

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

In the Matter of the Application of	)	No. PLN18-0086
	)	
<b>Karin Ertl, on behalf of Sound Transit</b>	)	
	)	
	)	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 develop a wetland mitigation site at Ronald Bog Park, located at 2301 North 175th Street, as off-site mitigation for permanent wetland and wetland buffer impacts resulting from the Central Puget Sound Regional Transit Authority’s “Lynnwood Link Extension” light rail project, 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 November 27, 2018.

Testimony:

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

Brian Lee, City Senior Planner  
Karin Ertl, Applicant Representative

Attorney Julie Taylor represented the City of Shoreline at the open record hearing

Exhibits:

The following exhibits were admitted into the record:

- A. Staff Report, dated November 15, 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. Letter from Karin Ertl to Eric Friedli, dated June 2, 2017
- E. Aerial photo, undated
- F. Contract L200, HNTB Jacobs, Critical Areas Report, dated July 13, 2018
- G. Federal Transit Administration, Lynnwood Link Extension, Record of Decision, dated July 2015

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- H. Federal Highway Administration, Lynnwood Link Extension, Record of Decision, dated August 2015
- I. Declaration of Mailing, dated July 25, 2018; Notice of Critical Area Special Use Permit Application, dated July 24, 2018, with Site Plan, Vicinity Map, and mailing list
- J. Sound Transit Neighborhood Meeting Notice, dated March 19, 2018, with Neighborhood Meeting Agenda
- K. Critical Areas Special Use Permit: Neighborhood Meeting Summary, dated April 11, 2018
- L. Phase 2 ESA and Piezometer Installation Report, CDM Smith, dated April 5, 2017
- M. Special Warranty Deed
- N. Memo from Karin Ertl to Brian Lee, dated June 15, 2018, with Attachments:
  - 1. Permit Application, received June 15, 2018
  - 2. Site Plan (Sheet 1), dated June 11, 2018
  - 3. Tree Retention, Protection, and Planting Plan – Planting Plan (Sheet No. 1), dated March 10, 2018; Tree Retention, Protection, and Planting Plan – Tree Protection and Removal (Sheet No. 2), dated April 4, 2018; Tree Retention, Protection, and Planting Plan – Wetland Plant Mixes (Sheet No. 3), dated April 25, 2018; Tree Retention, Protection, and Planting Plan – Tree Inventory (Sheets No. 4 and 5), dated April 25, 2018; Tree Retention, Protection, and Planting Plan – Planting Details (Sheet 6), dated October 24, 2017; Tree Retention, Protection, and Planting Plan – Site Protection Details (Sheet No. 7), dated October 24, 2017
  - 4. Memorandum from Becki Kniveton to Karin Ertl, dated May 11, 2018
  - 5. Neighborhood Meeting Summary (same as Exhibit K)
  - 6. Letter from Karin Ertl to Eric Friedli, dated June 2, 2017 (same as Exhibit D)
  - 7. Contract L200, City of Shoreline, Critical Areas Report, dated July 13, 2018 (same as Exhibit F)
- O. Site Plan (Sheet 1), dated June 11, 2018
- P. Staff PowerPoint, received November 27, 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) has been working with other government agencies and local jurisdictions for several years, 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 and 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

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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 is 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 (City). 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*.
4. The LLE’s proposed “guideway,” the flat area and structures constructed to support the light rail and its tracks, would impact at least 8 wetlands or wetland buffers along the proposed route within the City.<sup>1</sup> 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; locating associated project facilities, such as stormwater treatment systems, construction staging areas, and access roads outside of critical areas, where practicable; preserving hydrological input to affected wetlands through appropriate stormwater treatment and management; utilizing retaining walls to minimize the project footprint; installing cross-culverts to allow water

