

**BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH**

DECISION

FILE NUMBER: SSDP2014-00171

APPELLANTS: Lake Sammamish 4257 LLC
C/o Duncan Greene ¹
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Seattle, WA 98104-1728
dmg@vnf.com

SHO, Herbert & Elynne Moore, and Philip Bradbury
C/o John T. Ludlow ²
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APPLICANT/APPELLANT: King County
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King County Prosecuting Attorney's Office, Civil Division
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RESPONDENT: City of Sammamish
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TYPE OF CASE: Three appeals from approval of a Substantial Development Permit issued pursuant to the Shoreline Management Act of 1971

EXAMINER DECISION: 1) Lake Sammamish 4257 LLC's withdrawal of its appeal is accepted;

¹ Mr. Greene did not participate in the actual hearing: His client settled with the City and King County prior to the start of the hearing. (See Settlements/Stipulations section, below.)

² Mr. Ludlow did not participate in the actual hearing: Tom Hornish substituted for Mr. Ludlow on December 16, 17, and 18, 2015; Erin Stines substituted for Mr. Ludlow on January 28, 2016.

2) SHO, Herbert & Elynne Moore, and Philip Bradbury's appeal is DENIED; and 3) King County's appeal is GRANTED in PART

DATE OF DECISION: February 8, 2016

INTRODUCTION ³

On or about July 7, 2015, the City of Sammamish (City) Department of Community Development (Department) approved the Shoreline Substantial Development Permit (SSDP) application of King County (King County or simply the County) under City file number SSDP2014-00171. (Exhibit 9001.1.A ⁴) The project for which the subject SSDP was issued is to widen and pave a 1.3 mile segment (Segment A) of the East Lake Sammamish Trail (ELST) lying within a rail-banked section of a railroad right-of-way in the City. (Exhibit 1 *et al.*)

Three appeals were filed with the City Hearing Examiner (Examiner) from the Department's approval of SSDP2014-00171. Lake Sammamish 4257 LLC (LS 4257) filed its appeal on July 24, 2015, raising eight issues. (Exhibit 9001) SHO (Sammamish Homeowners), Herbert & Elynne Moore, and Philip Bradbury (collectively Owners) filed their appeal on July 27, 2015, raising four issues (Owners Appeal Issues 4.2.1 – 4.2.4). (Exhibit 9002) King County filed its appeal on July 28, 2015, challenging 10 permit conditions and raising Federal preemption (County Appeal Issues II.a – II.k). (Exhibit 9003)

The subject property is the southern 1.3 miles of the ELST extending north from the Sammamish/Issaquah city line.

The Examiner held a prehearing conference with the parties on September 23, 2015. The prehearing conference is memorialized in Exhibit 9011.

The Examiner convened an open record hearing on December 16, 2015; the hearing concluded on January 28, 2016, after more than 23 hours of testimony over four days (December 16, 17, and 18, 2015; and January

³ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

⁴ Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Decision is based upon all documents in the record.

The City numbered each page of most of its exhibits (Similar to "Bates" numbering.), including those where the original document was paginated. The two sets of page numbers do not always agree. Wherever available, the Examiner will use the exhibit page numbers assigned by the City rather than the original document page numbers.

Some exhibits include subparts. A citation to an exhibit with subparts that does not specify a subpart is a citation to the exhibit as a whole.

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28, 2016). The Department gave notice of the hearing as required by the Sammamish Municipal Code (SMC); day-to-day continuations were announced on the record. (Exhibits 14, 16, and 17)

Pursuant to City of Sammamish Hearing Examiner Rule of Procedure (RoP) 224(c) and Exhibit 9011, ¶ 4, the Examiner entered the following administrative exhibits into the hearing record:

- Exhibit 9001: City of Sammamish Administrative Appeal Form from LS 4257, filed July 24, 2015
- Exhibit 9001.1: Notice of Appeal from LS 4257 filed July 24, 2015
- Exhibit 9001.1.A: Notice of Decision for Shoreline Substantial Development Permit, SSDP2014-00171 and Findings/Conclusions/Decision Shoreline Substantial Development Permit, SSDP2014-00171, issued July 7, 2015
- Exhibit 9002: Notice of Appeal from Owners, filed July 27, 2015
- Exhibit 9002.1: Land Use Permit Application Form, SSDP2014-00171
- Exhibit 9002.2: Findings/Conclusions/Decision Shoreline Substantial Development Permit, SSDP2014-00171, issued July 7, 2015
- Exhibit 9003: City of Sammamish Administrative Appeal Form from King County filed July 28, 2015
- Exhibit 9003.1: Appeal of City of Sammamish Decision for Shoreline Substantial Development Permit 2014-00171 from King County, filed July 28, 2015
- Exhibit 9004: City of Sammamish's Motion to Dismiss All Appeals for Lack of Jurisdiction, filed August 11, 2015
- Exhibit 9005: King County's Response to City of Sammamish's Motion to Dismiss, filed August 19, 2015
- Exhibit 9006: Appellant [LS 4257's] Response in Opposition, filed August 21, 2015
- Exhibit 9007: Owners' Joinder in Opposition, filed August 21, 2015
- Exhibit 9008: Interlocutory Order Denying Motion to Dismiss, issued August 25, 2015
- Exhibit 9009: Letter, Examiner to Principal Parties, August 25, 2015 (scheduling)
- Exhibit 9010: Notice of Prehearing Conference, issued September 2, 2015
- Exhibit 9011: Order Memorializing a Prehearing Conference, issued September 24, 2015
- Exhibit 9012: Motion for Summary Judgment, filed October 23, 2015 (with Exhibits 1 – 3, to be cited as Exhibits 9012.1 – 9012.3)
- Exhibit 9013: King County's Motion to Dismiss, filed October 23, 2015 (with Exhibits 1 – 5, to be cited as 9013.1 – 9013.5)
- Exhibit 9014: Appellant [LS 4257's] Response in Opposition to King County's Motion to Dismiss, filed November 6, 2015 (with Exhibits 1 – 4, to be cited as Exhibits 9014.1 – 9014.4)
- Exhibit 9015: City of Sammamish's Response to SHO's Motion for Summary Judgment, filed November 6, 2015
- Exhibit 9016: Declaration of Mona Davis in Support of City of Sammamish's Response to Motion for Summary Judgment, filed November 6, 2015 (with Exhibits A – D, to be cited as Exhibits 9016.A – 9016.D)

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- Exhibit 9017: [Owners'] Response to King County's Motion to Dismiss, filed November 6, 2015
- Exhibit 9018: Declaration of Thomas E. Hornish, filed November 6, 2015
- Exhibit 9019: Declaration of Herbert Moore, filed November 6, 2015 (with Exhibits 1 – 3, to be cited as Exhibits 9019.1 – 9019.3)
- Exhibit 9020: Declaration of Phillip Bradbury, filed November 6, 2015
- Exhibit 9021: Declaration of Rush Riese, filed November 6, 2015 (with Exhibits 1 – 4, to be cited as Exhibits 9021.1 – 9021.4)
- Exhibit 9022: Declaration of Rick Cline, filed November 6, 2015 (with Exhibits 1 – 4, to be cited as Exhibits 9022.1 – 9022.4)
- Exhibit 9023: King County's Response to [Owners'] Summary Judgment Motion and King County's Motion to Strike, filed November 6, 2015
- Exhibit 9024: [Owners'] Reply to King County's Response to Motion for Summary Judgment, filed on November 13, 2015
- Exhibit 9025: Declaration of John T. Ludlow, filed November 13, 2015
- Exhibit 9026: [Owners'] Reply to City's Response to Motion for Summary Judgment, filed on November 13, 2015
- Exhibit 9027: King County's Reply to Appellants' Responses to King County's Motion to Dismiss, filed November 13, 2015 (with Exhibits 1 – 3, to be cited as Exhibits 9027.1 – 9027.3); and
- Exhibit 9028: Interlocutory Order on Motions, issued November 18, 2015
- Exhibit 9029: Letter, Ludlow to Hearing Examiner, November 25, 2015 (responding to ¶ 2(D) of Exhibit 9028)
- Exhibit 9030: E-mail, Hearing Examiner to Principal Parties, December 4, 2015 (establishing time limits for the hearing)

Pursuant to RoP 224(d) and Exhibit 9011, ¶ 4, Respondent Department pre-filed Exhibits 1 - 17 and provided an index listing of those exhibits.⁵ The Examiner assigned Exhibit number 18 to the Department's Pre-Hearing Memorandum. No objections were raised to entry of those exhibits. The Examiner entered those exhibits into the hearing record. Pursuant to RoP 224(i) the Examiner accepted additional exhibits during the hearing from the Department as follows:⁶

- Exhibit 19: Joint Stipulation between City and County Regarding Condition 10, filed December 16, 2015
- Exhibit 20: Joint Stipulation, Voluntary Withdrawal of Appeal, and request for Dismissal, filed by LS 4257, December 16, 2015, with Exhibits A – C to be cited as Exhibits 20A - 20C

⁵ During preparation of this Decision the Examiner realized that the document listed as Exhibit 12 (a November 20, 2014, letter from Monica Leers of King County Parks) was not entered as a City exhibit. Listed Exhibit 13 is actually Exhibit 12, listed Exhibit 14 is actually Exhibit 13, and Exhibit 14 is a copy of the text of the appeal hearing notice. The Leers letter was not entered into the record by any party.

⁶ Public comments were entered as Department exhibits even though they were not generated by the Department.

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- Exhibit 21: Photograph of ELST/206th Avenue SE crossing
- Exhibit 22: King County Critical Areas Mitigation Guidelines, November 10, 2012 (excerpts)
- Exhibit 23: Manual on Uniform Traffic Control Devices, 2009 Edition, pp. 1 and 803
- Exhibit 24: A Policy on Geometric Design of Highways and Streets, 2011 6th Edition, p. 9-38
- Exhibit 25: 2009 King County Surface Water Design Manual, pp. 1-12 and 1-51 – 1-54
- Exhibit 26: Code Interpretation – Environmentally Critical Areas Regulations, July 29, 2010
- Exhibit 27: Hearing statement, Reid Brockway, December 18, 2015
- Exhibit 28: E-mail, Ryan Harasimowicz, December 30, 2015
- Exhibit 29: E-mail, Roger Burton, December 30, 2015
- Exhibit 30: E-mail, John Bissell, December 30, 2015
- Exhibit 31: E-mail, Chip Greaves, December 30, 2015
- Exhibit 32: E-mail, Steven Glasgow, December 30, 2015
- Exhibit 33: E-mail, Mike J. Ubezzi, December 30, 2015
- Exhibit 34: Joint Stipulation between City and County Regarding Condition 17, filed January 28, 2016, with Exhibits A – C to be cited as Exhibits 35A - 35C
- Exhibit 35: Joint Stipulation between City and County Regarding SSDP Conditions 4, 7, and 8, filed January 28, 2016
- Exhibit 36: Letter, Cascade bicycle Club (Jeff Aken), filed January 28, 2016
- Exhibit 37: Testimony given January 28, 2016, by Reid Brockway
- Exhibit 38: Statement from Ann Lewis, filed January 28, 2016

Pursuant to RoP 224(e) and Exhibit 9011, ¶ 4, Appellant LS 4257 pre-filed Exhibits 1001, 1003, 1007, 1009, 1011, 1033, 1035, 1043, and 1055 and provided an index listing of those exhibits. No objections were raised to entry of those exhibits. The Examiner entered those exhibits into the hearing record.

Pursuant to RoP 224(e) and Exhibit 9011, ¶ 4, Appellant Owners pre-filed Exhibits 2001 - 2013. ⁷ No objections were raised to entry of those exhibits. The Examiner entered those exhibits into the hearing record.

Pursuant to RoP 224(e) and Exhibit 9011, ¶ 4, Applicant/Appellant King County pre-filed Exhibits 3001 - 3033 and provided an index listing of those exhibits. ⁸ The Examiner assigned Exhibit number 3034 to King County's Pre-Hearing Brief. No objections were raised to entry of those exhibits. The Examiner entered those exhibits into the hearing record. During the hearing the parties agreed to divide Exhibit 3028 into three parts, identified as follows:

- Exhibit 3028A: DVD taken on December 8, 2015
- Exhibit 3028B: Driveway 1 Aerial Photograph Index and seven photographs
- Exhibit 3028C: Driveway 2 Aerial Photograph Index and seven photographs

⁷ Those 13 exhibits are all photographs. Owners' witness Hornish described the location of each photograph during his testimony.

⁸ The County inadvertently identified its exhibits as Exhibits 1 – 33. The Examiner directed the parties to convert those numbers to 3001 – 3033.

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Pursuant to RoP 224(i) the Examiner accepted additional exhibits during the hearing from King County as follows:

- Exhibit 3035: King County's witness list and associated curriculum vitae
- Exhibit 3036: Letter, Department of the Army, Seattle District, Corps of Engineers, Re: NWS-2015-605, January 12, 2016
- Exhibit 3037: Interlocal Agreement Between King County and the City of Sammamish Relating to Processing of Building and Land Use Applications, April 4, 2012, together with First Amendment, August 22, 2012
- Exhibit 3038: William Schultheiss curriculum vitae, filed January 28, 2016
- Exhibit 3039: Memorandum from Bill Schultheiss, January 26, 2016
- Exhibit 3040: Guide for the Development of Bicycle Facilities, 2012, Fourth Edition, Chapter 5, consisting of pp. 5-1 – 5-56
- Exhibit 3041: Trail Crossing – 206th Avenue SE Vehicle Queues, prepared by Yammie Ho, January 27, 2016⁹

The Deputy City Clerk has the record copy of all exhibit index lists and exhibits.

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.

