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MEMORANDUM

TO: Hearing Examiner Galt

FROM: King County DNRP, Applicant for **SSDP2016-00414**

SUBJECT: KING COUNTY RESPONSE TO DPD STAFF REPORT AND
RECOMMENDATION ON **INGLEWOOD PARKING LOT SSDP2016-00414**

In response to the City of Sammamish's September 29, 2017 Staff Report and Recommendation on SSDP 2016-00414 (Ex. 1) for the Eastlake Sammamish Trail (ELST) Inglewood Hill Parking lot, the applicant, King County, is providing this memo as an outline of the County's concerns regarding certain recommended conditions. For SSDP 2016-00414, the County is requesting the Examiner modify, clarify or strike in their entirety Recommended Conditions 2, 3, 5, 6 and 9. This memo explains the legal deficiencies and facts that warrant substantive changes to these conditions.

I. INTRODUCTION

The ELST is an 11-mile regional multi-use trail and nonmotorized, alternative transportation corridor, part of which lies within the City of Sammamish. In 2010, the East Lake Sammamish Master Plan Trail and associated NEPA/SEPA review, undertaken jointly by King County, the Washington State Department of Transportation and the Federal Highway Administration, determined that improving the regional trail along the existing railroad right-of-way corridor was the preferred alternative. Exs. 1, at 7; 9; 10.

The SSDP application currently under consideration is for reconstruction of an existing gravel parking lot into a 30-stall paved lot including an access ramp to serve the ELST, and to develop 425 feet of the multi-use trail. Ex. 6. This project was considered in the ELST Master Plan Trail FEIS, and, as acknowledged in the City's Staff Report, is consistent with the "Corridor Alternative" identified in the FEIS. Exs. 1, 9, 10.

The trail portion of the project is a Public Recreational Use that is permitted under SMC 25.07.010 and the parking lot is a permitted accessory use. As the City's Staff Report acknowledges, "the Project is considered a preferred water-oriented and water-enjoyment use that is given priority in both the SMA and the SMP." Ex. 1, at 6. None of the proposed improvements occur within the 50-foot shoreline setback area. The project is consistent with the goals and objectives of the City's shoreline master program.

For each portion of the ELST, King County 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. This iterative process has involved coordination with the City of Sammamish staff and incorporating City and public input into the project design.

While the County appreciates the need for several of the Recommended Conditions, some require additional analysis, reporting and design changes that the County believes are redundant with what has already been provided to the City, overreach their regulatory authority, and are duplicative of accommodations the County has already made to incorporate the City's concerns. These concerns inform the requested changes to the conditions as discussed below.

II. RECOMMENDED CONDITION 2

King County is requesting clarification and narrowing of Recommended Condition 2, which reads 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).

King County's concerns with this Recommended Condition are the lack of legal basis for requiring a new comprehensive survey, as well as the cost and redundancy of conducting a new survey. However, the County recognizes the City's reasonable concern that the survey used for approval of clearing and grading permits be as current and accurate as possible. The County is proposing a revised condition that addresses the concerns of both parties.

The City's stated legal basis for imposing this condition is WAC 173-27-180(9)(f), which is a requirement for a complete SSDP application. The County has already fully complied with this code requirement. A survey complying with WAC 173-27-180(9)(f) was submitted as part of the County's 60% Revised Project Plan Set/Site Plan. Ex. 7 (July 2017). WAC 173-27-180(9)(f) does not authorize or require updating of a survey. Nor does this section create any obligation related to application requirements for construction permits.

With regard to utilities, the County located utilities by field observations, utility locates and record drawings and include all of this information on the 60% project plans. Exhibit 7 depicts utilities for water and sewer, gas, power and communication including Sammamish Plateau Water utilities. In addition, the project plans show all existing buildings and improvements.

As a matter of practice, the County continually updates its survey through field verification which involves walking the project area, looking for structures and encroachments, and comparing site conditions with the existing survey. Where there are discrepancies, the survey is updated. The County has no objection to an updated survey submitting an updated survey with its clearing and grading applications.

The County proposes modifying Recommended Condition 2 to read as follows:

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.

III. RECOMMENDED CONDITION 3

King County requests that Recommended Condition 3 be stricken in its entirety.

Recommended Condition 3 reads 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 Project will be modified, narrowed, or relocated to mitigate for conflicts with Permitted Structures.

This recommended condition 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.

First, all structures within the project area, whether or not owned by the County, are already identified in the County's survey. Any regulatory basis for ensuring accurate identification of structures within the proposed project is covered by Recommended Condition 2.

Second, there is no regulatory basis for requiring the County to determine whether or not the identified structures were constructed or installed pursuant to a nonrevocable permit. This is not a reasonable request of a permit applicant. The City, being the permitting jurisdiction, has the information on what permits it has issued for structures within the project area. Conditions placed on a shoreline permit must be "...necessary to assure consistency of the project with the act and the local master program." WAC 173-27-150(2). The City has not pointed to any shoreline regulation that would be met only through application of Recommended Condition 3.

Third, requiring the County to modify its project to avoid conflicts with permitted structures is beyond the regulatory authority of the City. The applicant is not obligated to accommodate or design around structures within the project area. The County owns the property within the Project Area. Exs. 24, 26. If there is a conflict between a structure within the project area and the County's design, that is a private dispute that the City has no jurisdiction to adjudicate through an SSDP permit condition.

