

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF SHORELINE**

In the Matter of the Application of)	No. PLN18-0114
)	
Karin Ertl, on behalf of Sound Transit)	
)	
)	FINDINGS, CONCLUSIONS,
<u>For a Critical Areas Special Use Permit</u>)	AND DECISION

SUMMARY OF DECISION

The request for a critical areas special use permit to install four concrete columns to support an elevated guideway for Sound Transit’s Lynnwood Link Extension light-rail project within overlapping stream, wetland, and landslide hazard area buffers located in the southeast cloverleaf loop of the I-5/SR-104 interchange is **APPROVED**. Conditions are necessary to address specific impacts of the proposed development.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on December 19, 2018. The hearing record was held upon until December 21, 2018, to receive additional exhibits.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Brian Lee, City Senior Planner
Juniper Nammi, City of Shoreline Sound Transit Project Manager
Rebecca McAndrew, Sound Transit Senior Environmental Planner

Exhibits:

The following exhibits were admitted into the record:

- A. Staff Report, dated December 5, 2018
- B. Lynnwood Link Extension, Final Environmental Impact Statement (excerpts), dated April 1, 2015
- C. Lynnwood Link Extension Project, 2018 SEPA Addendum to the FEIS, dated May 3, 2018
- D. Aerial photo, undated
- E. Contract L200, HNTB Jacobs, Critical Areas Report, dated July 13, 2018
- F. Federal Transit Administration, Lynnwood Link Extension, Record of Decision, dated July 2015

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- G. Federal Highway Administration, Lynnwood Link Extension, Record of Decision, dated August 2015
- H. Declaration of Mailing, dated December 3, 2018; Notice of Public Hearing, with Site Plan, Vicinity Map, and mailing list; Affidavit of Publication, *Seattle Times*, and ad text, published August 10, 2018
- I. Sound Transit Neighborhood Meeting Notice, dated July 19, 2017
- J. Sound Transit summary of neighborhood meeting, dated August 3, 2017, with meeting notice, mailing list/labels, sign-in sheet, and comment forms
- K. Memo from Karin Ertl to Brian Lee, dated July 16, 2018
 - 1. Permit Application, received July 18, 2018
 - 2. Site Plan (Sheet No. 1), dated February 13, 2018
 - 3. In Progress 90 Percent drawings, dated April 6, 2018: Structures General, Aerial Guide, General Layout (Sheet No. 179); Civil Construction Staging Areas (Sheet No. 138); Civil Demolition and Removal Plan (Sheet No. 169); Civil Grading and Paving Plan (Sheet No. 235); Composite Utility Plan Dry Utility Design (Sheet No. 164); Environmental Mitigation Planting Plan (Sheet No. 684); Environmental Mitigation Planting Schedules (Sheet No. 711); Environmental Mitigation Planting Schedules (Sheet No. 712); Environmental Mitigation Planting Schedules (Sheet No. 713)
 - 4. Tree Retention, Protection, and Planting Plan (Sheets 1, 2, and 3), dated February 13, 2018
 - 5. Memo from Becki Kniveton to Karin Ertl, dated July 9, 2018
 - 6. Sound Transit summary of neighborhood meeting, dated August 3, 2017, with meeting notice, mailing list/labels, sign-in sheet, and comment forms
 - 7. Contract L200, HNTB Jacobs, Critical Areas Report, dated July 13, 2018
- L. Site Plan (Sheet 1), dated February 13, 2018
- M. Sound Transit PowerPoint (14 slides)
- N. City PowerPoint (18 slides)
- O. Additional exhibits
 - 1. Email from Juniper Nammi to Hearing Examiner, dated December 20, 2018
 - 2. Email from Karin Ertl to Juniper Nammi, dated June 13, 2018, with email string
 - 3. Email from Karin Ertl to Brian Lee, dated June 13, 2018, with email string
 - 4. Email from Ryan Kahlo to Juniper Nammi, dated June 20, 2018, with email string
 - 5. Letter from Rebecca McAndrew to Hearing Examiner Clerk, dated December 21, 2018

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Background

1. The Central Puget Sound Regional Transit Authority (Sound Transit), for several years, has been working with other government agencies and local jurisdictions, including the Puget Sound Regional Council (PSRC), the Federal Transit Administration (FTA), King County, and the City of Shoreline, to implement the “Lynnwood Link Extension” (LLE), a proposal to expand the light-rail system north from Seattle to Lynnwood. The proposal to extend light rail to Lynnwood, through the cities of Shoreline and Mountlake Terrace, would implement part of PSRC’s “VISION 2040 Plan” and Sound Transit’s “Long Range Plan,” both of which call for the eventual extension of mass transit service to Everett. Further, the LLE would implement one of the final stages of the “Sound Transit 2 Plan” (ST2), a funding plan approved by voters in 2008 to expand the mass transit system in the region. *Exhibit B.*