MOTIONS

On August 11, 2015, Respondent City filed a Motion to Dismiss All Appeals for Lack of Jurisdiction. (Exhibit 9004) On August 19, 2015, King County filed a response supporting the City's Motion. (Exhibit 9005) On August 21, 2015, LS 4257 and Owners filed Responses in opposition to the City's Motion. (Exhibits 9006; 9007) On August 25, 2015, the Examiner issued an Interlocutory Order Denying Motion to Dismiss. (Exhibit 9008)

Three motions were filed pursuant to a schedule established during the September 23, 2015, prehearing conference: Owners' Motion for Summary Judgment, filed on October 23, 2015 (Exhibit 9012); King County's Motion to Dismiss, filed on October 23, 2015 (Exhibit 9013); and King County's Motion to Strike, incorporated within King County's Response to the Motion for Summary Judgment, filed on November 6, 2015 (Exhibit 9023). Responses and Replies, together with supporting declarations, were filed. (Exhibits 9014 – 9027) On November 18, 2015, the Examiner issued an Interlocutory Order on Motions which: Denied Owners' Motion for Summary Judgment; Denied King County's Motion to Dismiss Owners for lack of standing; Dismissed LS 4257's Appeal Issue 1 and Owners' Appeal Issues 4.2.1 and 4.2.2; Denied King County's Motion to Strike; and held that LS 4257's Appeal Issue 8 was moot. (Exhibit 9028)

⁹ Identity of the author and date of preparation of this document were established during the open record hearing.

The Examiner incorporates herein by reference as if set forth in full both Interlocutory Orders (Exhibits 9008 and 9028).

SETTLEMENTS/STIPULATIONS

On or about December 16, 2015, LS 4257, King County, and the City entered into a Joint Stipulation, Voluntary Withdrawal of Appeal, and Request for Dismissal (Joint Stipulation). (Exhibit 20) The Joint Stipulation resolved all issues of concern to LS 4257. The Joint Stipulation includes design changes in the vicinity of Station 224+00 (Exhibits 20A and 20B) which the signators of the Joint Stipulation state will appropriately implement Condition 5. The Joint Stipulation asks the Examiner to “impose an additional condition on the SSDP requiring compliance with this Joint Stipulation unless events outside of their control make it impossible to construct improvements to the drainage system depicted in Exhibit B” to the Joint Stipulation. (Exhibit 20, p. 2, ll. 7 – 10) Finally, LS 4257 withdrew its appeal in its entirety and King County withdrew its challenge to Condition 5. (Exhibit 20, p. 2, ll. 12 – 17) LS 4257’s withdrawal of its appeal is herewith formally acknowledged. This Decision will not further address LS 4257’s appeal.

King County and the City reached three Stipulations which effectively render moot five of King County’s appeal issues. (Exhibits 19, 34, and 35) Each appeal issue covered by the Stipulations will be addressed in the body of this Decision.

FINDINGS OF FACT

- A. General
- A.1. The Findings of Fact and Conclusions of Law in this Decision each begin with a General section which is followed by sections devoted to each of the active appeal issues. The section headings in the Findings of Fact and Conclusions of Law are identical. The Findings of Fact and Conclusions of Law 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.2. King County Department of Natural Resources and Parks, Parks & Recreation Division, proposes to widen and pave South Sammamish Segment A (Segment A) of the ELST Interim Trail in conformance with the County Trail Master Plan.¹⁰ The ELST, an overall 11-mile trail linking Issaquah and Redmond, runs roughly parallel with the eastern shoreline of Lake Sammamish within the “rail-banked” former Burlington Northern-Santa Fe (BNSF) railroad corridor, generally abutting

¹⁰ 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 and the Master Plan versions.

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the west side of East Lake Sammamish Parkway SE (Parkway).¹¹ Segment A is approximately 1.3 miles long, starting at the Issaquah-Sammamish city boundary and extending north to SE 33rd Street. The Interim Trail consists of an approximately 10-foot wide crushed rock surface on top of the old railroad bed, fencing, guardrails, and signage. The project consists of widening and paving the trail to a 12-foot width with 2-foot-wide gravel shoulders plus one foot of clearing on both sides. Consequently, the width of the Master Plan Trail will be 18 feet. Minor changes to the existing grade and alignment maybe required. Where necessary, drainage facilities, guardrails, fences, signs, retaining walls, and traffic controls (bollards) will be constructed to ensure safety, protection of critical areas and existing trees, and to separate the ELST from private properties. (Exhibits 4; 9, p. 25; 9001.1.A; *et al.*)

A.3. The Redmond portion of the ELST was completed in 2011; the Issaquah portion of the ELST was completed in 2013. The project is one of three segments of the ELST in the City. The north segment, extending approximately 2.4 miles south from the Redmond city line, received an SSDP on September 3, 2013, to upgrade it from an Interim Trail to the Master Plan Trail; that segment was completed in 2015. Segment A will be the second segment of the ELST to be upgraded in the City; it will extend north from the already improved segment within the City of Issaquah to SE 33rd Street. (Exhibits 4; 3025; 3027; testimony)

A.4. King County acquired the “rail-banked” former BNSF corridor in 1998 for development into a trail. The corridor runs roughly parallel with the Lake Sammamish shoreline, but does not touch the shoreline. For virtually the entire length of the corridor there are houses between the corridor and the lake.¹² The ELST is a link in the County’s regional trail system. (Exhibits 2a, Vol. 1, pp. 20 and 45 - 49; 4; 3029)

The County’s concept was to first develop an Interim Use Trail (Interim Trail) to be followed by development of the Master Plan Trail. (Exhibit 2a, Vol. 1, p. 50)

A.5. The City was incorporated in August, 1999. Upon incorporation, the new City entered into an Interlocal Agreement (ILA) with King County spelling out responsibilities for processing land development and building permit applications which were pending at the time of incorporation. That ILA had expired by Spring, 2012. On April 4, 2012, the City and King County entered into a follow-on ILA (2012 ILA) to essentially renew the original ILA. The 2012 ILA, like the original ILA, provided that “[t]he County’s East Lake Sammamish Trail permits” “shall continue to be processed by the County.” (Exhibit 3037, quotes from p. 4, § 6)

¹¹ For the sake of simplicity, the trail will be presumed to run north-south, with the lake to its west. All directions in this Decision will be based on that convention. (Some record documents adopted a convention that the Trail runs east-west and that the lake is south of the Trail. (For example, Exhibit 9.))

¹² A number of the owners of parcels between the corridor and the lake hotly dispute King County’s ownership interest in and right to develop the BNSF corridor. (Exhibits 9002; 9018; 9020 – 9025)

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The term “processed by the County” means, for land development applications which do not require a pre-decision quasi-judicial hearing (a class of applications which includes SSDP applications), that “the County will continue to process such applications and shall make a report and recommendation to the City’s designated decision-maker. Any decisions to approve, deny, or approve with conditions such applications shall be made by the City.” (Exhibit 3037, pp. 1 and 2, § 1.3)

The 2012 ILA was to be effective for 36 months from the date it was approved by the City and County Councils “unless mutually extended by written agreement of the parties”; either party may terminate the 2012 ILA “upon 90 days advance written notice to the other.” (Exhibit 3037, p. 4, § 7)

The 2012 ILA became effective on or about July 18, 2012. It was extended for an additional 36 months by written agreement executed by both parties on July 14, 2015. (Exhibit 9016.A, pp. 9 and 10) The 2012 ILA is in effect.

- A.6. King County issued a Final Environmental Impact Statement (FEIS) for the Interim Trail in 2000. (Exhibit 2a, Vol. 1, p. 51) The FEIS was issued under SEPA’s phased review procedures: A separate EIS was prepared for the ELST Master Plan Trail. That FEIS was issued in June, 2009. (Exhibit 2)

Because Federal funds are involved in the development of the ELST, a Record of Decision (ROD), issued 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 3)

- A.7. The final segment of the Interim Trail opened for use in April, 2006. (Testimony)

- A.8. Lake Sammamish is classified as a Shoreline of Statewide Significance under the Shoreline Management Act of 1971 (SMA), Chapter 90.58 RCW (SMA). (Exhibit 9001.1.A, p. 5, Finding 12) The ELST lies wholly or partially within 200 feet of the ordinary high water mark of Lake Sammamish. (Exhibit 4) Therefore, the ELST lies within the jurisdictional area of the SMA.

The SMA requires local jurisdictions to prepare and adopt Shoreline Master Programs (SMPs) which are subject to review and approval by the Washington State Department of Ecology (Ecology). [RCW 90.58.090] The City’s current SMP was adopted in 2009 and amended in 2011 to comply with directives from Ecology. [Title 25 SMC] The SMP incorporates by reference into the SMP all but four sections of Chapter 21A.50 SMC, Environmentally Critical Areas. [SMC 25.01.070]

The version of Chapter 21A.50 SMC which existed in 2009 when the current SMP was adopted had been adopted by Ordinance O2005-193, effective on January 3, 2006. In 2013, the City adopted Ordinance O2013-350 which made substantial changes to Chapter 21A.50. [Official notice] The City

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has sent Ordinance O2013-350 to Ecology for review and approval as a revision to the adopted SMP. Ecology has not yet responded. (Testimony)

Therefore, the Segment A proposal is subject to Title 25 SMC, but the Critical Areas regulations which must be followed are those in Chapter 21A.50 SMC as it existed in 2006; in other words, the Ordinance O2005-193 version, not the Ordinance O2013-350 version. SMC citations to Chapter 21A.50 SMC in this Decision will clearly state which version of the SMC is being referenced: “current” means the Ordinance O2013-350 version; “former” means the Ordinance O2005-193 version.

- A.9. The Segment A project meets the threshold requirements to require issuance of an SSDP under the SMA. Thus, on July 31, 2014, King County, in accordance with the 2012 ILA, filed an application for an SSDP with the King County Department of Permitting and Environmental Review (DPER). That application included “60% Review Submittal” plans for the Segment A project. (Exhibit 1)
- A.10. DPER performed application review pursuant to the 2012 ILA. During that review process, DPER had available to it, among other materials, drainage reports (Exhibits 5; 9; 3010; 3013), vegetation management plans (Exhibits 6; 10; 3008), a geotechnical report (Exhibit 7), and a critical areas study (Exhibit 8). Comments from the public were received; the City submitted review comments to DPER in January, 2015. (Exhibit 11; testimony) As a consequence of that review process, the County developed and submitted “90% Review Submittal” plans in February 2015, and “95% Review Submittal” plans in April, 2015. (Exhibit 4; testimony) Exhibit 3007 lists the changes between the 90% and 95% Review Submittal plans.
- A.11. On or about June 23, 2015, DPER submitted to the City a draft SSDP decision document recommending approval of an SSDP for Segment A based on the 95% Review Submittal plans subject to eight conditions. (Exhibit 3002; testimony)
- A.12. King County asked the City to issue the SSDP as quickly as possible in order that the County could preserve eligibility to receive certain grant funds. Notwithstanding that the City had outstanding concerns/issues, the City obliged: The SSDP at issue in these appeals was issued on July 7, 2015, approximately two weeks later (a period which included the 4th of July national holiday). The City believed that resolution of its concerns could be deferred to construction plan review by imposing some general conditions. The SSDP as issued by the City was subject to 19 conditions. Conditions 2 – 8 resulted in large measure from comments which had been received during the public comment period. (Exhibits 11; 9001.1.A; testimony) Little, if any, dialogue occurred between King County and the City between receipt of the draft permit on June 23rd and the City’s issuance of the SSDP on July 7th. (Testimony) The three appeals which are the subject of this Decision followed.
- A.13. The County asserts that the ELST is an essential public facility (EPF) and that conditions which “are so onerous, cost prohibitive and unreasonable that they have the effect of precluding the siting of an

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[EPF]" violate RCW 36.70A.200(5)¹³ and, therefore, are impermissible. (Exhibit 9003, p. 13, ll. 6 and 7; see also Exhibit 3034, pp. 14 and 15, § IV(D)) King County's appeal asserts that Conditions 3 – 8, 10, 14, and 17 fall into that category. (Exhibit 9003, p. 13, ll. 5 – 10)

... Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

[RCW 36.70A.200(1)]

- A.14. The only mention of "essential public facility" in the entire SMC is in SMC 20.05.100(2)(b) which excludes EPF applications from the permit processing time limits established elsewhere in the code.
- A.15. The City Comprehensive Plan (Comp Plan) applicable to this ELST application (2003 version, updated through 2013) discusses EPFs in Chapter VIII. The text identifies two EPFs in Sammamish: "an adult care center, and a shelter, whose locations are kept confidential by the State of Washington." [Comp Plan, p. VIII-2] It states that "King County has not designated any existing or planned essential public facilities in the City of Sammamish." [*Ibid.*]

The Comp Plan provides guidance for determining what ought to be considered an EPF:¹⁴

A facility should be classified as an essential public facility if the [*sic*¹⁵] has one or more of the following characteristics:

- a. The facility meets the Growth Management Act definition of an essential public facility,
- b. The facility is on a State, County or City list of essential public facilities,
- c. The facility serves a significant portion of the County or metropolitan region or is part of a Countywide service system,
- d. The facility is the sole existing facility in the County for providing that essential public service, or
- e. The facility, conveyance, or site: (1) is used to provide services to the public; (2) is necessary to adequately provide a public service, or (3) provides services that are delivered by government agencies, private or non-profit organizations under

¹³ "No local comprehensive plan or development regulation may preclude the siting of essential public facilities."

¹⁴ The Comp Plan states that the City should compile a list of EPFs within the City. [Comp Plan, p. VIII-3, EPFP-1.1] No such list has been generated to the best of the Examiner's knowledge.

¹⁵ The word "the" appears to be a scrivener's error. The likely intended word was "it."

contract to or with substantial funding from government agencies, or private firms or organizations subject to public service obligations.