Fourth, the scope of this requirement is overbroad. The City is seeking to impose this requirement throughout the entire "Trail Parcel," which grossly exceeds the boundaries of this project. The County utilizes the term "Project Area" to refer to the outer clearing and grading boundaries of the proposed project as shown on the plan sheets. This term encompasses all areas that will be permanently or temporarily impacted by the proposed project. Any SSDP conditions should utilize the term "Project Area" to define the geographical scope of the conditions.

In summary, Recommended Condition 3 should be stricken because all structures within the Project Area are identified in the survey and existing site plans, imposing a duty on the applicant to identify the permit history of all permitted structures within the Trail Parcel is overly

burdensome and without a regulatory basis, and the City cannot use SSDP conditions to require project modifications for accommodation of private encroachments on County property.

IV. RECOMMENDED CONDITION 5

The County requests modification of Recommended Condition 5, which reads 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.

The County believes Ch. 21A.37 SMC is inapplicable to the trail portion of this project and that the City lacks regulatory authority to require an updated arborist report.

First and foremost, the City is misapplying Ch. 21A.37. This chapter applies to significant trees, not all trees. More importantly, the trail portion of the proposed project is exempt from the City's tree regulations under SMC 21A.37.230 because it is entirely within the public right-of-way. Therefore, the trail improvements are exempt from the removal standards in SMC 21A.27.240 and the retention standards in SMC 21A.27.250.

As to the second sentence in this condition, the City has cited no authority for requiring an updated arborist report. Moreover, this request appears unduly onerous and duplicative with work that was done by the applicant **just six months ago**. *See* Exhibit 54 (arborist report as updated July 17, 2017); Ex 55 (July 2017 Tree Preservation Plan).

The County proposes the following modifications to 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) 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.

V. RECOMMENDED CONDITION 6

The County asks that Recommended Condition 6 be stricken in its entirety because it is inapplicable to SSDP2016-00414. Recommended Condition 6 reads as follows:

The Project proposed to remove trees and vegetation. SMC 21A.30.201(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 quantity of trees to be removed. The Trail can be narrowed in locations to reduce required clearing and grading limits and preserving 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 tree protection barrier and grading/rubbing limit restrictions in 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.

The City's purported authority for Recommended Condition 6 is Ch. 21A.37 SMC which regulates "significant trees." As noted above, the City's regulatory authority under Ch. 21A.37 SMC pertains only to significant trees...not all trees and vegetation.

Recommended Condition 6 opines that "The Trail can be narrowed in locations to reduce required clearing and grading limits and preserving [sic] additional trees." In other words, the City believes that narrowing the trail will result in removal of fewer significant trees.

As can be seen on the Landscape Plan, no significant trees are being removed to accommodate the proposed trail widening. Ex. 55, at 1920. Narrowing the trail will not preserve additional significant trees. The condition should be stricken on this basis alone.

Moreover, the purported regulatory authority for Recommended Condition 6 is SMC 21A.37.250.¹ The trail, which is wholly within the right-of-way, is exempt from SMC 21A.37.250. SMC 21A.37.230 states that projects within the public right-of-way are exempt from the removal standards in SMC 21A.27.240 and the retention standards in SMC 21A.27.250. Because that section does not apply to this project, the condition should be stricken.

VI. RECOMMENDED CONDITION 9

King County is requesting modification of Recommended Condition 9, which reads as follows:

Pursuant to WAC 173-27-090, construction shall be commenced on the proposed Trail, Parking Lot, and associated elements 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.

WAC 173-27-090(1) gives a local jurisdiction discretion to modify the applicable commencement and permit expiration timeframes where there is good cause.

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.

WAC 173-27-090(4) explains that the 2-year commencement and 5-year termination timelines do not include:

¹ The City generally references SMC 25.06.020(5) and SMC 21A.30.201(3) (which the County presumes is referring to 21A.30.210(3)) for the proposition that clearing and grading be the minimum necessary to accommodate the allowed use/development. These regulations do not give the City carte blanche to require trail narrowing when the proposed project is not only compliant with the City's substantive regulations but, in this case, is completely avoiding any significant tree removal along the trail.

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.

King County is eager to complete the last portion of the ELST, however, we are all aware that this is a unique and complex project, that appeals are likely, and that there are additional permits that the County will need to obtain to begin its project. The City's timeframe for review and approval of this SSDP has already far exceeded the requirements under the City's Code. SMC 20.05.100. Exs. 25, 34. Because of the likelihood that delays will continue in additional permit review and related litigation, the County seeks to safeguard the applicability of its SSDP when approved.

Recommended Condition 9 does not build in additional time to account for the specific circumstances of this project, including challenges that may not fall within the scope of WAC 173-27-090(4). While the County agrees to commence construction within two (2) years of the SSDP effective date, we would like any condition to clearly incorporate the tolling provisions in WAC 173-27-090(4). Regarding the five (5) year duration of the SSDP, the County requests that this be extended 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.

The County requests that Recommended Condition 9 be modified as follows:

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 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.

VII. CONCLUSION

The County appreciates the City's efforts to be thorough and comprehensive in its Staff Report. As designed, this project will be a significant benefit to the community, will improve public shoreline access, and will promote safe achievement of regional transportation goals. We are hopeful that with the Examiner's consideration of the legal and factual issues raised in this memo, the Recommended Conditions will be retained, modified or excluded as proposed herein to enable the project to move forward without further delay.