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<sup>1</sup> The Critical Areas Report for the LLE, prepared by HNTB Jacobs, notes that the specific boundaries for several of the wetlands could not be delineated or verified on-site because such wetlands (or portions thereof) encumber private property, and rights of entry were not obtained prior to preparation of the Critical Areas Report. Accordingly, the numbers included in the report (and in this decision) are approximations based on the best available data. *Exhibit F*.

to better flow freely under elevated portions of the guideway; implementing best management practices (BMPs) during construction; removing all geotextile fabrics and temporary fill material used for construction staging and/or access roads; restoring grades to preconstruction conditions; restoring soil and hydrologic conditions (where possible); adding topsoil to restore soil fertility; removing invasive species, such as Himalayan blackberry; and replanting affected areas with native plants. *Exhibit A, Staff Report, pages 4 through 6; Exhibit B; Exhibit F.*

5. Despite minimization and avoidance measures, construction and placement of the LLE guideway would permanently impact wetlands and wetland buffers within the Thornton Creek watershed on the east side of I-5, between NE 152nd Street and NE 155th Street, and within the Ridgecrest Neighborhood. Specifically, approximately 0.35 acres of permanent wetland impacts, 0.69 acres of permanent buffer impacts, 0.36 acres of temporary wetland impacts, and 2.14 acres of temporary wetland buffer impacts would result from development of the LLE proposal. *Exhibit A, Staff Report, page 5; Exhibit F.*
6. Due to the limited opportunity to directly mitigate for these impacts on-site, Sound Transit determined that an off-site mitigation project at Ronald Bog Park, located at 2301 North 175th Street, would serve as appropriate compensatory mitigation for such impacts under SMC 20.80.350, particularly because Ronald Bog Park is within the Thornton Creek watershed. Of note, under SMC 20.80.350.A.1, compensatory mitigation for alterations to wetlands “shall be used only for impacts that cannot be avoided or minimized and shall achieve greater biologic functions.” *Exhibit A, Staff Report, page 3; Exhibit C; Exhibit F.*
7. Ronald Bog Park is a Section 4(f) resource under Title 23 of the Code of Federal Regulations (CFR), Part 774. Section 4(f) of the U.S. Department of Transportation Act of 1966 is a federal law that protects certain parks, recreation areas, historic and cultural areas, and wildlife and waterfowl refuges, and applies to significant, publically-owned parks and recreation areas open to the public. Because of this, the City had to concur with Sound Transit’s assessment, as required by 23 CFR 774.13(g)(1) and (2), that alterations to Ronald Bog Park would be necessary for mitigation of the LLE project and would preserve or enhance an activity, feature, or attribute that qualified Ronald Bog Park for Section 4(f) protection. In a letter dated June 2, 2017, the City concurred with Sound Transit’s assessment, allowing the mitigation proposal to move forward subject to local permitting requirements. *Exhibit D.*

#### Application and Notice

8. Accordingly, Karin Ertl, on behalf of Sound Transit (Applicant), requests a critical areas special use permit (CASUP) to develop a wetland mitigation site at Ronald Bog Park to provide off-site mitigation for permanent wetland and wetland buffer impacts resulting from the LLE proposal. The mitigation project would include wetland creation and re-establishment, along with enhancement of existing wetlands and wetland buffers at Ronald

Bog Park. The mitigation project would also include improvements to the trails within the park's arboretum area, removal of informal social paths throughout the existing buffer area, and the installation of a new trail from the parking lot to the existing shelter. The project would take place at Ronald Bog Park, located at 2301 North 175th Street.<sup>2</sup> *Exhibit A, Staff Report, pages 1 through 5; Exhibit D.*

9. The City determined the application was complete on June 15, 2018.<sup>3</sup> On July 24, 2018, the City mailed notice of the application to property owners within 500 feet of the site, posted notice at the project site (along North 175th Street and Meridian Avenue North) and published notice in the *Seattle Times*. The City also provided notice of the open record hearing associated with the application, at least 15 days in advance of the hearing, to property owners within 500 feet of the site, posted notice of the hearing, and published notice in the *Seattle Times*, as required by SMC 20.30.180. The City received no comments in response to its notice materials. *Exhibit A, Staff Report, page 10; Exhibit I; Exhibit J; Exhibit P.*