2. The LLE would begin at Northgate in Seattle and run north for approximately 8.5 miles, generally following Interstate 5 (I-5) to the Lynnwood Transit Center. According to Sound Transit and the FTA, the proposal would provide “reliable, rapid, and efficient peak and off-peak two-way transit service” between Lynnwood and Seattle, create an “alternative to travel on congested roadways and improve regional multimodal transportation connections,” address “overcrowding caused by insufficient transit capacity,” and create a “reliable alternative to automobile trips on I-5 and State Route (SR) 99, the two primary highways serving the project corridor.” *Exhibit B.*

3. As explained in more detail below, the LLE proposal underwent extensive project review, including environmental review, by local governments and state and federal agencies throughout the last several years. Ultimately, the agencies and jurisdictions involved selected a route for the LLE that would entail, in part, constructing approximately 3.2 miles of light-rail track through the city of Shoreline. The proposed route through the city would generally follow I-5 and vary in its alignment profile. In places, the LLE would travel at grade, and in other places the LLE would be elevated. The LLE would provide two new light-rail stations within the city: one station would be constructed at the existing North Jackson Park & Ride, north of the NE 145th Street interchange, and another station would be built east of the NE 185th Street interchange. *Exhibit A, Staff Report, page 3; Exhibit B.*

Application and Notice

4. Karin Ertl, on behalf of Sound Transit (Applicant), requests a critical areas special use permit (CASUP) to install four concrete columns to support an elevated guideway for Sound Transit’s Lynnwood Link Extension light-rail project within overlapping stream, wetland, and landslide hazard area buffers. The project is located in the western edge of

the southeast cloverleaf loop of the I-5/SR-104 interchange.¹ *Exhibit A, Staff Report, pages 1 and 4; Exhibit K; Exhibit L.*

5. The City of Shoreline (City) determined the application was complete on July 18, 2018.² The City issued a “Notice of Application” on August 7, 2018. The City posted notice on the property and the City’s “Land Use Action and Planning Notice” webpage, and mailed notice to property owners and residents within 500 feet of the site. On August 10, 2018, the City published notice in the *Seattle Times*. On December 3, 2018, the City mailed notice of the open record hearing associated with the application to the mailing-list addresses. The City received no comments in response to its notice materials. *Exhibit A, Staff Report, page 80; Exhibit H.*

Comprehensive Plan and Zoning

6. The property is designated Public Facility by the City’s Comprehensive Plan. This designation applies to a number of current and proposed facilities within the community. If the use becomes discontinued, the underlying zoning remains, unless adjusted by a formal amendment. *Comprehensive Plan, Land Use Policy LU-18.* The City has adopted several Comprehensive Plan policies specific to light-rail expansion, including restoring adjacent streams, creeks, and other environmentally sensitive areas through redevelopment opportunities associated with light-rail expansion, which includes improving public access to such areas and providing public education about the functions and values of these areas. *Comprehensive Plan, Land Use Policy LU-41. Exhibit A, Staff Report, pages 1 and 4.*
7. The site is located between the Echo Lake and Ballinger neighborhoods, just south of the Shoreline/Mountlake Terrace boundary at the King-Snohomish County line. The property is not zoned but, rather, is an unclassified right-of-way. *Shoreline Municipal Code (SMC) 20.40.060.D.* The nearest designated zoning district, bordering on the east, is zoned R24 (Residential, 24-units per acre). The nearest neighborhood contains a mixture of residential, multi-family, and commercial uses. *Exhibit A, Staff Report, pages 1 and 3; Exhibit D.*

¹ The property is WSDOT right-of-way. *Exhibit K.1.*

² Sound Transit held a pre-application meeting with City staff on June 19, 2017, as required by SMC 20.30.080, and held a neighborhood meeting on August 3, 2017, as required by SMC 20.30.090. The Applicant prepared a summary of the neighborhood meeting addressing questions and concerns raised at the meeting. *Exhibit A, Staff Report, pages 8 and 9; Exhibit I; Exhibit J.*

