the ELST right-of-way and is, thus, fully subject to Chapter 21A.37 SMC.

Recommended Condition 5 already ties the SSDP to the arborist's report (Exhibit 54) which contains only limited discussion of tree protection needs. (Exhibit 61.6 only shows the adverse effect if prescriptive tree protection requirements were to be imposed.)

We know from the evidence that rigid application of the prescriptive tree protection requirements of SMC 21A.37.270(5) would result in loss of more trees, not retention of more trees. And we know from the evidence that even significant narrowing of the trail would not change that reality. The Examiner concludes that this is a situation where the alternative measures of SMC 21A.37.270(7) should be employed.

Therefore, the Examiner will modify the Department's alternative version to fully implement the SMC 21A.37.270(7) alternative.

- C.6. Recommended Condition 9. This Recommended Condition essentially recites part of the WAC 173-27-090 provisions regarding SSDP time limits. However, it doesn't recite that part of WAC 197-27-090(1) which allows the City to impose different time limits for "good cause."

The complexities of the project, the linear nature of the project, the number of permits that must be obtained from other jurisdictions, and the significant controversies which swirl around ELST applications provide more than "good cause" to extend the basic term of the SSDP from five to seven years as requested by the County. Given the controversies, it is also appropriate to specifically reference the time limit tolling provisions of WAC 173-27-090.

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There is only one difference between King County's proposed text and the Department's alternative text. The Examiner will simplify both alternatives by replacing "the SSDP" and the bracketed words which follow with "this Shoreline Substantial Development Permit".

The Examiner will make one further minor word change – one that he made in the corollary condition in his Segment B Decision. The Examiner prefers to not use the word "applicant" in permit conditions to refer to the holder of the permit. "Applicant" is usually construed to refer to the original party seeking approval of the permit. But land use entitlement permits, such as SSDPs, "run with the land." That means that a permit remains valid regardless of who owns the property. Therefore, it is possible (though perhaps not very likely in this case given the nature of the project) that someone other than King County could some day become the developer. To avoid any possible misunderstanding, the Examiner will replace "applicant" with "permittee."

C.7. Section 173-27-190 WAC contains certain content and format requirements for any SSDP R which is issued:

(1) Each permit for a substantial development, conditional use or variance, issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140(5)(a) and (b).

(2) Permits for substantial development, conditional use, or variance may be in any form prescribed and used by local government including a combined permit application form. Such forms will be supplied by local government.

(3) A permit data sheet shall be submitted to the department with each shoreline permit. The permit data sheet form shall be as provided in Appendix A of this regulation.

Subsection (2) allows the Examiner's Decision to serve as the SSDP. Subsection (1) requires that an additional condition be added. The data sheet required by Subsection (3) will be prepared by the Department when it transmits the SSDP and supporting exhibits to the state as required by Chapter 90.58 RCW.

The Examiner will impose the additional condition required by Subsection (1).

C.8. The Project, modified by removal of the kiosk, picnic shelter, and restroom from consideration and conditioned as discussed above, complies with SMP requirements for approval of the requested SSDP.

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DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner **GRANTS** the requested Shoreline Substantial Development Permit to upgrade 426.12 feet of the Interim East Lake Sammamish Trail to Master Plan Trail standard and to construct a 30-stall parking lot adjacent thereto, excluding the kiosk, picnic shelter, and restroom, **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued February 5, 2018.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS¹⁹

Barbara Flemming, unsworn counsel
Frank Overton
David Pyle
Mark Cross

Kim Adams Pratt, unsworn counsel
Jennie Bailey
Janet Bird

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Examiner (in care of the City of Sammamish, ATTN: Lita Hachey, 801 228th Avenue SE, Sammamish, WA 98075) a written request for reconsideration within 10 calendar days following the issuance of this Decision in accordance with the procedures of SMC 20.10.260 and Hearing Examiner Rule of Procedure 504. Any request for reconsideration shall specify the error which forms the basis of the request. See SMC 20.10.260 and Hearing Examiner Rule of Procedure 504 for additional information and requirements regarding reconsideration.