#### Comprehensive Plan and Zoning

10. The property is designated Public Open Space by the City's Comprehensive Plan. This designation applies to all publicly owned space and to some privately owned property that might be appropriate for public acquisition. *Comprehensive Plan, Land Use Policy (LU) 19*. The City has adopted several Comprehensive 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 (Policy LU-41) and using investment in light rail as a foundation for other community enhancements (Policy LU-42). *Exhibit A, Staff Report, page 4.*
11. The property is within the City's Low-Density Residential (R-6) zone. The purpose of the R-6 zone is to "provide for a mix of predominantly single detached dwelling units and other development types, such as accessory dwelling units and community facilities, that are compatible with existing development and neighborhood character." *SMC 20.40.030*. Public parks are a permitted use within the R-6 zone. *SMC 20.40.140*. *Exhibit A, Staff Report, page 4.*

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<sup>2</sup> The property subject to the application is identified by Tax Parcel No. 0826049048. *Exhibit A, Staff Report, page 1.*

<sup>3</sup> Prior to submitting its application, Sound Transit held a pre-application meeting with City staff on February 6, 2018, as required by SMC 20.30.080, and held a neighborhood meeting on April 11, 2018, as required by SMC 20.30.090. *Exhibit A, Staff Report, page 10; Exhibit K.*

12. Ronald Bog Park is within the City's Meridian Park neighborhood and is bordered on the south by single-family residential development, on the east by I-5, on the west by Meridian Park Elementary School, and on the north by North 175th Street and additional residential development. *Exhibit A, Staff Report, page 1.*

#### Environmental Review

13. Sound Transit acted as lead agency and analyzed the environmental impacts of the entire LLE project and determined that it would have a probable significant, adverse environmental impact.<sup>4</sup> Accordingly, 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 B; Exhibit G; Exhibit H.*
14. 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.<sup>5</sup> Accordingly, 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 G; Exhibit H.*
15. 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

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<sup>4</sup> The first agency receiving an application for, or initiating, a nonexempt proposal shall 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 shall be 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).*

<sup>5</sup> 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.*

evaluated mitigation measures proposed within Ronald Bog Park and 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. Accordingly, Sound Transit determined no supplemental EIS would be required for the proposal. *Exhibit C.*

#### Existing Site

16. The subject property is a 13.4-acre natural area located in the central portion of the city. HNTB Jacobs prepared a Critical Areas Report (CAR), dated July 13, 2018, assessing the site. The CAR notes that Ronald Bog Park was chosen as the preferred wetland mitigation site for the LLE project in August 2016. The park includes a small conifer arboretum, a pond, and a large mowed lawn area north of the pond that allows easy public access to the water. The CAR explains that the area was originally part of a large peat wetland system that was mined from the 1940s to 1960s, and the pond on the property formed as a result of the excavation. HNTB Jacobs conducted wetland and stream delineations on the property and determined that there are two wetlands (“WSH6” and “WSH7”) and two streams (“SSH5” and “SSH6”) that encumber the mitigation site. The former peat bog, which now resembles a small lake (i.e., the pond), is the focal point of the park and is classified as a Category III wetland (WSH6). The second wetland (WSH7) is a small, Category III wetland in a depression northeast of the pond. The two streams are segments of Thornton Creek, a Type-F stream that passes through the park. The park also contains an arboretum, with a shelter, and public trails. *Exhibit A, Staff Report, page 3; Exhibit F.*
17. In addition to the CAR, the Applicant submitted a Phase 2 Environmental Site Assessment (ESA) for the proposal, prepared by CDM Smith, dated April 5, 2017. The ESA notes that historical records show that the project site was once littered with large mounds of debris, including concrete, asphalt, bricks, metal, and dimensional wood, some of which may have contained contaminants. No buried drums, chemical containers, underground storage tanks or other indications of possible chemical dumping, however, were found on site. On-site testing indicated that the fill contains contaminants, most particularly carcinogenic polycyclic aromatic hydrocarbons (cPAHs), metals, and petroleum hydrocarbons, and that concentrations of these contaminants may exceed levels allowed under the Model Toxics Control Act. Accordingly, fill excavated from the project site would not be suitable for disposal at a clean fill site. *Exhibit L.*