Environmental Review

8. Sound Transit acted as lead agency³ and analyzed the environmental impacts of the entire LLE project and determined that it would have a probable significant, adverse environmental impact. Sound Transit issued a Draft Environmental Impact Statement in July 2013, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, assessing the environmental impacts of the proposal and potential measures to mitigate for such impacts. Numerous agencies, municipalities, and tribal entities were consulted during the environmental review process of the LLE project, including the Federal Highway Administration (FHA); the Washington State Department of Transportation (WSDOT); the Army Corps of Engineers (Army Corps); the U.S. Fish and Wildlife Service; the Environmental Protection Agency; the Federal Emergency Management Agency (FEMA); the National Park Service; the Washington Department of Archaeology and Historic Preservation; the Washington State Department of Fish and Wildlife (WSDFW); the Washington State Department of Ecology (DOE); the Cities of Edmonds, Lynnwood, Mountlake Terrace, Seattle, and Shoreline; and King and Snohomish Counties. *Exhibit A, Staff Report, page 8; Exhibit B; Exhibit G.*

9. During the environmental review process, Sound Transit and FTA considered several alternative routes for the LLE, provided various opportunities to comment on the project, and assessed multiple options to mitigate impacts from the proposal. Ultimately, the current alignment of the proposed LLE and several potential mitigation measures were approved, and Sound Transit issued a Final Environmental Impact Statement (FEIS) in April 2015.⁴ The FTA issued a Record of Decision (ROD) in July 2015, and the Federal Highway Administration issued a ROD in August 2015, documenting this approval. *Exhibit A, Staff Report, page 8; Exhibit B; Exhibit F; Exhibit G.*

10. Following additional planning and project review, Sound Transit issued an “Addendum” to the FEIS on May 3, 2018, describing proposed design refinements to the LLE proposal and new information related to construction and mitigation. The Addendum specifically evaluated project changes, including the addition of the Ronald Bog Park. In the Addendum, Sound Transit determined that project refinements would not substantially change the analysis of significant impacts and alternatives evaluated in the FEIS or result in new probable significant environmental impacts. Sound Transit determined that no

³ The first agency receiving an application for, or initiating, a nonexempt proposal must determine the lead agency for that proposal, unless the lead agency has been previously determined, or the agency receiving the proposal is aware that another agency is determining the lead agency. The lead agency is determined by using the criteria in WAC 197-11-926 through 197-11-944. WAC 197-11-924(1). When an agency initiates a proposal, it is the lead agency for that proposal. WAC 197-11-926(1).

⁴ The FTA also reviewed the proposal as the federal lead agency under the National Environmental Policy Act (NEPA). Sound Transit and the FTA jointly issued the FEIS. *Exhibit B.*

supplemental EIS would be required for the proposal. *Exhibit A, Staff Report, page 8; Exhibit C.*

Critical Areas

11. The proposed LLE guideway would impact critical areas.⁵ The proposed project would permanently impact 0.008 acres of buffer (with temporary buffer impacts of 1.146 acres) and 0.033 acres of Wetland WSH5 due to construction access. The center of the southeast cloverleaf loop contains an open channel section of McAleer Creek and Wetland WSH5, in a deep depression, surrounded by moderate to very-high risk landslide hazard areas. McAleer Creek is classified as a Type F-Anadromous stream and is considered a fish and wildlife habitat conservation area with a 115-foot required buffer. McAleer Creek is not subject to the City's Shoreline Master Program regulations and is not classified as a flood hazard area. Wetland WSH5, a forested and scrub-shrub slope wetland along an open segment of McAleer Creek, is rated Category II with a standard 165-foot buffer. The on-site landslide hazard area exists due to the construction of I-5 and largely consists of cuts and fills. A standard 50-foot buffer is required for very-high risk landslide hazard areas, which may be reduced to 15 feet when geotechnical studies demonstrate, and a qualified professional certifies, that the reduction will not increase the risk of hazard to people or property on- or off-site. Very high risk landslide hazard areas also require that a calculated factor of safety be 1.5 for static conditions and 1.2 for dynamic conditions. If the existing conditions are below these limits, the proposed development must increase the factor of safety to these limits or it may not be permitted, except as granted by a critical areas special use permit. *Exhibit A, Staff Report, page 3; Exhibit D; Exhibit E.*

Mitigation Proposal

12. HNTB|Jacobs Trusted Design Partners prepared a Critical Areas Report (CAR) for Sound Transit, dated July 13, 2018. The CAR identified and characterized all critical areas within the vicinity of the LLE project with the City, including the McAleer Creek Basin, wetland PWSH5, and landslide hazard areas. Section 3.0 of the CAR contains the Sound Transit's mitigation plan, including mitigation goals, objectives, and performance standards, monitoring, maintenance, contingency measures, and financial guarantee, as required by Chapter 20.80 SMC. Sound Transit would mitigate for permanent wetland/stream buffer impacts through on-site buffer enhancement and buffer functional loss mitigation. This would be accomplished by one or both of two mitigation techniques: (1) stockpiling downed trees during construction and then placing the trees back in the buffer or wetland as large woody debris or (2) replacing downed trees with similar trees. In addition, Sound Transit would replace the loss of 20 conifers and 26

⁵ The guideway is the flat area and the structures constructed to support the light rail tracks. *Exhibit A, Staff Report, page 3.*

deciduous trees by replanting 131 conifers and 540 deciduous trees in the wetland buffer. Approximately 0.25 acres of dense blackberry thickets would be removed and replaced with native vegetation. The Washington Department of Ecology reviewed the buffer mitigation plan and determined that it would be adequate for the tree clearing needed for the guideway and columns. The Washington Department of Fish and Wildlife also reviewed the mitigation plan and determined that the mitigation plan is acceptable as proposed. The Watershed Company provided third-party review for the City, and it also determined that the mitigation plan is acceptable as proposed. *Exhibit E; Exhibit M; Exhibit O.2 through .4.*

13. The CAR determined that the construction of large concrete drilled shafts would act as reinforcing elements resulting in marginal improvements to the I-5 roadway embankment so that overall slope stability would not be decreased. The CAR determined that, although the slope safety factors would not be met, Sound Transit would achieve adequate stability of temporary construction and permanent structures and would maintain or improve the stability of WSDOT I-5 embankments. In addition, the inability of Sound Transit to mitigate WSDOT's I-5 embankment to the required factor of safety was accepted as adequate by the City's peer review professional. Sound Transit Senior Environmental Planner Rebecca McAndrew testified that the factor of safety requirement would therefore be met. This testimony was not refuted. *Exhibit A, Staff Report, pages 11 and 12; Exhibit E; Exhibit M; Testimony of Ms. McAndrew.*
14. Under City ordinances, projects proposed in water bodies used by anadromous fish must be given special consideration for the preservation and enhancement of anadromous fish habitat. *SMC 20.80.276(B) and (D)*. The CAR includes an analysis of Fish and Wildlife Habitat Conservation Areas. Federally listed threatened and endangered species documented within 300 feet of the LLE in the city of Shoreline are limited to salmonid species (Chinook salmon and steelhead trout) in McAleer Creek. The Washington Department of Fish and Wildlife priority habitat and species website maps coho and winter steelhead trout, state priority species, in McAleer Creek east of the LLE alignment. The City determined that the proposed mitigation plan would use best available science and result in no overall net loss of critical area functions and values and no increased risk of hazards to fish. The project would not increase surface water discharge or sedimentation on-site or onto adjacent properties. *Exhibit A, Staff Report, page 6; Exhibit E.; Exhibit N.*

Critical Areas Special Use Permit

15. A CASUP may be approved to allow development in a critical area or buffer by a public agency when the strict application of the critical areas standards would unreasonably prohibit the provision of public services. *SMC 20.30.333(A)*. To obtain a CASUP an

applicant must meet the decision criteria of SMC 20.30.333(B)(1) through (7).⁶ *Exhibit A, Staff Report, page 4.*

16. City staff analyzed the proposal for consistency with the requirements for a CASUP, including consideration of relief from the provisions of the critical areas code described above, and determined that the proposal would meet the criteria for approval of a CASUP under SMC 20.30.333.B. Specifically, staff determined:
- The LLE proposal would benefit the public. Even though alignment of the project would have unavoidable impacts on critical areas along I-5, strict application of the City's critical areas regulations would unreasonably restrict Sound Transit's ability to provide benefits to the public. *SMC 20.30.333(B)(1).*
 - Sound Transit evaluated several alternatives, selected a preferred alternative, and refined the design to minimize impacts to critical areas. *SMC 20.30.330(B)(2).*
 - The proposal would not create a health or safety hazard on or off the development site, or be materially detrimental to the property or improvements in the vicinity. The light-rail system would be constructed in accordance with design standards from the International Building Code, American Association of State Highway and Transportation Officials, and Sound Transit. *SMC 20.30.333(B)(3).*
 - Sound Transit has submitted a mitigation plan for both temporary and permanent impacts to the wetland, wetland buffers, stream, stream buffers, and geologic hazard areas. *SMC 20.30.333(B)(5).*
 - The proposal attempts to protect existing critical area functions and values consistent with the best available science and attempts to mitigate adversely impacted critical area functions as fully as possible. *SMC 20.30.333(B)(6).*
 - The proposal would be consistent with other applicable regulations and standards. Both the Washington Department of Ecology and the Washington Department of Fish and Wildlife have determined that the proposed mitigation is acceptable. Consistency with all applicable regulations and standards would be verified through relevant site development and right-of-way use permit applications and strict adherence to decision conditions. *SMC 20.30.333(B)(7).*

Exhibit A, Staff Report, pages 9 through 12.

Testimony

17. City Senior Planner Brian Lee testified about the proposed project and how the proposed mitigation would satisfy the requirements of the critical areas code. He testified that the Geological Hazard Area, consisting of an embankment to support the construction of I-5, is no longer under review by the City. He also presented a revised site plan, as part of the City's PowerPoint presentation, depicting a power pole in the northeast corner of the

⁶ The City determined that SMC 20.30.333(B)(4) was not applicable. *Exhibit A, Staff Report, page 10.*

WSH5 wetland buffer. The City’s Sound Transit Project Manager, Juniper Nammi, clarified that she had received email approvals from both the Washington Department of Ecology and the Washington Department of Fish and Wildlife. She concurred that a priority approach to removal of invasive vegetation (primarily blackberries) would be preferable and consistent with City codes. *Exhibit M; Testimony of Mr. Lee; Testimony of Ms. Nammi.*

18. Ms. McAndrew corrected page 4 of the staff report (Exhibit A) and clarified that there would be no direct impacts to McAleer Creek. She testified that Sound Transit proposes to use herbicides to remove blackberries on-site. She agreed to provide a revision to Condition 5, however, to address the control of invasive vegetation on the site with a preferred order of invasive vegetation control to emphasize an order of preference: mechanical or hand control, other non-chemical methods of control, and then herbicides. City staff recommended approval of the Applicant’s proposal, with conditions. *Exhibit A, Staff Report, pages 4, 13, and 14; Exhibit K.3, Sheet 169, note 35; Exhibit M; Exhibit O; Testimony of Ms. McAndrew.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is authorized to conduct public hearings and issue final decisions for land use applications that are required to have a public hearing. *SMC 2.15.060.B*. Quasi-judicial decisions, or “Type C” decisions, involve “the use of discretionary judgment in the review of each specific application” and are heard by the City Council or Hearing Examiner. *SMC 20.30.060*. *SMC 20.30.060* dictates that the Hearing Examiner hear applications on critical area special use permits. *SMC 20.30.060; SMC 20.30.333*.

Criteria for Review

The Hearing Examiner may grant a critical areas special use permit only if the utility or public agency demonstrates that:

- The application of the critical areas regulations, Chapter 20.80 SMC, Critical Areas, would unreasonably restrict the ability of the public agency or utility to provide services to the public;
- There is no other practical alternative to the proposal by the public agency or utility which would cause less impact on the critical area;
- The proposed development does not create a health or safety hazard on or off the development site, will not be materially detrimental to the property or improvements in the vicinity;
 . . .
- Any alterations permitted to the critical area are mitigated in accordance with *SMC 20.80.082* and relevant mitigation standards for the impacted critical area(s);

- Consistent with SMC 20.80.050, Alteration of Critical Areas, the proposal attempts to protect the existing critical area functions and values consistent with the best available science and attempts to mitigate adversely impacted critical area functions and values to the fullest extent possible; and
 - The proposal is consistent with other applicable regulations and standards.
- SMC 20.30.333.B.*

The proposed activity may be conditioned, as necessary, to mitigate the impacts to critical areas and to conform to the standards required by Chapter 20.80 SMC. *SMC 20.30.333.C.*

The criteria for review adopted by the City Council are designed to implement the requirement of chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

With conditions, the proposal would comply with the requirements for a critical areas special use permit under SMC 20.30.333.B. The City provided reasonable notice and an opportunity to comment. The Applicant and the Federal Transit Administration prepared environmental impact statements and evaluated alternatives as required under the State and Federal Environmental Policy Acts. Strict application of the City’s critical areas regulations would restrict Sound Transit’s ability to extend high-capacity regional transit service through the region. Alignment of the LLE proposal is generally within the I-5 right-of-way and would create unavoidable, permanent impacts to existing critical areas. No other practicable alternatives were identified with fewer impacts. The proposal would not create a health or safety hazard or increase surface water discharge or sedimentation on-site or to adjacent properties. The LLE proposal has been designed to protect and/or avoid critical areas to the fullest extent possible. Sound Transit would implement minimization and avoidance measures, as required by Shoreline Municipal Code (SMC) 20.80.050 and .053, to reduce such impacts, including avoiding wetlands and streams where possible by ensuring the LLE alignment is placed as close to I-5 as possible; elevating the guideway, where necessary, to minimize stream and wetland impacts; removing invasive species, such as Himalayan blackberry and utilizing hand or mechanical control as a first priority in removal; and replanting affected areas with native plants and trees. Permanent impacts, however, are unavoidable.

Sound Transit submitted a mitigation plan addressing goals, objectives, performance standards, monitoring methods, maintenance requirements, and contingency plans as required by SMC 20.80.082. The proposal would mitigate both temporary and permanent impacts to critical areas resulting from the LLE proposal at the I-5 and SR-104 interchange and improve the functions of the wetland buffers within the project site. Specifically, the Applicant would either stockpile

downed trees during construction and place the trees back in the buffer or wetland as large woody debris or replace downed trees with similar live trees. In addition, Sound Transit would replace the loss of 20 conifers and 26 deciduous trees by replanting 131 conifers and 540 deciduous trees in the wetland buffer. Approximately 0.25 acres of dense blackberry thickets would be removed and replaced with native vegetation. Compliance with all applicable regulations and standards would be verified through relevant permit applications and strict adherence to the conditions of approval.

Conditions are necessary to address impacts related to the proposed project, including those to ensure that Sound Transit obtains all required local, state, and federal permit approvals prior to any development activity; submits any changes to the project proposal for review and approval by the City, including a hearing where required; marks the boundary of Wetland WSH5 on the revised Site Plan submitted December 19, 2018 (Exhibit L); approaches removal of invasive species with priority given first to removal by mechanical or hand control prior to any use of herbicide; and obtains any required permits prior to discharging any treated groundwater into the sanitary sewer system. *Findings 1 – 18.*

DECISION

Based upon the preceding findings and conclusions, the request for a critical areas special use permit to install four concrete columns to support an elevated guideway for Sound Transit's Lynnwood Link Extension light-rail project within overlapping stream, wetland, and landslide hazard area buffers located in the southeast cloverleaf loop of the I-5/SR-104 interchange is **APPROVED**, with the following conditions:

1. This CASUP approval shall automatically become null & void if no development permit application for work within the southeast cloverleaf at I-5 & SR104 is accepted as complete by the Department of Planning & Community Development within one year of the Notice of Decision date.
2. The decision set forth herein is based on the revised site plan (Drawing No. L90-LMP103, dated February 13, 2018, and submitted December 19, 2018) and preliminary mitigation plans (Drawing No. N18-LMP103, dated April 6, 2018). Any changes to these plans must be submitted for review and approval of such modifications to the City. Any significant changes shall be processed as set out in Condition 6.
3. Prior to any development activity, all required local, state, and federal permit approvals applicable to the specific proposal must be obtained, including but not limited to: Master and Work Zone Site Development & Right-of-Way Permits, Joint Aquatic Resources Permit Application approvals, NPDES, and WSDOT permits.
4. Prior to commencing any development activity, a licensed professional land surveyor shall mark the boundary of Wetland WSH5 as depicted on the revised site plan, dated

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February 13, 2018, submitted December 19, 2018 (Exhibit L). Once construction permits are issued, it is the responsibility of Sound Transit and its authorized contractors to uphold stormwater BMPs to limit erosion and turbidity within and along Stream SSH4 and Wetland WSH5, and its associated buffer areas.

5. All mitigation, including measures to avoid and minimize impacts to critical areas, monitoring, and maintenance, as noted in the Critical Areas Report dated July 13, 2018, pages 50-79, shall be followed. To control invasive vegetation in the I-5/SR 104 cloverleaf, a variety of methods may be needed as listed in Sections 3.3.8 and 3.3.9 in the Critical Areas Report to be able to meet the Performance Standards listed in Section 3.3.6. The preferred order of invasive vegetation control shall be 1) mechanical or hand control followed by applications of mulch, 2) other non-chemical methods of control (e.g. cardboard or biocontrols), and 3) herbicide. Prior to commencing any clearing and grading activities, Sound Transit's contractor must prepare a Weed Control Plan, which includes a Sound Transit Pesticide Use Request Form, for review and approval by a Sound Transit or qualified professional as defined in SMC 20.20.040. Any proposed herbicide application must also be approved by the City Sound Transit Project Planner in accord with SMC 20.80.085 (A-C) in association with the site development permit.
6. The decision set forth herein is based upon representations made and exhibits contained in the CASUP application. If Sound Transit desires to modify the project from that shown on the revised site plan dated February 13, 2018, submitted December 19, 2018 (Exhibit L) and the mitigation, restoration, monitoring plans contained in CAR dated July 13, 2018 (Exhibit E), it must submit a request for review and approval of such modifications to the City or the issuance of a new or amended CASUP, including a hearing where required.
7. Any work within the City of Shoreline right-of-way shall require a Right-of-Way permit.
8. All stormwater control, quality treatment, and erosion and sedimentation control measures shall be implemented in accordance with Shoreline Municipal Code, Shoreline Engineering Development Manual and adopted references, and King County Surface Water Manual.
9. The proposed mitigation work east of the guideway construction area, as depicted in preliminary plans (Drawing No. L90-eCCP101-303, dated April 6, 2018) shall be completed during the first year of project construction.
10. Restoration and mitigation within the construction area shall be completed as soon as possible following completion of guideway construction and prior to start of revenue service or June 30, 2024.

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11. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition to the approvals granted and is a continuing requirement of such approvals. For all development activities authorized by this CASUP, Sound Transit shall comply with such laws, regulations, and ordinances relevant to those activities. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, Sound Transit shall promptly bring such development or activities into compliance within 30-days.
12. During all activities to implement the project authorized by the CASUP, Sound Transit shall secure all applicable King County Industrial Discharge Permits and Ronald Wastewater District Industrial Discharge Permits prior to discharging any treated groundwater into the sanitary sewer system. If Sound Transit is required to discharge to the sanitary sewer during construction, all applicable conditions of those permits shall apply.
13. During all activities to implement the project authorized by the CASUP, should any discharge into the Ronald Wastewater District's sanitary sewer system be necessary, then a manhole structure as a point of discharge is required. The construction of the structure shall be done to Ronald Wastewater District specifications detailed in the Ronald Wastewater District's Developer Extension Manual and be subject to conveyance to the District upon completion of the proposed permitted discharge.

DECIDED this 4th day of January 2019.



THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF SHORELINE**

In the Matter of the Application of)	No. PLN18-0114
)	
Karin Ertl, on behalf of Sound Transit)	
)	
)	
<u>For a Critical Areas Special Use Permit</u>)	RESPONSE TO REQUEST FOR CLARIFICATION

TO: Parties of Record

BACKGROUND

On January 4, 2019, the undersigned Hearing Examiner approved the Applicant’s request for a critical areas special use permit to install four concrete columns to support an elevated guideway for Sound Transit’s Lynnwood Link Extension light rail project within overlapping stream, wetland, and landslide hazard area buffers located in the southeast cloverleaf loop of the I-5/SR-104 interchange. The Hearing Examiner determined that conditions to approval were necessary to address specific impacts of the proposed development. Condition 5 reads:

All mitigation, including measures to avoid and minimize impacts to critical areas, monitoring, and maintenance, as noted in the Critical Areas Report dated July 13, 2018, pages 50-79, shall be followed. To control invasive vegetation in the I-5/SR 104 cloverleaf, a variety of methods may be needed as listed in Sections 3.3.8 and 3.3.9 in the Critical Areas Report to be able to meet the Performance Standards listed in Section 3.3.6. The preferred order of invasive vegetation control shall be 1) mechanical or hand control followed by applications of mulch, 2) other non-chemical methods of control (e.g. cardboard or biocontrols), and 3) herbicide. Prior to commencing any clearing and grading activities, Sound Transit’s contractor must prepare a Weed Control Plan, which includes a Sound Transit Pesticide Use Request Form, for review and approval by a Sound Transit or qualified professional as defined in SMC 20.20.040. Any proposed herbicide application must also be approved by the City Sound Transit Project Planner in accord with SMC 20.80.085 (A-C) in association with the site development permit.

REQUEST

On January 9, 2019, the Applicant submitted a letter to the Hearing Examiner asking for clarification of the last sentence of that condition. The Applicant requests that the words “City Sound Transit Project Planner” be deleted, and the words “Director or the Director’s designee” be inserted. The reasons for this request are that “there is no Sound Transit Project Planner” position, according to the Applicant, and that both City planners who testified at the hearing

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about the condition “hold Term Limited positions that likely will not continue through construction.”