[Comp Plan, p. VIII-3, EPFP-1.2]

A.16. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

B. Owners Appeal Issue 4.2.3

B.1. Owners allege that the City “[i]mproperly applied applicable wetland regulations in establishing the proposed Trail alignment”. (Exhibit 9002, p. 2, § 4.2.3) Owners make two alternative arguments in support of this issue. First, they argue that areas delineated as wetlands along the east, upslope side of the trail are not actually wetlands at all, but are drainage ditches. If those features are drainage ditches, the widening contemplated in the project could be shifted easterly instead of being generally centered on the existing Interim Trail, thus keeping the trail farther from the residences that line the area between the ELST and the lake shoreline. (Testimony)

In the alternative, Owners allege that if those features are indeed wetlands, then the ELST cannot be developed at all as it would pass through the required buffers for the wetlands. Current 21A.50.290(2)(a) SMC, which expressly allows required wetland buffers to be truncated by the ELST, has not as yet been accepted by Ecology as a component of the SMP and, thus, is not a part of the applicable SMP regulations. Similar provisions were contained in former SMC 21A.50.290(1)(a), but that language did not expressly apply to the ELST. Owners argue that a 2010 interpretation of the former section, which held that the ELST was benefitted by the code provision, cannot be used either as it was never submitted to Ecology for its review and approval. (Testimony)

B.2. “Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches,”¹⁶ [SMC 21A.15.1415, italics in original]

B.3. Numerous (approximately 78) wetlands along the 11-mile ELST corridor were delineated and discussed in the 2009 ELST FEIS. (Exhibit 2, pp. 129 – 149) The field work for that delineation took place in 1999 – 2000 and was updated in 2007 - 2008. (Exhibit 2a, Vol. 1, p. 130; testimony) Thirty-two of those wetlands were categorized as “modified slope wetlands” in which “topography and water flow were modified by road or railroad construction such that they now include some natural slope wetland, but also constructed depressions and/or ditches.” (Exhibit 2a, Vol. 1, p. 133) Habitat

¹⁶ The current SMC requires delineation of wetlands to comply with “the federal 1987 Wetland Delineation Manual (Environmental Laboratory, 1987) and the United States Army Corps of Engineers (USACE) Interim Regional Supplement for Western Mountains, Valleys, and Coast Region (USACE, 2010), or such other manuals adopted by the Department of Ecology pursuant to RCW [90.58.380](#) and WAC [173-22-035](#), as amended.” [current SMC 21A.15.1415] That requirement cannot be applied in this case as it was adopted as part of ordinance O2013-350 and has not as yet been approved by Ecology for use within the SMP.

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within jurisdictionally-required buffers was described as “generally in poor condition.” (Exhibit 2a, Vol. 1, p. 136)

- B.4. The County had Segment A “re-evaluated in 2013 and 2014 to update any areas where changes may have occurred due to recent development or natural conditions in the project vicinity”. (Exhibit 8, p. 18) That work confirmed the presence of all or part of five wetlands within Segment A, all located on the eastern, upslope side of the trail adjacent to the rail bed. Most, if not all, of the five wetlands include a ditch within them. (Exhibit 8) All were rated as category III or IV wetlands, requiring a 50 foot buffer. (Exhibit 8, p. 33, Table 3-1)
- B.5. Owners presented photographs depicting current maintenance and evidence of past maintenance of ditches along the upslope side of the ELST by King County. A number of those photographs depict activity outside Segment A. (Exhibits 2001 – 2006; testimony) The remainder depict activity within Segment A. (Exhibits 2007 – 2013; testimony) Owners presented no substantive evidence or expert testimony challenging the wetland delineations.
- B.6. The U.S. Army Corps of Engineers (USACE) issued a Preliminary Jurisdictional Determination (JD) for the five wetlands within Segment A on December 31, 2015. The JD means that USACE has determined that those five wetlands “will be treated as jurisdictional waters of the U.S. for purposes of computation of impact area and compensatory mitigation requirements”. (Exhibit 3036, January 12, 2016 letter, p. 2; JD Form, p. 1)
- B.7. The required 50 foot buffers for all five of the delineated wetlands within Segment A extend well west of the ELST. (Exhibit 8, pp. 157 – 160)
- B.8. The Ordinance O2005-193 version of Chapter 21A.50 SMC included a provision allowing truncation of a required wetland buffer where the buffer was crossed by a street:

Where a legally established and constructed street transects a wetland buffer, the department may approve a modification of the standard buffer width to the edge of the street if the isolated part of the buffer does not provide additional protection of the wetland and provides insignificant biological, geological or hydrological buffer functions relating to the wetland. If the resulting buffer distance is less than 50 percent of the standard buffer for the applicable wetland category, no further reduction shall be allowed.

[Former SMC 21A.50.290(1)(a)]

- B.9. The SMC defines “street” as “a public or recorded private thoroughfare providing pedestrian and vehicular access through neighborhoods and communities and to abutting property.” [SMC 21A.15.1245] That definition has not changed since in or around 2003. [Official notice]

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- B.10. On July 29, 2010, the then Director of the Department, acting under authority granted to him by Chapters 21A.05 and 21A.100 SMC, issued a Code Interpretation of former SMC 21A.50.290(1)(a). The Director noted that the definition of “street” included public thoroughfares “providing pedestrian and vehicular access” and that the dictionary definition of “thoroughfare” included “street, or the like”. The Director concluded that the trail “is consistent with the definition of street” contained in the SMA. (Exhibit 26)

The Director concluded that the specific property west of the ELST which gave rise to the interpretation in 2010 provided no “geologic, hydrologic, or biological protection functions” for the wetland on the east side of the ELST at that location. The Director therefore concluded that the area west of the ELST on that property was not subject to any wetland buffer requirement. (Exhibit 26)

The Department has followed the 2010 Director’s Code Interpretation “broadly” ever since its issuance in matters relating to the ELST. (Testimony)

- B.11. The Director’s 2010 Code Interpretation of former SMC 21A.50.290(1)(a) was not presented to Ecology for its review. Owners argue that it should have been as it amounts to an amendment of the SMC and thus an amendment of the SMP. The City argues that it did not have to be submitted to Ecology as an interpretation is not a code amendment. (Testimony and argument)
- B.12. The City’s position is that the areas west of the ELST within the regulatory wetland buffers provide virtually no biological, geological or hydrological functions for the wetlands on the east side of the ELST. Therefore, based on former SMC 21A.50.290(1)(a) and the 2010 Director’s Code Interpretation, the Department concludes that the wetland buffers end at the eastern edge of the ELST. (Testimony)
- B.13. Former SMC 21A.50.290(1)(a) was relocated (it became current SMC 21A.50.290(2)(a)) and was amended by Ordinance O2013-350:

Where a legally established and constructed street or the East Lake Sammamish Trail transects a wetland buffer, the department may approve a modification of the standard buffer width to the edge of the street or the East Lake Sammamish Trail if the isolated part of the buffer does not provide additional protection of the wetland and provides insignificant biological, geological or hydrological buffer functions relating to the wetland. If the resulting buffer distance is less than 50 percent of the standard buffer for the applicable wetland category, no further reduction shall be allowed.

[Current SMC 21A.50.290(2)(a), text amendments underlined]

- B.14. The project as proposed will result in temporary impacts to less than 0.01 acres of wetland and 0.55 acres of wetland buffers. The project as proposed will permanently impact 0.28 acres of wetland

buffers. (Exhibits 8; 9001.1.A, pp. 7 – 10) King County has proposed mitigation for those impacts. (Exhibit 8, pp. 51 – 56)

C. Owners Appeal Issue 4.2.4

C.1. Owners allege that the SSDP “[a]llows the County to connect newly installed surface water drainage lines to existing private drainage lines serving neighboring properties”. (Exhibit 9002, p. 2, l. 22)

C.2. Owners Appeal Issue 4.2.4 is non-specific as to the lines and/or parcels to which it refers. Owners questioned King County regarding one specific location: A culvert and drainage pipe being replaced generally between Stations 229+00 and 229+85, the outflow from which passes through or adjacent to the McNaughton property. (Exhibit 4, p. 28) An existing 12” clay culvert passes beneath the Interim Trail at approximately Station 229+85, discharging into a catchbasin adjacent to a wood retaining wall. From the catchbasin water flows southerly through a 12” pipe along the east side of East Lake Sammamish Shore Lane SE (Shore Lane) for about 85 feet before making a sharp turn to the west to cross beneath Shore Lane and follow more or less along the south McNaughton property line to a discharge point on the Lake Sammamish shoreline.¹⁷ (Exhibits 4, pp. 9 and 28; 3010, p. 3-11 and Fig. 3-1¹⁸) There is apparently no formal easement for the pipe beneath the McNaughton or adjacent property. (Testimony)

Project plans require replacement of the wood retaining wall with a taller masonry retaining wall at the base of the rail bed embankment in this area. That necessitates replacement of the catchbasin and pipes. The plan has a new catchbasin installed on the east side of the ELST to provide a better vertical transition to a replacement catchbasin on the west side of the ELST; a new catchbasin is proposed to replace the sharp bend in the drainage pipe where it turns west to run beneath Shore Lane. The pipes connecting those three catchbasins will be enlarged to 18”. (Exhibits 4, pp. 28 and 40)

C.3. The individually named appellants (Moore and Bradbury) own lakefront properties within the Segment A area. Moore’s property is along the Issaquah-Sammamish city line at approximately Station 217+00 at the south end of the project. The nearest drainage features in the vicinity of the Moore property are Driveway #1 (See Part D Findings of Fact, below.) and cross culverts at approximately Station 218+45: A 24” corrugated metal pipe (CMP) culvert beneath the Trail discharging to a 16” pipe beneath Shore Lane. That pipe discharges towards property owned by Vanderhoeven and reaches the lake through an open channel. (Exhibits 4, pp. 8 and 26; 3010, p. 3-11 and Fig. 3-1) The project will make no changes to those pipes. (Exhibits 4, p. 26; 3010, p. 5-2)

¹⁷ It appears from the plans that the drainage pipe is actually beneath the adjoining owner’s property (Morning West LLC) rather than beneath McNaughton’s. (Exhibit 4, p. 28) Identification of the owner beneath whose property the pipe is located is immaterial to the outcome of this appeal.

¹⁸ Exhibit 3010 is the May, 2015 final version of King County’s Technical Information Report (TIR). The County provided a copy of an earlier draft TIR (Exhibit 9, December, 2014, watermarked “DRAFT” on pp. 7 and 8) to the City prior to the City’s issuance of the SSDP in July, 2015. It did not provide a copy of Exhibit 3010 to the City prior to decision issuance. (Buitrago testimony) The Examiner is using the final TIR, not the draft TIR.

Bradbury’s property is located at approximately Station 255+75. The nearest drainage feature to the Bradbury property is an 18” concrete culvert beneath the Trail which discharges to a 12” pipe beneath Shore Lane, both located at about Station 256+35. At the end of that pipe, water falls about six feet before flowing through an open concrete and cobblestone channel to the lake. (Exhibits 4, pp. 11 and 12; 3010, p. 3-14 and Fig. 3-3) The project will make no changes to those pipes. (Exhibits 4, p. 34; 9, p. 5-3)

- C.4. Developers in the City must control storm water runoff from their projects in compliance with the 2009 King County Surface Water Design Manual and a City Addendum thereto (collectively 2009 KCSWDM). (Exhibit 3010, p. 2-1) Approximately 337.5 acres located upslope of the ELST to the east, most lying east of the Parkway, drain to or across Segment A. Those 337+ acres are divided by natural terrain features into threshold discharge areas (TDAs). TDAs 1a and 1b drain towards the culvert at Station 218+45; TDA 3 drains toward the culvert at Station 229+85; and TDA 8 drains to the culvert at Station 256+35. (Exhibits 5, p. 6; 3010, Fig. 1-3)

TDA	ELST Trail Areas (Acres)			Percent Increase	TDA Area (Acres)	Trail %
	Existing Impervious	Net New Impervious	Total Impervious			
1	0.49	0.21	0.70	42.9	31.7	2.2
3	0.33	0.20	0.53	60.6	5.9	9.0
8	0.83	0.45	1.28	54.2	42.0	3.0

(Exhibit 3010, p. 1-2 {Table 1-1} and Fig. 1-3; percentages calculated from the data)

- C.5. TDA 1 extends from Station 216+79 to Station 222+50. TDA 3 extends from Station 229+15 to Station 234+50. TDA 8 extends from Station 249+25 to Station 261+50. (Exhibit 3010, pp. 3-11, 3-12, 3-14)
- C.6. The 2009 KCSWDM requires new developments to control flow rates unless an exemption applies. One of the exemptions holds that the “flow control facility requirement is waived for any threshold discharge area in which the difference in the 100-year peak runoff flow rate (ΔQ_{100}) between the developed site condition and the historical site condition does not exceed 0.1 cfs [cubic feet per second].” (Exhibit 3010, p. 4-3; see 2009 KCSWDM § 1.2.3.1.B) “[T]he historical site condition (forest) is assumed as the pre-developed condition.” (Exhibit 3010, p. 4-3) Since the Interim Trail is not forested but is predominantly crushed rock, presumed to be relatively impervious, actual current runoff is greater than the baseline used for drainage calculations, thus resulting in a conservative result: The baseline against which future runoff is calculated is much lower than actual current runoff. If runoff increase is less than 0.1 cfs over calculated baseline, the increase will be much less than 0.1 cfs over actual current conditions. (Testimony)

TDAs 1 and 8 qualify for this exemption: Their calculated increase over historic runoff conditions is 0.1 cfs or less. (Exhibit 3010, p. 4-3, Table 4-2) In addition, TDA 8 will employ infiltration trenches

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which will be designed to infiltrate all Trail runoff in that TDA up to the 100-year storm. (Exhibit 3010, pp. 4-3 and 4-4)

- C.7. TDA 3 qualifies for a different flow control exemption: Direct discharge. (Exhibit 3010, p. 4-3)
- C.8. The conveyance capacity of the culvert systems located at Stations 218+45, 229+85, and 256+35 was calculated to determine if they could handle flows after development of the project.

Station 218+45. The smaller 16” culvert in this system “may have enough capacity to contain the 25-year design storm, but not the 100-year design storm.” Because the project will contribute 0.1 cfs or less to the flow during the 100-year storm event, King County has no obligation under the 2009 KCSWDM to enlarge any of the components of this conveyance system. (Exhibit 3010, p. 3-21)

Station 229+85. The culverts at this location will have adequate capacity to convey the 25-year design storm. Backwater calculations indicate that the replacement system with the new catchbasins will not overflow at any catchbasin at flow rates up to 6.0 cfs. The 100-year design storm flow rate is 5.9 cfs.¹⁹ (Exhibit 3010, pp. 5-4 and 5-5)

Station 256+35. This culvert is in TDA 8. All ELST runoff in TDA 8 will be infiltrated. Therefore, the amount of water contributed to this culvert from the ELST will be reduced from current contributions. (Exhibit 3010, p. 3-22)

D. County Appeal Issue II.a (Condition 2)

- D.1. King County alleges that Condition 2’s requirement that “drainage from driveway #1 and driveway #2 shall be substantially captured and managed” places an illegal burden on it to control surface water runoff which is neither caused by nor exacerbated by its project. (Exhibit 9003, pp. 2 and 3; the quote is from Exhibit 9001.1.A, p. 12)

- D.2. Condition 2 reads as follows:

A Grading Permit (KC File GRDE14-0052) must be approved prior to commencing project construction. Grading plans showing the proposed trail widening and paving and associated site improvements, including required landscaping, restoration and mitigation plantings, shall be in substantial conformance with the 95% Review Submittal Plans prepared by Parametrix, received April 24, 2015. As part of the grading permit review, drainage from driveway #1 and driveway #2 shall be substantially captured and managed. As part of a larger drainage improvement in that

¹⁹ King County first attempted to secure a drainage easement across the McNaughton property so it could completely separate ELST flows from other flows in TDAs 2 and 3 and route the former through a new conveyance to Lake Sammamish. When it was unable to secure such an easement, it reconsidered use of the existing systems. (Exhibit 3010, p. 4-2)

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area, additional improvement may be required if deemed appropriate by the City. All construction shall be in compliance with the approved stormwater manual.

(Exhibit 9001.1.A, p. 12)

- D.3. Driveway 1 is located at approximately Station 217+75; Driveway 2 is located at approximately Station 220+75. Both driveways are located within TDA 1. (Exhibits 4, p. 8; 3010, Fig. 4-1) Both driveways slant down-slope from the Parkway to Shore Lane, crossing the ELST along the way. Both driveways are paved. (Exhibits 4, p. 8; 3028)
- D.4. Widening to convert the Interim Trail into the Master Plan Trail will require changing the grade of Driveways 1 and 2 from a point about 15 feet above (east of) to a point about 15 feet below (west of) the Interim Trail. (Exhibit 8, p. 17) The existing sag vertical curve on the east side of the Trail at each driveway will be deepened by a maximum of about one foot to meet the wider trail; the existing crest vertical curve on the west side of the Trail at each driveway will be built up a little over one foot maximum to account for the wider trail. (Exhibit 8, pp. 44 and 45) The average grade of each driveway will be unchanged as the Parkway and Shore Lane elevations (the starting and ending points of the driveway grades) will remain unchanged. Existing impervious surface area of each driveway will not be increased. (Exhibit 3010, Fig. 4-1)
- D.5. Water from above the east side of the Parkway flows down onto the east edge of the Parkway during rain storms. Some, not captured in the catchbasin system along the east side of the Parkway, sheet flows across the Parkway, ponds along the west shoulder of the Parkway, flows north and south until it reaches Driveways 1 and 2, and then flows down Driveways 1 and 2 as sheet flow. Those flows cross the Interim Trail and then flow onto Shore Lane. They pond along the west side of Shore Lane before eventually entering one of several catchbasins along the west side of Shore Lane. (Exhibit 3028) Residents in the area (Moore and Bolger) have filed multiple complaints with the City about flooding of their properties. Moore's garage and basement have flooded; Bolger has made similar complaints. The flooding problems are exacerbated by clogging of culverts and catchbasins in the area. (Exhibit 3010, pp. 3-15 – 3-17)
- D.6. The project will not be contributing any additional flows to Driveways 1 and 2. (Exhibit 3010, pp. 3-15 – 3-17)
- E. County Appeal Issue II.b (Condition 3)
- E.1. King County alleges that the requirements in Condition 3 that the existing culvert at Station 218+50 "be further analyzed" for specified purposes and that the County "shall coordinate with the City and neighboring property owners" regarding these topics exceed the City's authority and impose an inappropriate burden on the County. (Exhibit 9003, pp. 3 and 4)
- E.2. Condition 3 reads as follows:

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Prior to Site Development Plan approval and issuance of a grading permit by the City, the culvert located at station 218.5 [*sic* ²⁰] shall be further analyzed by the County. Additional information/studies shall be submitted to the City to detail culvert stormwater capacity, fish passage potential, and the stormwater outfall location. The applicant shall coordinate with the City and neighboring properties owners on culvert replacement and other needed work for improved fish passage, where appropriate, and any needed flood control measures on this stream (located between stations 218 and 219). Plans submitted for the site development/grading permit shall reflect the successful outcome of this coordination effort.

(Exhibit 9001.1.A, pp. 12 and 13)

- E.3. The City’s counsel (Pratt) agreed during the hearing to remove the “fish passage” portion of Condition 3 on the basis that King County had submitted sufficient information on that topic. (Statement of counsel) See Exhibit 3013.
- E.4. King County calculated flow rates contributory to and the capacity of the culvert system at Station 218+45. Calculated flow rates from the Trail and from off-site properties within TDA 1 for design storms are:

	Trail Right-of-way Flow	Off-site TDA 1a Flow	Off-site TDA 1b Flow	Total Contributing Flow
Flow Rate (5-Min Timestep)	cfs	cfs	cfs	cfs
Q _{2YR}	0.10	3.05	3.27	6.42
Q _{25YR}	0.20	8.13	8.72	17.05
Q _{100YR}	0.34	14.63	15.67	30.64

(Exhibit 3010, p. 3-16)

The capacity of the 16” culvert is 17.02 cfs, slightly less than the calculated 25-year storm event flow rate and significantly less than the 100-year storm event flow rate. The calculations show that the open channel downstream of the 16” culvert crossing the Vanderhoeven property would have a channel depth of 0.88 feet during the 25-year storm event and 1.2 feet during the 100-year storm event. Since the channel is only one foot deep, it would be expected to overtop during the 100-year storm event. (Exhibit 3010, p. 3-16)

²⁰ The stationing reference in the Condition uses an incorrect format: “station 218.5” should be “station 218+50.” This is the same culvert referred to above and in many record documents as located at Station 218+45.

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- E.5. As stated in Finding of Fact C.6, above, King County has no obligation to perform any remedial work on the 16” culvert or downstream open channel since ELST’s flow contribution during the 100-year storm event will be not more than 0.10 cfs above the calculated historical 100-year flow rate.
- F. County Appeal Issue II.c (Condition 4)
- F.1. King County alleged that the requirement in Condition 4 to narrow the paved trail surface between Stations 216+50 and 220+50 in order to preserve additional trees along the west side of the ELST exceeded the City’s authority and would have required it to construct a trail not meeting the 2012 AASHTO ²¹ Bike Guide. (Exhibit 9003, p. 5; testimony)
- F.2. King County and the City negotiated a resolution to this issue: The County will tighten the clearing and grubbing limits in this trail segment to increase the number of trees to be saved in the segment from 0 to 11, to increase the number of trees to be removed from 5 to 7, and to reduce the number of trees to be monitored from 20 to 7. (Exhibits 35, p. 2; 35A – 35C)
- F.3. King County and the City ask the Examiner to “adopt Exhibits [35A – 35C] as an agreed implementation of Condition #4”. (Exhibit 35, p. 2, l. 19)
- G. County Appeal Issue II.d (Condition 5)
- G.1. King County alleged that the requirement in Condition 5 to “work with neighboring property owners” regarding a stormwater vault “in the vicinity of [S]tations 224 through 230+50” exceeded the City’s authority and wrongly delegated authority over the project to private citizens. (Exhibit 9003, pp. 6 and 7; quote from Exhibit 9001.1.A, p. 13)
- G.2. King County, the City, and LS 4257 negotiated a Joint Stipulation to resolve this issue: King County will eliminate a planned storm water vault and move a planned retaining wall further east; LS 4257 will will make certain improvements to a drainage channel through its property and provide a drainage covenant across its property to Lake Sammamish. (Exhibit 20, pp. 1 and 2) These agreements are reflected in Exhibits 20A – 20C.
- G.3. The Joint Stipulation asks that the Examiner “impose an additional condition on the SSDP requiring compliance with this Joint Stipulation unless events outside of their control make it impossible to construct improvements to the drainage system depicted in Exhibit B” to the Joint Stipulation. (Exhibit 20, p. 2, ll. 7 – 10)
- H. County Appeal Issue II.e (Condition 6)
- H.1. King County alleges that the requirement in Condition 6 to have ELST traffic STOP sign controlled at the 206th Avenue SE crossing is contrary to accepted shared use path guidelines. The County asserts that “right of way priority [should be given] to the trail users based on volume of use.” (Exhibit 9003, pp. 7 and 8; quote from p. 7)

²¹ American Association of State Highway and Transportation Officials.

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H.2. Condition 6 reads as follows:

A condition will be applied to the site development/grading permit that the stop sign on 206th Avenue SE (station 239+00) shall be relocated to have trail users stop and not control traffic on the public roadway.

(Exhibit 9001.1.A, p. 13)

- H.3. 206th Avenue SE is a public cul-de-sac which runs more or less westerly from the Parkway across the Interim Trail at approximately Station 239+00. ²² It is a local access street which serves 15 single-family residences, all located west of the ELST. Its speed limit by City ordinance is 25 miles per hour (mph). The distance between the west edge of the Parkway pavement and the east edge of the Interim Trail is about 52 - 65 feet. ²³ The Trail crosses 206th Avenue SE at essentially a right angle. (Exhibits 2a, Vol. 1, p. 288; 4, pp. 5 and 10; 12; 21; testimony)
- H.4. The Interim Trail is currently, and has been for the 10 years that the Interim Trail has been open, STOP sign controlled at 206th Avenue SE: Trail users must stop at the crossing; 206th Avenue SE users have right of way priority. Bicycle/pedestrian crossing warning signs are posted on both the west- and eastbound approaches to the Interim Trail on 206th Avenue SE; a NO PARKING sign is also posted on the westbound approach. ²⁴ (Exhibits 4, pp. 3 and 10; 9, p. 47; 12, pp. 5 and 6; 21; testimony)
- H.5. King County's project plans reverse the priority at the 206th Avenue SE crossing: The plans give the ELST right of way priority and require traffic on 206th Avenue SE to stop. (Exhibit 4, pp. 56 and 63)
- H.6. The Parkway is a designated Minor Arterial which currently carries about 17,000 vehicles on an average day (ADT). ²⁵ In the vicinity of the 206th Avenue SE intersection the Parkway is a two lane

²² In reality, 206th Avenue SE runs more north-south than it does east-west. But in keeping with the directional convention adopted for this Decision and recognizing that 206th Avenue SE crosses the Interim Trail at nearly a right angle, it will be assumed to run east-west. (Exhibits 12; 21)

²³ Exhibit 3018 says the distance is 52 feet. The scaled distance from Exhibit 4, p. 10, is about 55 feet. Testimony indicated that the distance measured in the field is 65 feet.

²⁴ Exhibit 4, p. 10, clearly denotes the presence of the signs on the westbound approach. They are also visible (in reverse in the background) in the photograph in Exhibit 12 at page 6.

Exhibit 4, p. 10, does not indicate the presence of any warning signs on the eastbound approach. However, the double bicycle/pedestrian crossing warning sign is prominent in the foreground of the photograph in Exhibit 12 at page 6; the back of that sign is visible in the background in the photograph in Exhibit 12 at page 5. There does not appear to be a NO PARKING sign on the eastbound approach. (*Ibid.*)

²⁵ This volume figure was provided in testimony (Zagars). The 2009 FEIS provides a range of Parkway volumes from 9,800 to 45,100 ADT, depending upon location. For the segment of the Parkway south of SE 33rd Street, the FEIS reports 16,600 ADT. (Exhibit 2a, Vol. 1, p. 290) SE 33rd Street is the north end of Segment A. Therefore, the Examiner believes that Zagars was referring to that segment of the Parkway when he testified.

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street with paved shoulders. There is no protected turn lane at the intersection.²⁶ The speed limit on the Parkway is 35 mph. (Exhibit 2a, Vol. 1, p. 288; testimony)

The nearest traffic signal on the Parkway to the north is at Louis Thompson Road NE, approximately 3.5 miles north of the 206th Avenue SE intersection; the nearest traffic signal on the Parkway to the south is at SE 51st Street in Issaquah, approximately 1.6 miles south of the 206th Avenue SE intersection. A roundabout is located at the Parkway/SE 43rd Way intersection, approximately 0.5 miles south of the 206th intersection. Roundabouts generally do not cause a traffic “platooning” affect. (Official notice; locations and distances confirmed by Google Earth imagery (last visited February 3, 2016) and MapQuest route distances)

- H.7. The average daily vehicle trip generation rate for a single-family residence pursuant to Institute of Transportation Engineers (ITE) data is 9.52. (Exhibit 3019) City code and standards require use of ITE data for trip generation calculations. [SMC 14.10.020(2)(a), SMC 14.15.020(6), and Interim Public Works Standard PWS.15.020(D)(3)(a)] Given that 206th Avenue SE serves 15 single-family residences, its calculated ADT is 143 (9.52 x 15 = 142.8). The generally accepted rule of thumb is that ten percent of ADT (14 trips in this case) usually occurs during the PM peak traffic hour. [Official notice]
- H.8. When the FEIS was issued in 2009, King County expected that the ELST would draw “from 2,500 users on a peak weekday to 4,000 users on a peak weekend day, based on user counts from the Sammamish River Trail.” (Exhibit 2a, Vol. 1, p. 298) King County continues to use those estimates. (Exhibit 3041; testimony)

Based on studies conducted for the Burke-Gilman/Sammamish River Trails in the years 1995 and 2000, weekday trail usage is generally highest during the AM and PM commute periods, with approximately 16 percent of the total daily volume occurring during the trail peak hour (6 to 7 p.m.) on a typical weekday. Weekend peak volumes typically occur during the midday hours and taper off in the evening; approximately 11 percent of the total daily volume occurred during the peak hour (12 to 1 p.m.) on a typical weekend day.

(Exhibit 2a, Vol. 1, p. 298) The record in this proceeding does not contain any update of that information or more specific information. King County believes that current volumes are probably much lower than those predictions, at least partly because the Interim Trail is crushed rock surfaced. The County expects volumes to increase measurably once the ELST is fully widened and paved. (Testimony)

²⁶ The record contains conflicting testimony regarding the existence of turn lanes at the Parkway/206th Avenue SE intersection. Zagars, the City Engineer, testified that a left turn lane existed at that intersection. Berry, the developer of the subdivision served by 206th Avenue SE, testified that there was no left turn lane at the 206th Avenue SE intersection. The Examiner takes official notice that Google Earth imagery (last viewed February 3, 2016) indicates that Berry is correct.

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- H.9. Subsection 7.12.295(A) King County Code addresses speed on County trails: “No person shall travel on a trail at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. ... Travel at speeds in excess of 15 miles per hour shall constitute in evidence a prima facie presumption that the person violated this section.” [*sic.*]
- H.10. The FEIS identifies seven different types of crossing situations along the ELST. Type 1 crossings are for high-volume streets where signalized intersections are adjacent. Type 2 crossings are for low volume streets; Type 2 crossings assign right of way to the street with the Trail STOP sign controlled. Types 3 through 7 are for various residential driveway configurations. (Exhibit 2a, Vol. 1, pp. 85 – 94)

Although the FEIS recognizes 206th Avenue SE as a local access street (Exhibit 2a, Vol. 1, p. 288), it does not assign it to one of the seven crossing types. (Exhibit 2a, Vol. 1, p. 303)

- H.11. The ELST is a highway under state law.

State motor vehicle laws are contained in Title 46 RCW, Motor vehicles. The definitions in Chapter 46.04 RCW generally apply to all provisions in Title 46 RCW. [RCW 46.04.010] A “highway” is “the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.” [RCW 46.04.197] A “vehicle” “includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, including bicycles. ... Bicycles are not considered vehicles for the purposes of chapter 46.12, 46.16, or 46.70 RCW. ...”²⁷ [RCW 46.04.670] Therefore, the ELST is a highway by definition as it is publicly maintained and is open to bicycle usage.

- H.12. The FEIS lists three guidance documents which shaped proposed ELST crossing designs: The 1999 edition of AASHTO’s Guide for the Development of Bicycle Facilities (1999 AASHTO Bike Guide); the 2001 edition of AASHTO’s A Policy on Geometric Design of Highways and Streets (2001 AASHTO Green Book); and the 2006 edition of the Washington State Department of Transportation Design Manual (2006 WSDOT Design Manual). (Exhibit 2a, Vol. 1, pp. 301 and 302)

Based on those guidance documents, the FEIS states that a bicycle would require a 125-foot minimum stopping sight distance for a posted speed of 15 mph and that motor vehicles require 115 feet of stopping sight distance for a 20 mph travel speed. If a motor vehicle is required to yield to trail traffic, the motorist when 10 feet from the edge of the trail must be able to see a bicyclist 250 feet down the trail if the bicyclist is traveling at 20 mph. If that situation cannot be met, then, if the trail user is to have right of way priority, the motor vehicle must be STOP sign controlled. (*Ibid.*)

²⁷ Chapters 46.12, 46.16, and 46.70 RCW deal, respectively, with titling and registration requirements, license requirements, and dealer and manufacturer requirements. None have any bearing on the present applications.

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- H.13. Trail design guidance documents currently in use include the 2012 AASHTO Bike Guide, 2001 AASHTO Green Book,²⁸ the 2012 WSDOT Design Manual, and the 2009 Manual on Uniform Traffic Control Devices – including Revisions 1 and 2 (2009 MUTCD).²⁹
- H.14. The ELST is a “shared use path” in AASHTO, WSDOT, and MUTCD terminology.³⁰ [2012 AASHTO Bike Guide, § 5.1; WSDOT Design manual, § 1515.01; 2009 MUTCD, § 1A.13, Definition 191] The ELST/206th Avenue SE crossing is a “mid-block” crossing. [2012 AASHTO Bike Guide, § 5.3.1; testimony]

The 2012 AASHTO Bike Guide includes guidance for assigning right of way priority at shared use path/street mid-block crossings. It advises that speed differential, available sight distance, and relative volumes/speeds on the path and street should be taken into account. The least amount of restriction needed for effective control should be employed. [2012 AASHTO Bike Guide, § 5.3.2]

In conventional roadway intersection design, right of way is assigned to the higher volume and/or higher speed approach. In the case of a path-roadway intersection, user volumes on the path should be considered. While in many cases roadways will have greater volumes, user volumes on popular paths sometimes exceed traffic volumes on minor crossed streets. In such situations, total user delay may be minimized if roadway traffic yields to path traffic, and given bicyclists’ reluctance to lose momentum, such an operating pattern often develops spontaneously. In such situations, “YIELD” or “STOP” control is more appropriately applied on the roadway approaches (given an analysis of speeds, sight distances, and so forth as described below).

Changes in user volumes over time should also be considered. New shared use paths are often built in segments, resulting in low initial volumes. In that case, assignment of priority to roadway traffic is usually appropriate. However, path volumes may increase over time, raising the need to re-examine priority assignment. Traffic flows at path-roadway intersections should be reviewed occasionally to confirm that the priority assignment remains appropriate.

²⁸ The record contains two pages (cover and page 9-38) from the 2011 AASHTO Green Book. The 2011 AASHTO Green Book has not yet been adopted by the Federal Highway Administration (FHWA). It may be used as guidance pending its adoption. The 2001 AASHTO Green Book is still in current use. [fhwa.dot.gov/design/greenbook2011.cfm, last visited February 3, 2016] Neither the 2001 nor the 2011 AASHTO Green Book are currently available on the FHWA web site; the 2011 AASHTO Green Book is available on the AASHTO web site only by purchase.

²⁹ Excerpts from some of those documents are contained in the record. (Exhibits 23; 24; 3015; 3021; 3023) Where a fact being cited is contained in one of the excerpts, the citation will be in parentheses and will list the exhibit and the source section information. Where a fact being cited is not contained in one of the excerpts, the citation will be in brackets and will list only the source section information.

³⁰ The 2012 AASHTO Bike Guide does not hyphenate the term “shared use;” the 2009 MUTCD and the 2012 WSDOT Design Manual do. Unless in a quote, the Examiner will use the AASHTO style.

[2012 AASHTO Bike Guide, p. 5-33]

- H.15. The 2012 WSDOT Manual’s chapter on shared use paths provides “possible design solutions, which should be treated with appropriate flexibility as long as doing so complies with corresponding laws, regulations, standards, and guidance.” (Exhibit 3015, p. 1515-1; WSDOT Design Manual, §1515.01) It lists the 2012 AASHTO Bike Guide and the 2009 MUTCD as “Design Guidance” documents. (Exhibit 3015, p. 1515-2; WSDOT Design Manual, §1515.02(2))

The 2012 WSDOT Manual says: “Design shared-use paths to maintain speeds at or below” 12 mph when approaching intersections. (Exhibit 3015, p. 1515-3; WSDOT Design Manual, §1515.04(1))

The 2012 WSDOT Manual says: “Clearly define who has the right of way and provide sight distance for all users at shared-use path and roadway intersections.” (Exhibit 3015, p. 1515-11; WSDOT Design Manual, §1515.05(1)) Among the considerations when designing mid-block crossings are “traffic right of way assignments” and “sight distances for both bicyclists and motor vehicle operators”. (*Ibid.*)

The 2012 WSDOT Design Manual says “Determine the need for traffic control devices at path/roadway intersections by using MUTCD warrants and engineering judgment. Bicycles are considered vehicles in Washington State” (Exhibit 3015, p. 1515-13; 2012 WSDOT Design Manual, § 1515.05(1)(a))

- H.16. The 2009 MUTCD provides uniform standards for traffic signs, signals, and pavement markings. The 2009 MUTCD classifies its textual provisions into one of four categories: Standard (“a statement of required, mandatory, or specifically prohibitive practice regarding a traffic control device”); Guidance (“a statement of recommended, but not mandatory, practice in typical situations”); Option (“a statement of practice that is a permissive condition and carries no requirement or recommendation”); and Support (“an informational statement that does not convey any degree of mandate, recommendation, ...”). [2009 MUTCD, § 1A.13,01.A, .B, .C, and .D, respectively ³¹] The MUTCD “shall not be a legal requirement for [traffic control devices] installation.” [2009 MUTCD, § 1A.09, Standard]

Engineering judgment should be used to establish intersection control. The following factors should be considered:

- A. Vehicular, bicycle, and pedestrian traffic volumes on all approaches;
- B. Number and angle of approaches;
- C. Approach speeds;
- D. Sight distance available on each approach; and
- E. Reported crash experience.

³¹ The 2009 MUTCD uses distinctive font styles for each of the four categories. All distinctive fonts have been omitted from 2009 MUTCD quotes used in this Decision.

[2009 MUTCD, § 2B.04, Guidance]

The use of traffic signals is subject to warrant analysis; the use of STOP and YIELD signs are not. [2009 MUTCD § 4C.01; see also §§ 2B.05, 2B.07, and 2B.09] To be effective, traffic control devices “should” fulfill a need, command attention, be clear, command respect, and give adequate notice. (Exhibit 23; 2009 MUTCD, § 1A.02, Guidance)

“YIELD or STOP signs should be used” in “one or more of” four circumstances, only one of which is remotely applicable to the ELST/206th Avenue SE crossing: “Intersection of a less important road with a main road where application of the normal right-of-way rule would not be expected to provide reasonable compliance with the law”. [2009 MUTCD, § 2B.04, Guidance] “At intersections where a full stop is not necessary at all times, consideration should be given to using less restrictive measures such as YIELD signs”. [2009 MUTCD, § 2B.06, Guidance]

H.17. Part 9 of the 2009 MUTCD specifically addresses traffic controls for bicycle facilities.

STOP ... signs ... shall be installed on shared-use paths at points where bicyclists are required to stop.

YIELD ... signs ... shall be installed on shared-use paths at points where bicyclists have an adequate view of conflicting traffic as they approach the sign, and where bicyclists are required to yield the right-of-way to that conflicting traffic.

(Exhibit 3023; 2009 MUTCD, § 9B.03, Standard)

When placement of STOP or YIELD signs is considered, priority at a shared-use path/roadway intersection should be assigned with consideration of the following:

- A. Relative speeds of shared-use path and roadway users,
- B. Relative volumes of shared-use path and roadway traffic, and
- C. Relative importance of shared-use path and roadway.

Speed should not be the sole factor used to determine priority, as it is sometimes appropriate to give priority to a high-volume shared-use path crossing a low-volume street, or to a regional shared-use path crossing a minor collector street.

When priority is assigned, the least restrictive control that is appropriate should be placed on the lower priority approaches. STOP signs should not be used where YIELD signs would be acceptable.

(Exhibit 3023; 2009 MUTCD, § 9B.03, Guidance)

H.18. Bicyclists’ compliance (or lack thereof) with traffic control devices complicates assignment of priority at path-street crossings.

Bicyclists approach an intersection at a far greater speed than pedestrians, and they desire to maintain their speed as much as practical. The result may be the need to remind bicyclists of their responsibility to yield or stop, while not confusing the issue of who has the legal right of way at mid-block crossings.

[2012 AASHTO Bike Guide, p. 5-32]

Application of intersection controls (“YIELD” signs, “STOP” signs, or traffic signals) should follow the principle of providing the least amount of restriction that is effective. Installing unwarranted or unrealistically restrictive controls on path approaches in an attempt to “protect” path users can result in path users disregarding the signs and other traffic control devices at the intersection. This can lead to a loss of respect for traffic control at more critical locations.

A common misconception is that the routine installation of stop control for the pathway is an effective treatment for preventing crashes at path-roadway intersections. Poor bicyclist compliance with “STOP” signs at path-roadway intersections is well documented. Bicyclists tend to operate as though there are “YIELD” signs at these locations: they slow down as they approach the intersection, look for oncoming traffic, and proceed with the crossing if it is safe to do so. “YIELD” control (either for vehicular traffic on the roadway or for users on the pathway) can therefore be an effective solution at some mid-block crossings, as it encourages caution without being overly restrictive.

[2012 AASHTO Bike Guide, p. 5-34, emphasis added]

- H.19. North- or southbound vehicles on the Parkway turning into 206th Avenue SE will travel only about 60 feet after making their turn before encountering the ELST. (Exhibit 4, p. 56) Northbound vehicles must execute a left turn across southbound Parkway traffic, which in the PM peak hour could amount to approximately 850 vehicles or about 15 vehicles per minute. (Assumes a 50 – 50 northbound – southbound traffic split which may or may not be accurate in the PM peak hour.) Southbound right turning vehicles must slow down and execute a hard right with fast moving traffic behind them. (Testimony)
- H.20. “Sight distance is a principal element of roadway and path intersection design. At a minimum, provide stopping sight distance for both the roadway and the path at the crossing. Decision sight distance is desirable for the roadway traffic.” (Exhibit 3015, p. 1515-14; 2012 WSDOT Design Manual, § 1515.05(1)(a)(5))
- H.21. According to the 2012 WSDOT Design Manual,

The distance needed to bring a shared-use path user to a complete stop [known as “stopping sight distance”] is a function of the user’s perception and braking reaction times, the initial speed, the coefficient of friction between the wheels and the pavement, the braking ability of the user’s equipment, and the grade.

[2012 WSDOT Manual, §1515-04(5), p. 1515-10]

The stopping sight distance for a bicycle traveling at 15 mph on a flat trail is approximately 102 feet using the formula contained in the 2012 AASHTO Bike Guide ($(15^2 \div (30 \times 0.16)) + (3.67 \times 15) = 101.925$). [2012 AASHTO Bike Guide, p. 5-17, Table 5-4, U.S. Customary formula] The stopping sight distance for a bicycle traveling at 12 mph on a flat trail is approximately 75 feet. [2012 WSDOT Design Manual, p. 1515-20]

Stopping sight distance for an automobile assumes a driver’s eye height of 3.5 feet and an object height of 2.0 feet above the road surface. The stopping sight distance for an automobile on a flat grade is 80 feet at 15 mph, 115 feet at 20 mph, 155 feet at 25 mph, and 200 feet at 30 mph. (Exhibit 3021; 2011 AASHTO Street Guide, p. 9-41, Table 9-8) Stopping sight distance increases on down-grades and decreases on up-grades. [2012 AASHTO Bike Guide, pp. 5-18 and 5-19]

H.22. The ELST has little, if any, grade at the 206th Avenue SE crossing. 206th Avenue SE has a modest down grade from the Parkway to the ELST; the down grade continues to the west beyond the ELST. (Exhibits 4, p. 10; 12, pp. 5 and 6; 21)

H.23. According to the 2012 WSDOT Design Manual, “Decision sight distance values are greater than stopping sight distance values because they give the driver an additional margin for error and afford sufficient length to maneuver at the same or reduced speed rather than to just stop.” [2012 WSDOT Design Manual, § 1260.05] The Decision sight distance for a design speed of 30 mph is 220 feet for a “rural” stop and 490 feet for an “urban” stop. [*Ibid.*]

H.24. A third type of sight distance is intersection sight distance.

The driver of a vehicle that is stopped and waiting to cross or enter a through roadway needs obstruction-free sight triangles in order to see enough of the through roadway to complete all legal maneuvers before an approaching vehicle on the through roadway can reach the intersection.

[2012 WSDOT Design Manual, § 1310.05, ¶ 2] The basic intersection sight distance formula where grades are not a factor is: $S_i = 1.47Vt_g$, where S_i is intersection sight distance (in feet), 1.47 is a constant, V is the design speed (in mph) of the through street, and t_g is the time gap (in seconds). For a passenger car crossing a through street, t_g is 6.5 seconds. [2012 WSDOT Design Manual, p. 1310-40] Intersection sight distance is 115 feet for a design speed of 12 mph (as recommended by the 2012

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WSDOT Design Manual for shared use paths at intersection approaches) and 143 feet for a design speed of 15 mph. (Calculated)

Intersection sight distance is measured from a point in the travel lane approaching the stop where the driver's eye is presumed to be. Typically, that point is 18 feet from the edge of the through street's travel lane. But it can be reduced to as little as 10 feet if necessary. [2012 WSDOT Design Manual, § 1310.05, ¶¶ 4 and 6]

H.25. A related concept is intersection sight triangles: Approaching sight triangles and departure sight triangles. Approaching sight triangles provide clear visibility for vehicles on intersecting legs of the intersection to see one another and stop or yield before colliding. Departure sight triangles provide clear visibility for a stopped vehicle to see an approaching vehicle on the cross street/path far enough away to make a safe crossing of the street/path. A departure sight triangle is essentially a depiction of intersection sight distance.

According to King County, for an uncontrolled or YIELD controlled path/street intersection where the ELST has priority and where the trail design speed is 18 mph and the 206th Avenue SE design speed is 15 mph, the approaching sight triangle requires a clear line of sight to a point 180 feet down the trail to the left from a point on 206th Avenue SE 75 feet from the near edge of the ELST and to a point 180 feet down the trail to the right from a point on 206th Avenue SE 75 feet from the near edge of the ELST. (Exhibit 3020, July 2015 document, ³² p. 3)

According to King County, for a STOP controlled street intersection with the ELST where the ELST has priority and where the trail design speed is 18 mph and the 206th Avenue SE design speed is 15 mph, the departure sight triangle requires that a stopped vehicle have a clear line of sight to a point 175 feet down the trail to the left from a point on 206th Avenue SE 10 feet from the near edge of the ELST and to a point 175 feet down the trail to the right from a point on 206th Avenue SE 10 feet from the near edge of the ELST. (Exhibit 3020, July 2015 document, p. 4)

H.26. Sight distance at the ELST/206th Avenue SE crossing is severely limited in some places by existing evergreen vegetation and subdivision monument signs. Masonry monument signs are located on each side of 206th Avenue SE, approximately 10 feet west of the Interim Trail and between two and five feet off the edges of the 206th Avenue SE pavement. Large conifers exist behind (west of) those signs and north of the northern sign. Deciduous trees and scrub brush populate the area between the ELST and the Parkway north of 206th Avenue SE. None of the exhibits depict any significant vegetation in the area between the ELST and the Parkway south of 206th Avenue SE. (Exhibits 4, p. 10; 12, pp. 5 and 6; 21; 3031)

H.27. Stopping sight distance requirements are easily met for both north- and southbound travel on the ELST at the 206th Avenue SE crossing: The ELST is nearly level and almost straight for several hundred feet north and south of the crossing. (Exhibits 4, p. 10; 21)

³² A prior (March 2014) version of this document appears in two places in the record: As part of Exhibits 3018 and 3020.

Stopping sight distance is available for eastbound but not for westbound traffic on 206th Avenue SE. Even though 206th Avenue SE curves towards the northeast as it approaches the ELST, the curve appears gentle enough that at least 155 feet of stopping sight distance is available.

The same cannot be said for westbound traffic on 206th Avenue SE for one simple and immutable reason: The distance between the Parkway and the ELST (52 – 65 feet) is less than the stopping sight distance for vehicles travelling only 15 mph (80 feet). Therefore, a vehicle entering 206th Avenue SE from the Parkway would have insufficient space to stop if something popped up on the ELST in front of it.

- H.28. Intersection sight distance is not adequate from northbound ELST looking west or east. It will be remembered that intersection sight distance is the distance a stopped vehicle must be able to see to safely cross a street. The street in this case is 206th Avenue SE which has a posted speed limit of 25 mph. Design speed is 5 mph greater than posted speed. Therefore, the required intersection sight distance would be 290 feet. (Exhibit 12, p. 3) Intersection sight distance to the west from a northbound stopped bicycle is at best 55 – 60 feet because of the subdivision monument sign and nearby conifers. Available intersection sight distance to the east from a stopped northbound bicycle on the ELST is equally short because of the proximity of the Parkway. Intersection sight distance from a southbound stopped bicycle to the west is adequate, but is not adequate to the east, again because of the proximity of the Parkway. (Exhibits 12, pp. 1 and 4³³; 3031, Exhibit B)
- H.29. Intersection sight distance for vehicles stopped on 206th Avenue SE at the ELST is more than 150 feet in all four directions: Westbound traffic looking north and south on the ELST and eastbound traffic looking north and south on the ELST. (Exhibits 4, p. 56; 3031, Exhibit A)
- H.30. Approaching sight distance triangles for an uncontrolled or YIELD controlled crossing would not be met at the ELST/206th Avenue SE crossing. The trees and subdivision monument signs would block the clear sight triangles on at least three of the four quadrants of the intersection. (Exhibits 4, p. 56; 3020, July 2015 document)
- H.31. King County assigned right of way priority to the ELST at the 206th Avenue SE crossing “because the potential volume of the trail will exceed the vehicular volumes of driveways.” (Exhibit 12, p. 1; testimony) (See also Exhibit 3018, p. 1: “As a result, the trail is given priority over the local roads at both intersections [206th Avenue SE and 33rd Street SE].”) Therefore, King County’s plans depict STOP sign control on 206th Avenue SE at the ELST crossing. (Exhibit 4, p. 56)

King County’s consulting licensed civil engineer (Ho) testified that she would not “stamp” plans that required placement of a STOP sign for the ELST at 206th Avenue SE “if not warranted.” (The City Engineer (Zagars) testified that the City would not prepare and “stamp” plans for the County.)

³³ The sight triangles drawn on p. 4 of Exhibit 12 represent required intersection sight distance for stopped bicycles on the ELST, not available sight distance.

King County argues that STOP sign placement “is not a shoreline issue and [Condition 6] is not properly imposed through shoreline permit review.” (Exhibit 34, p. 12, ll. 11 – 13)

Finally, in its closing argument, King County asserted that the ELST is located within a right-of-way owned by King County, that there is no evidence that the 206th Avenue SE right-of-way supersedes the ELST right-of-way, and that, therefore, sole jurisdiction to place traffic control devices within the ELST right-of-way rests with King County. In other words, King County asserts that the City has absolutely no say in the placement of traffic control devices anywhere within the ELST right-of-way. (Argument of counsel)

H.32. The City Engineer testified that the City regulates the placement of traffic control devices anywhere within the City. The City argues that because of traffic speeds on the Parkway, motorists turning from the Parkway onto 206th Avenue SE will be focused on Parkway traffic until they have safely entered 206th Avenue SE and would then have inadequate distance to stop before crossing the ELST. Therefore, the STOP control should be for trail users as it has been for the past 10 years. The City also points out that an eastbound motorist on 206th Avenue SE would have two STOP signs within a distance of about 75 feet and would be inclined to ignore one of them, most likely the first (ELST) one. The City would be satisfied with YIELD control for ELST users at that crossing. (Testimony)

The City also argues that ELST use varies greatly by season, day of week, and time of day. It posits that motorists would frequently encounter no trail users after stopping and would, over time, begin to ignore the STOP sign. The City notes that volume is only one of many considerations in assignment of priority at crossings. (Testimony)

The City opposes King County’s insistence that the STOP sign at the ELST/206th Avenue SE crossing be switched to control street traffic instead of ELST traffic. (Testimony)

H.33. The record contains no traffic impact analysis, no current traffic counts on the public street system, no current usage data for the Interim Trail, no speed analysis for traffic on either the Interim Trail or the street system, and no data regarding temporal distribution of traffic on either the Interim Trail or the public street system.

H.34. The August, 2010 Record of decision contains no mitigation measures that specifically apply to the ELST/206th Avenue SE crossing nor that would impinge on either traffic control alternative before the Examiner. (Exhibit 3, pp. 11 and 12 ³⁴)

I. County Appeal Issue II.f (Condition 7)

³⁴ One mitigation measure states: “Provide signage at critical intersections, including Waverly Shores Private Boat Launch at 33rd Street, warning trail users that they are approaching a congested intersection.” (Exhibit 3, p. 11) Another states in relevant part: “Informational and regulatory signs would also be installed at all such crossings for trail users and road-based vehicles.” (Exhibit 3, p. 12)

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- I.1. King County alleged that the requirement in Condition 7 to narrow the Master Plan Trail between Stations 259+25 and 260+75 in order to preserve additional trees along the west side of the trail exceeded the City's authority and would have required it to construct a trail not meeting the 2012 AASHTO Bike Guide. (Exhibit 9003, pp. 8 and 9; testimony)
- I.2. King County and the City negotiated a resolution to this issue: The County will tighten the clearing and grubbing limits in this trail segment to shift all of the 43 significant trees in the segment from monitor to save. (Exhibits 35, p. 3; 35A – 35C)
- I.3. King County and the City ask the Examiner to “adopt Exhibits [35A – 35C] as an agreed implementation of Condition #7”. (Exhibit 35, p. 3, l. 4)

J. County Appeal Issue II.g (Condition 8)

- J.1. King County alleged that the requirement in Condition 8 to obtain separate tree removal permits for removal of all “save” or “monitor” trees and that obtaining such permits “may entail providing an arborist report and/or meeting with neighboring property owners” exceeded the City's authority and would impose an inappropriate burden on the County. (Exhibit 9003, pp. 9 and 10; quote from Exhibit 9001.1.A, p. 13)

- J.2. The full text of Condition 8 reads as follows:

Significant trees shown on the approved plans as being “save” or “monitor” within the clearing limits require a separate tree removal permit authorization from the City prior to removal. Obtaining a permit may entail providing an arborist report and/or meeting with neighboring property owners.

(Exhibit 9001.1.A, p. 13)

- J.3. King County and the City negotiated alternative wording for Condition 8:

Significant trees shown on the approved plans as being “save” or “monitor” within the clearing limits require a separate tree removal permit authorization from the City prior to removal. Obtaining a permit may entail providing an arborist report. The City will provide a decision on a tree removal permit application within 24 hours, excluding weekends and holidays, of receipt by the City of a County application and, if required by the City, a County supplied arborist's report on the tree(s) that are the subject of the application.

(Exhibit 35, p. 3) King County and the City ask the Examiner to “adopt this language as an agreed implementation of Condition #8”. (Exhibit 35, p. 3, l. 16)

K. County Appeal Issue II.h (Condition 10)

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- K.1. King County alleged that Condition 10 (“Where fences, retaining walls, or a combination of fence and retaining wall exceed four feet in height, adequate provisions shall be made to allow wildlife passage at intervals along the trail.”) exceeded the City’s authority and was unnecessary. (Exhibit 9003, pp. 10 and 11; Condition 10 quoted from Exhibit 9001.1.A, p. 13)
- K.2. King County and the City negotiated a resolution to this issue: The County demonstrated to the City’s satisfaction that “the multiple intersection breaks in the trail design” will provide ample opportunity for wildlife to cross the trail. (Exhibit 19, p. 1, ll. 21 and 22)
- K.3. King County and the City ask the Examiner to delete Condition 10. (Exhibit 19, p. 1, ll. 22 and 23)
- L. County Appeal Issue II.i (Condition 14)
- L.1. King County alleges that the requirement in Condition 14 that “all shrubs and trees installed in mitigation planting areas shall meet a 100% survival standard one year following City acceptance of as-built mitigation plans” and “meet an 80% survival standard during mitigation monitoring years 2 through 5” is unrealistic and not attainable. (Exhibit 9003, pp. 11 and 12; testimony; quotes from Exhibit 9001.1.A, p. 14)
- L.2. Condition 14 reads as follows:
- In addition to mitigation performance standards described in the critical area mitigation plans, all shrubs and trees installed in mitigation planting areas shall meet a 100% survival standard one year following City acceptance of as-built mitigation plans. All shrubs and trees installed in mitigation planting areas shall meet an 80% survival standard during mitigation monitoring years 2 through 5. Planting shall occur as needed to meet these standards in any mitigation monitoring year these standards are not met.
- (Exhibit 9001.1.A, p. 14)
- L.3. The City testified that for at least the past 10 years it has required survival rates as set forth in Condition 14 for all environmentally critical area mitigation plans. (Testimony)
- L.4. DPER has created Critical Areas Mitigation Guidelines (DPER Guidelines) for use by persons preparing critical area mitigation plans required for permits issued by King County. The DPER Guidelines require that the mitigation plan provide that “During Year One, every failed planting must be replaced.” (Exhibit 22, p. 6, § Two.12.1) “Design Guidelines” in the DPER Guidelines includes “100% survival by Year One, EITHER 85% survival by Year Three OR demonstrate that species diversity and distribution mimic reference standard wetlands.” (Exhibit 22, p. 9, § Three.II.1.1.3)
- L.5. King County wants the Examiner to replace Condition 14 with the mitigation performance standards contained in its consultant’s critical areas study: At least 80% survival of planted woody species in

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Year 1; at least 35% areal coverage of native woody species in Year 3; and at least 60% areal coverage of native woody species in Year 5. (Exhibit 8, p. 55)

King County notes that the comparable condition on the City's SSDP for the North Segment simply required that the project meet the provisions in the critical areas study submitted with that application. (Exhibit 3027, p. 7, Condition 5)

L.6. The City testified that Condition 5 on the North Segment SSDP resulted from an "oversight" and that if it could be done over, the City would impose the equivalent of Condition 14. The City also argues that an "areal coverage" standard can be met with native volunteer species which may not guarantee the species diversity desired in a wetland revegetation plan. (Testimony)

M. County Appeal Issue II.j (Condition 17)

M.1. King County alleged that Condition 17 ("A critical areas study must be provided with the site development application that demonstrates how the project meets Critical Aquifer Recharge Area (CARA) protection requirements in SMC 21A.50.280 during and post construction.") was unnecessary because it had "submitted a critical areas study that demonstrates compliance with the requirements of SMC 21A.50.280. The County has already met this condition." (Exhibit 9003, p. 12; Condition 17 quoted from Exhibit 9001.1.A, p. 14)

M.2. King County and the City negotiated a resolution to this issue: The County demonstrated to the City's satisfaction "that, based on information submitted by the County, Condition 17 has been satisfied subsequent to issuance of the SSDP." (Exhibit 34, p. 1)

M.3. King County and the City ask the Examiner to find "that Condition 17 has been satisfied." (Exhibit 34, p. 1)

N. County Appeal Issue II.k (Federal preemption)

N.1. King County alleges that the conditions which it appealed: "are preempted by operation of" a variety of federal laws; violate RCW 36.79A.200(5) relating to limitations on the authority to condition an Essential Public facility (EPF); and "conflict with the SEPA conditions imposed on the April 2010, Final EIS." (Exhibit 9003, pp. 12 and 13)

N.2. The County did not present evidence or argument on this issue beyond that in its appeal, its Prehearing Brief, and its closing statement. (Exhibits 3034; 9003; argument of counsel)

LEGAL FRAMEWORK ³⁵

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

³⁵ 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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Authority

An SSDP is a Type 2 land use application. [SMC 20.05.020, Exhibit A] An appeal from the Department's action on a Type 2 land use application requires an open record hearing before the Examiner. The Examiner makes a final decision on the appeal which is subject to the right of reconsideration and (normally) appeal to Superior Court. [SMC 20.05.020, 20.10.240, 20.10.250, and 20.10.260] In the case of an SSDP, however, appeal would be to the State Shorelines Hearings Board. (See Exhibit 9008.)

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.

The review criteria for a Type 2 SSDP are set forth at SMC 25.08.020(2): "The director may grant a substantial development permit 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 SMP]."

Subsection 90.58.140(2)(b) RCW provides that "A permit shall be granted: ... (b) After adoption or approval, as appropriate, by [Ecology] of an applicable master program, only when the development proposed is consistent with the applicable master program and this chapter."

WAC 173-27-150(1) provides that "A substantial development permit shall be granted only when the development proposed is consistent with: (a) The policies and procedures of the act; (b) The provisions of this regulation; and (c) The applicable master program adopted or approved for the area."

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 Type 2 application involved in this appeal is vested to the development regulations as they existed on July 31, 2014.

Standard of Review

The standard of review is preponderance of the evidence. The appellant has the burden of proof. [RoP 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. General

A.1. The Examiner is guided in determining the extent of permit conditioning allowed on an EPF proposal by the Court of Appeals' holding in *City of Des Moines v. Puget Sound Regional Council (Des Moines)*, 188 Wn. App. 836, 988 P.2d 27 (1999). To paraphrase *Des Moines*, King County "will have to comply with [Sammamish's] reasonable permitting and mitigation requirements. The fact that these requirements may make the [Master Plan Trail] more costly does not relieve [King County] of these obligations." [*Des Moines* at 843, paraphrased]

At this juncture the Examiner concludes that it is unnecessary to determine whether or not the ELST is an EPF.

A.2. Aside from the Examiner's own analysis, the Examiner accords considerable deference, absent clear error, to the professional opinions and interpretation of regulations rendered by the agencies charged with administering them. [*Mall, Inc. v. Seattle*, 108 Wn.2d 369, 739 P.2d 668 (1987)]

A.3. An appellant cannot meet its required burden of proof simply by presenting argument (unless, of course, an issue presents nothing but a legal question).

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- A.4. There is no condition on the SSDP that expressly adopts a particular set of plans as the SSDP plan set. Even though this was not an appeal issue, the Examiner believes that every permit should clearly identify the plan(s) which are being approved. Therefore, the Examiner will add a condition (a new Condition 1) which will specify that Exhibit 4 (the 95% Review Submittal plans, the most recent plan set in the record) is the approved plan set. This new condition will also facilitate recording some of the settlements between King County and the City.
- A.5. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.
- B. Owners Appeal Issue 4.2.3
- B.1. Owners have presented no evidence to refute the original delineations or the subsequent re-delineations of wetlands along the east side of the ELST. That there may be ditches within those wetlands does not render them not wetlands. The delineations were affirmed through the Interim Trail and Master Plan Trail EIS processes. The USACE has recently confirmed that those ditches are regulated waters of the United States. The wetlands in Segment A are regulated wetlands.
- B.2. A code interpretation is not a code amendment. “[D]eference is accorded an agency’s interpretation only if (1) the particular agency is charged with the administration and enforcement of the statute, (2) the statute is ambiguous, and (3) the statute falls within the agency’s special expertise.” [*Bostain v. Food Exp., Inc.*, 159 Wn.2d 700, 716, 153 P.3d 846 (2007)] “[A]n agency interpretation that conflicts with a statute is given no deference.” [*Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173, 184, 157 P.3d 847 (2007)] An agency interpretation or agency policy cannot work to effectively “amend” an ordinance or apply it in a manner that clearly exceeds its intended scope. [*Mall, Inc. v. City of Seattle*, 108 Wn.2d 369, 378, 739 P.2d 668 (1987)] The person challenging an agency’s interpretation bears the burden of proving that the interpretation is erroneous. [*City of Bellevue v. East Bellevue Community Mun. Corp.*, 119 Wn. App. 405, 413, 81 P.3d 148 (2003)]
- B.3. The Department’s 2010 Code Interpretation of former SMC 21A.50.290(1)(a) did not amend the SMC. The SMC then (and now) defined “street” in such a way that the term included shared use paths. The ELST is a shared use path. Therefore, the buffer truncation provision applied with or without the Code Interpretation.
- B.4. Nothing in state law or regulations requires a municipality to obtain Ecology approval of every code interpretation it renders in the context of implementing the SMA. The law requires Ecology approval of SMP amendments, but since an interpretation which does not amend the local SMP/code is not an amendment, Ecology approval is not required.
- B.5. The wetland buffer truncation provision of former 21A.50.290(1)(a) applies to the ELST. The record in this case contains absolutely no evidence that the area west of the ELST, which is developed as landscaped areas, parking areas, roads, etc., provides any biological, hydrological, or geological support to the wetlands upslope and across the ELST. Truncation is appropriate.

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- B.6. Owners have failed to meet their required burden on this issue; their appeal as to this issue must be denied.
- C. Owners Appeal Issue 4.2.4U
- C.1. There is no evidence in the record that upgrading the ELST from the Interim Trail to the Master Plan Trail will appreciably increase storm water flows to downstream properties. Applicable regulations, especially the 2009 KCSWDM, require that drainage be discharged where it historically and naturally has gone. King County's plans do just that: The plans do not direct water to places where it hasn't historically gone and the project will not measurably increase flows.
- C.2. King County has no obligation to correct existing drainage problems unless it will exacerbate them. The evidence demonstrates rather convincingly that flow rate increases will be well less than the threshold established by the 2009 KCSWDM that would require action under the 2009 KCSWDM.
- C.3. Owners have failed to meet their required burden on this issue; their appeal as to this issue must be denied.
- D. County Appeal Issue II.a (Condition 2)
- D.1. There is no evidence in the record that upgrading the ELST from the Interim Trail to the Master Plan Trail will appreciably increase storm water flows on Driveways 1 and 2. Applicable regulations, especially the 2009 KCSWDM, require that drainage be discharged where it historically and naturally has gone. King County's plans do just that: The plans do not direct water to places where it hasn't historically gone and the project will not measurably increase flows.
- D.2. King County has no obligation to correct existing drainage problems unless it will exacerbate them. The evidence demonstrates rather convincingly that flow rate increases will be well less than the threshold established by the 2009 KCSWDM that would require action under the 2009 KCSWDM.
- D.3. The evidence does convincingly show that un- or under-controlled storm water runoff exists in the vicinity of Driveways 1 and 2. But the evidence equally convincingly shows that the source of that existing problem runoff is the Parkway and points east, not the ELST. King County cannot be required to solve that problem since it neither created it nor will exacerbate it.
- D.4. The sentence in Condition 2 dealing with Driveways 1 and 2 must be stricken.
- D.5. The sentence in Condition 2 which indicates that King County may be required as a condition of this SSDP to participate with the City in "a larger drainage improvement in that area" must also be stricken. A comprehensive improvement program to correct existing drainage problems may well be very beneficial and desirable, but the question here is Can the City force King County's participation by imposing a condition on this SSDP? The Examiner concludes that it cannot, simply because there

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is no “rational nexus” between such a condition and the documented impacts from the proposed project.

E. County Appeal Issue II.b (Condition 3)

E.1. The record contains no legitimate justification for Condition 3. The evidence does convincingly show that un- or under-controlled storm water runoff exists in the vicinity of Station 218+45. But the evidence equally convincingly shows that the source of that existing problem is points east, not the ELST. King County cannot be required to solve that problem since it neither created it nor will exacerbate it.

E.2. Even if the condition were warranted because of the existence of a rational nexus between project impacts and the problem, the requirement to “coordinate with neighboring properties” would be inappropriate. The permitting authority for an SSDP is the City, not the neighbors. The City cannot delegate its permit authority to neighbors, nor can it create a condition which effectively grants to neighbors a veto power over the project. The City must determine if the project complies with applicable regulatory requirements. If it does, then it must approve it; if it doesn’t, then it must deny it.

E.3. There is no acceptable justification in the record for Condition 3. The condition must be stricken.

F. County Appeal Issue II.c (Condition 4)

F.1. King County and the City have resolved this appeal issue. Exhibit 35 documents that resolution. The Examiner finds the resolution to be consistent with the SMP. Condition 4 can be stricken if a clause is added to new Condition 1 specifying that Exhibits 35A – 35C supersede corresponding sheets in Exhibit 4.

G. County Appeal Issue II.d (Condition 5)

G.1. King County, the City, and LS 4257 have resolved this appeal issue. Exhibit 20 documents that resolution. The Examiner finds the resolution to be consistent with the SMP. Condition 5 can be replaced with a condition requiring compliance with the Joint Stipulation contained in Exhibit 20.

H. County Appeal Issue II.e (Condition 6)

H.1. The question of what traffic control devices should be installed where at the ELST/206th Avenue SE crossing is, in all probability, beyond the scope of the Transportation regulations within the SMP. (See SMC 25.07.100.) But it is a component of the project and public safety is at issue. The Examiner concludes that public safety is an inherent consideration in any permit, including SSDPs: The City should not be in the position of approving a permit for something that it knows will be unsafe.

H.2. The situation at the ELST/206th Avenue SE crossing is difficult for all parties. The notion, which King County and its witnesses seemed to be urging on the Examiner at times, that any of the guidance documents listed in Finding of Fact H.13, above, provide a mandatory, definitive answer to

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the question of which should have right of way priority is simply not true. Those guidance documents all list numerous considerations and end up saying that engineering judgment must be employed.

The corollary notion, also urged on the Examiner at times, that relative volume and speed always dictate where crossing priority will lie is equally not true. The guidance documents tell us that there are many considerations in determining priority, of which volume and speed are but two.

- H.3. The evidence indicates that YIELD control, either for the ELST or for 206th Avenue SE, will not work because adequate approaching sight distance triangles are not present for any of the four movement directions: Inadequate distances and/or vegetation and masonry monuments block the extensive areas that would be required were either approach to be regulated by YIELD signs.
- H.4. If the ELST is STOP sign controlled, northbound bicyclists have inadequate departure sight distance both to their left (west) and to their right (east) to make a safe crossing after stopping. Vegetation and the subdivision monument signs block adequate sight distance to the west for northbound cyclists. The Parkway is less far from the ELST than the required sight distance to the east. With respect to the latter, a bicyclist could well look east, see no vehicle on 206th Avenue SE, start across the street, and be struck by a vehicle that had turned in from the Parkway. It seems unreasonable to expect a bicyclist to see through the shrubs along the Parkway to the north or look over his/her shoulder to the south to see if a car is preparing for a right turn or a left turn into 206th Avenue SE.
- H.5. On the other hand, if 206th Avenue SE is STOP sign controlled, entering vehicles will have less than required stopping sight distance after entering the street to stop before crossing the ELST: The ELST is only 52 – 65 feet from the edge of the Parkway and stopping sight distance is 80 feet for an automobile traveling at 15 mph. It is not at all unreasonable to expect that motorists entering 206th Avenue SE from the Parkway could be travelling at around 15 mph, especially those who made a left turn into 206th Avenue SE.
- H.6. The Examiner finds speed differential to be essentially moot. Design speed for bicycles approaching an intersection is supposed to be 12 mph, the County's trail speed limit is 15 mph, and it is not unreasonable to expect that motorists both inbound from the Parkway and outbound to the Parkway on 206th Avenue SE could be traveling at around 15 mph.
- H.7. Volume as a factor does not seem to be as straight forward as King County would suggest. The record has no evidence of current volumes on the Interim Trail, no evidence of seasonal variation in trail use, and no evidence of daily temporal variation in trail use. Basically, the Examiner is expected to simply accept without questioning that numbers generated at some time in the past on other trails in King County's system are representative of what will be experienced here – and with little, if any, supporting data for the numbers that were presented.

It is true that the 15 residences west of the ELST served by 206th Avenue SE probably generate only 150 ADT of which 15 trips would occur during the peak hour of traffic on the street system. But there is a suggestion in the record that the peak weekday hour on the ELST is likely not to be the same as the peak traffic hour on the street system.

- H.8. Respect for traffic control devices seems to be a foggy consideration as well. It would seem to be rather likely that motorists on 206th Avenue SE would not see any traffic on the ELST at least as frequently as ELST bikers would not see any traffic on 206th Avenue SE. Either could become frustrated obeying a STOP sign that didn't seem to serve any useful purpose, and thus begin to disrespect it.

One aspect of this element struck the Examiner rather profoundly: According to the guidance manuals, bicyclists are apparently notoriously poor at obeying STOP signs. They apparently slow down as they approach a STOP sign, (hopefully) look both ways, and then shoot through the intersection without stopping. It seems a shame that choice of traffic control devices must be based, at least in part, on the premise that bicyclists will ignore the ones they don't like.

- H.9. The decision on crossing priority requires the exercise of engineering judgment according to all of the guidance manuals cited by both parties to this dispute. The Examiner would have far preferred that the engineers had exercised that judgment and come to an agreement to serve the safety of everyone. (Ample opportunity for such a convergence of opinion existed in the hearing schedule.)

But since the engineers have not reached such an agreement, it falls to the Examiner to make the decision for them.³⁶ In doing so, the Examiner has been guided by the factors discussed above, with safety being the overriding consideration.

- H.10. The Examiner will approve the traffic control plan for the ELST/206th Avenue SE crossing as proposed by King County. The primary factor in this decision is the lack of departure sight distance for bicyclists stopped at the crossing. Without adequate departure sight distance bicyclists will be very vulnerable to being hit in the intersection by vehicles on 206th Avenue SE. If there were adequate departure sight distance, the Examiner would have reached the opposite decision: Bicyclists will always lose in a collision with a motor vehicle and they would be safest if they stopped at the street and crossed only when no on-coming traffic was visible. But providing adequate departure sight distance does not seem to be possible.

The Examiner's major worry with this decision is the potential lack of stopping sight distance for inbound vehicles from the Parkway. The Examiner expects that the trail warning signs now on 206th Avenue SE will not be appropriate if the street is STOP sign controlled. The Examiner hopes that one or more appropriate warning signs ("Stop Ahead", etc.) can be installed on the westbound

³⁶ Revisions to SSDPs are provided for by the SMP. [SMC 25.08.140] If King County's engineers and the City Engineer can agree on a different, safer resolution to the 206th Avenue SE crossing priority issue, a revision could be processed.

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approach to the ELST so that drivers entering 206th Avenue SE from the Parkway will be aware of the need to stop a very short distance ahead.

H.11. The Examiner declines to become involved in the question of who has legal authority to place traffic control devices at the ELST/206th Avenue SE crossing, primarily because this is a property rights issue which the Examiner has indicated is beyond the scope of his jurisdiction. (Exhibit 9028, pp. 7 and 8) If King County and the City wish to adjudicate that issue, they will have to do so in a different forum.

H.12. Condition 6 will be stricken.

I. County Appeal Issue II.f (Condition 7)

I.1. King County and the City have resolved this appeal issue. Exhibit 35 documents that resolution. The Examiner finds the resolution to be consistent with the SMP. Condition 7 can be stricken if a clause is added to new Condition 1 specifying that Exhibits 35A – 35C supersede corresponding sheets in Exhibit 4.

J. County Appeal Issue II.g (Condition 8)

J.1. King County and the City have resolved this appeal issue. Exhibit 35 documents that resolution. The Examiner finds the resolution to be consistent with the SMP. Condition 8 should be modified to read as set forth in Exhibit 35.

K. County Appeal Issue II.h (Condition 10)

K.1. King County and the City have resolved this appeal issue. Exhibit 19 documents that resolution. The Examiner finds the resolution to be consistent with the SMP. Condition 10 can be stricken.

L. County Appeal Issue II.i (Condition 14)

L.1. If interpreted reasonably, Condition 14 is not measurably different from the mitigation plantings survival rate expected by King County for persons who are required to provide mitigation as a requirement of a King County-issued permit. Condition 14 does not require an applicant to guarantee that no mitigation plantings will die during the first year after planting. Interpreted reasonably, it requires replacement at a 1:1 ratio of mitigation plantings that die during the first year.

L.2. King County cannot complain about being required to comply with essentially the same standard it expects of persons who obtain permits from it.

L.3. King County has not met its burden. King County's appeal of Condition 14 will be denied. But, to the extent that the wording of Condition 14 may be unclear or potentially misleading, the Examiner will provide some clarity.

M. County Appeal Issue II.j (Condition 17)

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- M.1. King County and the City have resolved this appeal issue. Exhibit 34 documents that resolution. The Examiner finds the resolution to be consistent with the SMP. Condition 17 can be stricken.
- N. County Appeal Issue II.k (Federal preemption)
- N.1. The Examiner declines to delve into the question of Federal preemption.

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:

- A. **ACCEPTS WITHDRAWAL** of LS 4257's appeal based upon the Joint Stipulation;
- B. **DENIES** the Owners' appeal; and
- C. **GRANTS IN PART** King County's appeal as set forth above.
- D. The SSDP conditions of approval are revised to read as set forth below:
1. Exhibit 4 shall be the approved plan set for the subject SSDP; **PROVIDED**, that Exhibits 35A – 35C for clearing/grubbing limits and tree retention between approximately Stations 216+50 – 220+50 and Stations 259+25 – 260+75 shall supersede plan sheets within Exhibit 4 covering the same topics; and **PROVIDED FURTHER**, that Exhibits 20A and 20B with respect to improvements in the vicinity of Station 224+00 shall supersede plan sheets within Exhibit 4 covering the same topics.
 2. The Applicant shall comply with all city, county, state, and federal rules and regulations in effect on September 14, 2014, the vesting date of the subject application, including any necessary permits from applicable state or federal agencies.
 3. The Applicant shall comply with the Joint Stipulation (Exhibit 20, including 20A – 20C) unless events outside of their control make it impossible to construct the improvements to the drainage system depicted in Exhibit 20B.
 4. A Grading Permit (KC File GRDE14-0052) must be approved prior to commencing project construction. Grading plans showing the proposed trail widening and paving and associated site improvements, including required landscaping, restoration and mitigation plantings, shall be in substantial conformance with the 95% Review Submittal Plans prepared by Parametrix, received April 24, 2015. All construction shall be in compliance with the approved stormwater manual.
 5. Significant trees shown on the approved plans as being “save” or “monitor” within the clearing limits require a separate tree removal permit authorization from the City prior to removal. Obtaining a

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permit may entail providing an arborist report. The City will provide a decision on a tree removal permit application within 24 hours, excluding weekends and holidays, of receipt by the City of a County application and, if required by the City, a County supplied arborist's report on the tree(s) that are the subject of the application.

6. This Shoreline Substantial Development Permit shall include all mitigation measures listed in the East Lake Sammamish Master Plan Trail Record of Decision, Pages 8 - 13 (Exhibit 5).
7. Fences over 6 feet tall and retaining walls exceeding 42 inches in height will require structural review through the grading permit or a separate building permit.
8. Consistent with SMC 25.04.040 (2), interpretive educational sign(s) regarding shoreline ecological values and function shall be placed along the corridor where appropriate as an educational tool for protection of the natural resources along the trail.
9. Restoration and compensatory mitigation shall be completed substantially as shown on the Mitigation Plans found on the Landscape Plan sheets (Exhibit 2) and described in the Final Critical Areas Study (Exhibit 6), both by Parametrix.

An as-built report shall be completed by a qualified professional to document completion of proposed mitigation and restoration work. The as-built report must be supplied to the City. After the City inspects and approves as-built conditions, a required 5-year maintenance and monitoring period will begin. During the 5-year maintenance and monitoring period, a monitoring report shall be prepared by a qualified professional and supplied for City review by October 31st of each monitoring year.

10. In addition to mitigation performance standards described in the critical area mitigation plans, all shrubs and trees installed in mitigation planting areas shall meet a 100% survival standard one year following City acceptance of as-built mitigation plans or be replaced on a 1:1 basis. All shrubs and trees installed in mitigation planting areas shall meet an 80% survival standard during mitigation monitoring years 2 through 5 or be replaced on a 0.8:1 basis. Planting shall occur as needed to meet these standards in any mitigation monitoring year these standards are not met.
11. Mitigation and landscape plans supplied with the site development application shall depict installation of, or other methods to provide, temporary irrigation that provides a minimum of 1-inch of water per week to installed mitigation and landscape plantings from July 1st through September 30th during the first two years following plant installation in these areas. The source and layout of the temporary irrigation system shall be depicted on as-built plans. If water trucks are to be utilized, this shall be specifically described.
12. As part of the site development plan approval in order to protect water quality in Lake Sammamish, a condition will be added to the grading permit as follows: *Fertilizer used in planting areas shall be*

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minimized and any fertilizer used shall not contain phosphorous and shall be utilized consistent with the product's timing and quantity specifications. No herbicide shall be used for weed control unless specifically authorized by the City of Sammamish.

13. Due to the project location in a CARA, a condition will be applied to the Site Development/Grading Permit that fill material shall not contain concentrations of contaminants that exceed cleanup standards for soil as specified in the Model Toxics Control Act (MTCA). An imported fill source statement is required if more than 100 cubic yards of fill will be imported to the site. The City may require analytical results to demonstrate that fill materials do not exceed cleanup standards.
14. Per WAC 173-27-090, construction shall be commenced on the proposed trail widening and paving, and associated improvements, within two years of the effective date of a shoreline permit. Authorization to conduct development activities shall terminate five years after the effective date of this permit. The City 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 the City.

Decision issued February 8, 2016.

\s\ John E. Galt (Signed original in official file)

John E. Galt

Hearing Examiner

HEARING PARTICIPANTS ³⁷

Barbara Flemming, unsworn counsel
Kim Adams Pratt, unsworn counsel
Tom Hornish, unsworn counsel ³⁸
Gina Auld
Yammie Ho
Craig Buitrago
Frank Overton
Andrew Zagars
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John Tremble
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Erin Stines, unsworn counsel
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Kathy Curry
Jan Bird
William Schultheiss
Jim Berry

³⁷ The official Parties of Record register is maintained by the City's Hearing Clerk.

³⁸ Mr. Hornish also testified as a sworn witness.

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 after conclusion of the reconsideration period or process, as applicable, 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. 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.

<p>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.”</p>