#### Mitigation Proposal

18. As noted above, Sound Transit seeks to develop a wetland mitigation site at Ronald Bog Park as off-site mitigation for approximately 0.35 acres of permanent wetland impacts, 0.69 acres of permanent buffer impacts, 0.36 acres of temporary wetland impacts, and 2.14 acres of temporary wetland buffer impacts that would result from development of the LLE proposal within the city. The proposal is designed to compensate for the loss of

wetland acreage, functions, and values, as required by SMC 20.80.350.E and .082, through wetland creation and re-establishment, along with enhancement of existing wetlands and wetland buffers, at Ronald Bog Park and result in no overall net loss to critical areas within the affected watershed. Specifically, the Applicant would enhance approximately 0.05 acres of existing wetlands on-site, create approximately 1 acre of new wetlands, and enhance approximately 2.3 acres of existing wetland buffer. These mitigation measures would be divided between two areas of the park and the mitigation areas would be fenced off and protected in perpetuity. *Exhibit F; Exhibit N.*

19. Sound Transit would convert some of the areas of the park currently dominated by lawn and invasive species into emergent and forested wetland habitat bound by forested buffers. The mitigation would provide a net benefit in habitat functions by providing increased native plant richness, added refugia and foraging habitat for passerines and small mammals, and increased thorny native species around the border of the mitigation sites that would discourage intrusions into the wetland. 58 trees would be removed during site development, including 27 significant trees, requiring replacement under SMC 20.50.360.C. Sound Transit would plant approximately 3,000 tall and short-statured trees within the mitigation sites. Planting zones and associated plant mixes were designed to increase wetland function and provide additional wildlife habitat. *Exhibit F; Exhibit N.*
20. Wetland and adjacent buffer areas would be created by removing existing fill material, identified as containing contaminants by the ESA, bringing in clean soil, and regrading affected areas. Sound Transit would excavate portions of the floodplain to create the wetland creation areas, and regrade to a lower level, as needed, to ensure adequate wetland hydrology. The reduction in elevations from current conditions to support wetland hydrology would increase floodwater storage capacity by over 10,000 cubic yards, potentially reducing flooding issues in the immediate vicinity. In addition, Sound Transit would implement safety hazard avoidance measures, including temporary park closures, to ensure public safety during construction. *Exhibit F; Exhibit N.*
21. Invasive species would be removed as part of mitigation efforts and impacted areas would be replanted with native wetland species in clean soil. The invasive Japanese knotweed on-site would be eradicated. An 85-foot vegetated buffer would be established around the reestablished and enhanced wetlands, the maximum buffer achievable at the site, balancing the mitigation needs with the City's desire to preserve some of the law area for public use and maintain access to the waterfront. Critical area signs and interpretive signs would be placed at varying intervals along the fence line protecting the mitigation areas at strategic locations where the public would most likely encounter them. Areas of the park not used for wetland mitigation would remain open to the public. In addition, to enhance recreational opportunities at the park, Sound Transit would improve the existing trail within the arboretum, bringing it up to ADA accessibility standards. Sound Transit would also establish a new trail from the parking lot serving the park to the



shelter on-site. A sculpture (the “Kiss” sculpture) on-site would be relocated eastward during site development and the new trail would provide a loop around the sculpture. *Exhibit F; Exhibit N.*

#### Critical Areas Special Use Permit

22. Off-site mitigation at Ronald Bog Park would only be possible if the following relief from critical areas standards is granted: a reduction in required buffer width under SMC 20.80.350.A.1; relaxation of restrictions for trails to only occur within the outer 25 percent of wetland buffers under SMC 20.80.330.G.2.a; and allowing an increase in spacing between permanent field-marking signs under SMC 20.80.110.A. Accordingly, a critical areas special use permit (CASUP) is necessary. The purpose of the critical areas special use permit (CASUP) is to allow development by a public agency or public utility when the strict application of the critical areas standards would otherwise unreasonably prohibit the provision of public services. *SMC 20.30.333.A. Exhibit A, Staff Report, pages 5 and 6.*
23. The CAR addresses the proposed mitigation project in detail (as described above) and explains that mitigation would involve the creation and reestablishment of approximately 1.05 acres of wetland on-site and the enhancement of approximately 0.05 acres of existing wetlands, and approximately 2.3 acres of existing wetland buffer. The proposed mitigation would exceed the minimum 0.65 acres of wetland creation/reestablishment that would be required to offset impacts from the LLE project, as required by SMC 20.80.350.E. In addition, approximately 3,000 trees would be planted within the mitigation area as part of the proposal, and noxious weeds would be removed throughout the mitigation site. *Exhibit A, Staff Report, page 7; Exhibit F; Exhibit P.*
24. Sound Transit requests a reduction in the 165-foot standard buffer that would be required for both Category III wetlands on-site, under SMC 20.80.330, to 85 feet. The City reviewed the proposal and determined that the reduced buffer would reasonably protect the wetland mitigation area, meet regulatory requirements for mitigation within the impacted subbasin, preserve some of the park’s lawn area for public use, and maintain public access to the pond. The CAR determined that the proposed wetland creation/reestablishment would result in a permanent buffer reduction but that the proposed conversion of the lawn buffer and invasive species thickets to wetlands would result in an overall functional lift to wetland ecology. In addition, the mitigation areas would provide increased native plant richness and added habitat. *Exhibit A, Staff Report, pages 8 and 9; Exhibit F.*
25. Under SMC 20.80.330.G.2, passive recreation facilities designed in accordance with a critical areas report are allowed within wetland buffers, provided that such pathways are limited to minor crossings having no adverse impact on water quality, are located only in the outer 25 percent of the wetland buffer area, and are sited to avoid removal of

significant trees. Here, Sound Transit requests permission to improve the existing trail in the arboretum by making it ADA accessible and installing a new trail from the parking lot to an existing shelter within the arboretum. The trail locations would not be limited to the outer 25 percent of the stream and wetland buffers, but the placement of trails, as proposed, is necessary due to the location of the existing arboretum trail network, the overall site-size constraints, and the need to maintain public access to the pond. Moreover, the City stresses that it cannot legally agree to a mitigation project that would eliminate all recreational use within the park because existing covenants require the City to operate and maintain Ronald Bog Park in perpetuity as a public open space or public parks recreational facility. *Exhibit A, Staff Report, page 9.*

26. Under SMC 20.80.110, critical areas must be clearly marked using permanent field markings every 50 feet. For the subject proposal, this would require 15 signs and would result in three or more signs being visible from any given location within the park. The City determined that strict application of this requirement would result in visual clutter and decrease the overall aesthetic experience of Ronald Bog Park for visitors. Accordingly, Sound Transit requests that signs be allowed at intervals ranging from 58 to 177 feet. A licensed landscape architect determined that seven critical area signs and three interpretive signs, placed at strategic locations throughout the park, would be sufficient and that the revised spacing would achieve the same intended goal of informing the public and discouraging intrusion into critical areas. *Exhibit A, Staff Report, pages 9 and 10; Exhibit F.*
27. 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.1. Specifically, staff determined that:
- The LLE proposal would benefit the public, but alignment of the project would have unavoidable impacts on critical areas within the city that cannot be mitigated on-site. Accordingly, off-site mitigation within the same drainage subbasin is appropriate under SMC 20.80.350.D. Ronald Bog Park is the only site large enough to accommodate the amount of wetland mitigation required.
  - The proposal would convert areas dominated by lawn and invasive species into emergent and forested wetland habitat and buffers. The creation and reestablishment of approximately 1.05 acres of wetland and 2.3 acres of wetland buffer enhancement would exceed mitigation requirements and provide more than adequate compensation for permanent and functional loss impacts to the city's critical areas.
  - Sound Transit would implement safety hazard avoidance measures, including temporary park closures, to restrict public access for safety purposes during construction. Sound Transit would also use BMPs, such as erosion control, fencing, and on-site signage to avoid or reduce hazards during construction. In

addition, Sound Transit would coordinate with the City to communicate park closures and the overall construction schedule to the surrounding community.

- Sound Transit would over-excavate the impacted areas and import clean topsoil for planting. This would remove contaminants from the park, provide a cleaner environment for the public and wildlife, and provide some flood protection benefits to the vicinity.
- Sound Transit has submitted a mitigation plan addressing goals, objectives, performance standards, monitoring methods, maintenance, and contingency plans. The proposed mitigation plan would improve the functions of the on-site wetlands and buffers.
- The proposal would result in no overall net loss of critical area functions and values within the subbasin and would result in an overall gain in critical areas functions and values.

*Exhibit A, Staff Report, pages 13 through 15.*

#### Testimony

28. City Senior Planner Brian Lee testified about the history of the LLE proposal, the portions of the proposal that would impact the city specifically, and how the mitigation project would satisfy the requirements of the critical areas code, and the specific requirements for approval of a CASUP under SMC 20.30.333. Mr. Lee noted that the LLE proposal would benefit the public and that the off-site mitigation would greatly enhance Ronald Bog Park. *Testimony of Mr. Lee.*
29. Applicant Representative Karin Ertl testified that the proposal would increase the functionality of critical areas within the subbasin and that the Applicant has worked with the City, and other stakeholders, for over two years to ensure the proposal benefits the community. *Testimony of Ms. Ertl.*

#### Staff Recommendation

30. Mr. Lee testified that City staff recommends approval of the proposal, with conditions. Ms. Ertl stated that the Applicant understands and would comply with the recommended conditions. *Testimony of Mr. Lee; Testimony of Ms. Ertl.*

### **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 shall hear applications on critical area special use permits. *SMC 20.30.060; SMC 20.30.333*.

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### Criteria for Review

The Hearing Examiner shall 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.*<sup>6</sup>

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.** Strict application of the City's critical areas regulations would restrict Sound Transit's ability to extend high-capacity regional transit service

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<sup>6</sup> SMC 20.30.333.B includes an additional criterion (SMC 20.333.B.4) that dictates that the CASUP process may not be used to allow regional retention/detention facilities on certain critical areas, including Type S or Type F anadromous streams or buffers, Category I wetlands or buffers with rare plant associations, or Category I or II wetlands or buffers providing critical or outstanding habitat for herons, raptors, or other designated endangered or threatened species. City staff determined, and the Hearing Examiner concurs, that this criterion is inapplicable to the current proposal. *Exhibit A, Staff Report, page 13.*

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. 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; locating associated project facilities, such as stormwater treatment systems, construction staging areas, and access roads outside of critical areas, where practicable; preserving hydrological input to affected wetlands through appropriate stormwater treatment and management; utilizing retaining walls to minimize the project footprint; installing cross-culverts to allow water to better flow freely under elevated portions of the guideway; implementing best management practices (BMPs) during construction; removing all geotextile fabrics and temporary fill material used for construction staging and/or access roads; restoring grades to preconstruction conditions; restoring soil and hydrologic conditions (where possible); adding topsoil to restore soil fertility; removing invasive species, such as Himalayan blackberry; and replanting affected areas with native plants. Permanent impacts, however, are unavoidable.

Accordingly, several potential mitigation sites were evaluated, but Ronald Bog Park was the only site large enough to accommodate the amount of required wetland mitigation for the proposal. Sound Transit would implement safety hazard avoidance measures, including temporary park closures, to ensure public safety during construction. Clean fill would be installed on the property to reduce exposure to contaminants and significant quantities of contaminated fill would be removed from the mitigation site.

Sound Transit submitted a mitigation plan addressing goals, objectives, performance standards, monitoring methods, maintenance, 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 and improve the functions of the wetland buffers within the project site. Specifically, the Applicant would enhance approximately 0.05 acres of existing wetlands on-site, create approximately 1 acre of new wetlands, and enhance approximately 2.3 acres of existing wetland buffer. These mitigation measures would be divided between two areas of the park and the mitigation areas would be fenced off and protected in perpetuity. Some of the areas of the park currently dominated by lawn and invasive species would be converted into emergent and forested wetland habitat bound by forested buffers. The mitigation would provide a net benefit in habitat functions by providing increased native plant richness, added habitat for passerines and small mammals, and increased thorny native species around the border of the mitigation sites that would discourage intrusions into the wetland. 58 trees would be removed during site development, requiring replacement under SMC 20.50.360.C. Sound Transit, however, would plant approximately 3,000 tall and short-statured trees within the mitigation sites. Planting zones and associated plant mixes were designed to increase wetland function and provide additional wildlife habitat. The mitigation project at Ronald Bog Park would more than compensate for

unavoidable impacts to critical areas in the Thornton subbasin caused by the LLE proposal and no overall net loss of critical area functions and values within the subbasin would result. 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 ensure Sound Transit records a conservation easement for the Ronald Bog Park Mitigation Site, executes and records a Critical Area Notice to Title, properly tests excavated soils/sediments for contamination and appropriately disposes of all contaminated materials, ensures stormwater BMPs are implemented during construction, and secures all additional necessary permits. *Findings 1 – 30.*

### **DECISION**

Based upon the preceding findings and conclusions, the request for a critical areas special use permit to develop a wetland mitigation site at Ronald Bog Park, located at 2301 North 175th Street, as off-site mitigation for permanent wetland and wetland buffer impacts resulting from the portion of Sound Transit’s “Lynnwood Link Extension” light rail project extending through the City of Shoreline, is **APPROVED**, with the following conditions:

1. Prior to performing any work, pursuant to the CASUP or any implementing development permit, Sound Transit, at its sole cost and expense, shall ensure that a Conservation Easement for the Ronald Bog Park Mitigation site has been executed and recorded with the King County Recorder. A copy of the recorded easement shall be provided to the City.
2. Prior to issuance of any development permits, Sound Transit, at its sole cost and expense, shall execute and record a Critical Area Notice to Title for the proposed mitigation area as required by SMC 20.80.100. A copy of the recorded notice shall be provided to the City.
3. Based upon the Phase II Environmental Site Assessment (Exhibit L), materials and soils/sediments excavated from the project site shall be properly tested for contamination constituents and, if contamination is found, those materials and soils/sediments shall be disposed at the appropriate disposal location, as required by WAC 173-340. Sound Transit, at its sole cost and expense, shall be responsible for properly transporting and disposing of any materials, soils, and/or sediments in accordance with applicable law.
4. During all activities to implement the mitigation project authorized by the CASUP, Sound Transit shall ensure stormwater best management practices (BMPs) are fully implemented and adhered to such that erosion and turbidity are limited within and along Ronald Bog wetland and Thornton Creek.

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5. During all activities to implement the mitigation 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 of the Ronald Bog project, applicable conditions shall apply.
6. During all activities to implement the mitigation 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 shall be 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 11<sup>th</sup> day of December 2018.

A handwritten signature in black ink, appearing to read "Andrew M. Reeves", is enclosed within a thin black rectangular border.

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Andrew M. Reeves  
Hearing Examiner  
Sound Law Center