RESPONSE TO REQUEST

The purpose of the condition is to help ensure that contamination of water on the project site by herbicides or pesticides does not occur when removing vegetation, without first exploring methods of removal that do not involve use of hazardous substances and eliminating them from consideration for rational reasons supported by written determinations. The Hearing Examiner looked to the Applicant and City to draft a condition of approval that would accomplish this goal. They prepared a draft condition in a timely manner, and submitted it to the Hearing Examiner for consideration.

The Hearing Examiner changed the word “Director” to the phrase “City Sound Transit Project Planner” because of some uncertainty about what “Director” the condition was referencing. Although it was likely intended to mean the Director of the City Planning and Community Development Department or designee, it also could be considered to be the Director of Sound Transit or designee. To help ensure there would be no confusion, and to make certain there would be approval of any hazardous substance use by an individual other than the Applicant, the Hearing Examiner intended to reference the position title held by Juniper Nammi, which he determined by finding the title of her role on the City website: Sound Transit Project Manager. See, www.shorelinewa.gov/government/departments/planning-community-development/contact-us. The use of the word “planner” appeared to be more accurate than “manager”, as she appeared as a planner for the City at the hearing, at least to the best knowledge of this Hearing Examiner. Apparently, however, there is a critical difference between the title of Project Planner and that of Project Manager. Although the latter implies greater authority and responsibility, it is the title preferred by the City and the Applicant in the request for clarification.

Because the identification of an individual other than the Applicant was the intent behind the wording of the condition, and because both the City and the Applicant agree that the change of wording should be made, the Hearing Examiner grants the request. The last sentence shall be amended to read:

Any proposed herbicide application must also be approved by the Director of Planning and Community Development or Director’s designee in accord with SMC 20.80.085 (A-C) in association with the site development permit.

The Hearing Examiner notes that the citation to the Shoreline Municipal Code in the condition is applicable only to City-owned property. The ordinance prohibits use of certain pesticides, herbicides and fertilizers “in a City-owned riparian corridor, shoreline habitat or its buffer”

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except as allowed in certain circumstances.¹ The proposed project is to occur within right-of-way owned by WSDOT. Therefore, Condition 5 is further clarified by removing the reference to SMC 20.80.085. The condition, as now modified, reads:

All mitigation, including measures to avoid and minimize impacts to critical areas, monitoring, and maintenance, as noted in the Critical Areas Report dated July 13, 2018, pages 50-79, shall be followed. To control invasive vegetation in the I-5/SR 104 cloverleaf, a variety of methods may be needed as listed in Sections 3.3.8 and 3.3.9 in the Critical Areas Report to be able to meet the Performance Standards listed in Section 3.3.6. The preferred order of invasive vegetation control shall be 1) mechanical or hand control followed by applications of mulch, 2) other non-chemical methods of control (e.g. cardboard or biocontrols), and 3) herbicide. Prior to commencing any clearing and grading activities, Sound Transit's contractor must prepare a Weed Control Plan, which includes a Sound Transit Pesticide Use Request Form, for review and approval by a Sound Transit or qualified professional as defined in SMC 20.20.040. Any proposed herbicide application must also be approved by the City Director of Planning and Community Development in association with the site development permit.

The Hearing Examiner appreciates the fact that the Applicant brought these matters to his attention in order to avoid any misunderstandings as the project proceeds. May it now do so in a timely manner, without delay due to any misunderstanding.

DECIDED this 14th day of January 2019.



THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center

¹ SMC 20.80.085 reads in its entirety:

Pesticides, herbicides and fertilizers which have been identified by State or Federal agencies as harmful to humans, wildlife, or fish shall not be used in a City-owned riparian corridor, shoreline habitat or its buffer, wetland or its buffer, except as allowed by the Director for the following circumstances:

- A. When the Director determines that an emergency situation exists where there is a serious threat to public safety, health, or the environment, and that an otherwise prohibited application must be used as a last resort.
- B. Compost or fertilizer may be used for native plant revegetation projects in any location.
- C. Limited pesticide and herbicide use may be applied pursuant to the King County Noxious Weed Control Board best management practices, specific to the species needing control, when that is determined to be the best method of control for the location. Federal, State, and local regulations of pesticides and water quality must be followed, including requirements for pesticide applicator licensing from the Washington State Department of Agriculture.

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