A request for reconsideration is not a prerequisite to judicial review of this Decision. [SMC 20.10.260(3)]

NOTICE of RIGHT of APPEAL

This Decision is final and conclusive subject to the right of review before the State Shorelines Hearings Board in accordance with the procedures of Chapter 90.58 RCW, the Shoreline Management Act of 1971.

¹⁹ The official Parties of Record register is maintained by the City's Hearing Clerk.

See SMC 20.35.080, Chapter 90.58 RCW, and Washington Administrative Code regulations adopted pursuant thereto for further guidance regarding Hearings Board appeal procedures.

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.”

**CONDITIONS OF APPROVAL
ELST INGLEWOOD SEGMENT and PARKING LOT
SSDP2016-00414**

This Shoreline Substantial Development Permit is subject to compliance with all applicable provisions, requirements, and standards of the Sammamish Municipal Code, standards adopted pursuant thereto, and the following **SPECIAL CONDITIONS**:

1. All required Construction Permits must be issued in accordance with SMC Titles 14 and 16 before the County may commence Project construction. Final construction plans approved for Construction Permits showing the proposed Project shall be in substantial conformance with Exhibits 7, 53, and 55 which are the development plans approved with this Permit; PROVIDED, that the kiosk, picnic shelter, and restroom depicted on those plans are not approved with this permit.
2. Within one year prior to submittal or resubmittal of any clearing and grading permit applications, King County will verify the accuracy of the existing survey and, where the need for changes is identified, update the site plan to accurately show dimensions and locations of all existing and proposed structures and improvements within or immediately adjacent to the construction limits, including but not limited to buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.
3. In accordance with SMC 25.07.090(6), an updated and final landscaping plan shall be provided at the time of clearing and grading application submittal to ensure that native, self-sustaining vegetation is utilized.
4. The Project proposes to remove significant trees; therefore, all significant tree removal shall be in substantial conformance with the arborist report (Exhibit 54) and tree preservation plans (Exhibit 55) and, where applicable, the City’s tree regulations, Chapter 21A.37 SMC. If more than two years elapse between the July 7, 2017, arborist report and submission of a clearing and grading permit application, an updated arborist report and tree inventory will be required at application submittal.

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5. The County shall provide an updated clearing and grading plan that includes adequate tree protection barriers and grading/grubbing limits for all trees to be retained pursuant to Chapter 21A.37 SMC. Alternative and adequate tree protection measures shall be provided in accordance with SMC 21A.37.270(7). If acceptable tree protection measures meeting the requirements of SMC 21A.37.270(7) cannot be demonstrated prior to clearing and grading permit issuance, all significant trees that cannot be adequately protected must be considered as removed and replaced at a compliant replacement ratio.
6. Fences over six (6) feet tall and retaining walls exceeding 48 inches in height, as shown in the Project plans (Exhibit 7), will require structural review during the Construction Permit review process.
7. The grading, temporary erosion and sediment control, and drainage plans as shown on the approved Shoreline Substantial Development Permit plans are not approved for construction. Construction Permit(s) are required. Further detailed review of proposed construction plans by the City and County response to City comments and required corrections is required for Construction Permit issuance.
8. The time requirements of WAC 173-27-090 shall apply, except that, based on the requirements and circumstances of this project, the authorization to conduct development activities under this Shoreline Substantial Development Permit shall terminate seven (7) years after the effective date of this permit. All extension and tolling allowances in WAC 173-27-090 will be available to the permittee.
9. Except as provided in RCW 90.58.140(5)(a) and (b), construction pursuant to this permit shall not begin and is not authorized until twenty-one days from the date this permit is filed with the Washington State Department of Ecology and Attorney General as required by RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated.