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

## I. INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### IV. RESPONSES TO SPECIFIC ISSUES RAISED DURING THE HEARING

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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