



STATE OF WASHINGTON  
**ENVIRONMENTAL AND LAND USE HEARINGS OFFICE**

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November 7, 2018

**Sent by Email and US Mail**

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Re: **SHB No. 18-004c**  
**KING COUNTY DEPARTMENT OF NATURAL RESOURCES AND PARKS,  
ARUL MENEZES, REID and TERESA BROWN, SHAWN and TRINA HUARTE,  
YORK HUTTON, CHRIS and TARA LARGE, ANNETTE MCNABB, JORDAN  
and MISTILYN MILLER, ELIZABETH and EUGENE MOREL, TRACY and  
BARBARA NEIGHBORS, DOUG SCHUMACHER, IRIS and IVAN STEWART,  
and GORDON CONGER v. CITY OF SAMMAMISH**

Dear Parties:

Enclosed please find the Findings of Fact, Conclusions of Law and Order of the Shorelines Hearings Board.

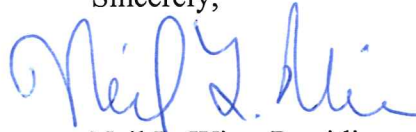
This is a FINAL ORDER for purposes of appeal to Superior Court within 30 days. See WAC 461-08-570 and 575, and RCW 34.05.542(2) and (4).

You are being given the following notice as required by RCW 34.05.461(3): Any party may file a petition for reconsideration with the Board. A petition for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final decision. WAC 461-08-565.



If you have any questions, please feel free to contact the staff at the Environmental and Land Use Hearings Office at 360-664-9160.

Sincerely,



Neil L. Wise, Presiding

NLW/le/S18-004c

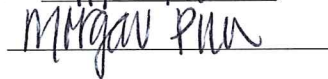
Encl.

**CERTIFICATION**

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through State Consolidated Mail Services to the attorneys of record herein.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED 11/7/18, at Tumwater, WA.



1 **SHORELINES HEARINGS BOARD**  
2 **STATE OF WASHINGTON**

3 KING COUNTY DEPARTMENT OF  
4 NATURAL RESOURCES AND PARKS,  
5 ARUL MENEZES, REID and TERESA  
6 BROWN, SHAWN and TRINA HUARTE,  
7 YORK HUTTON, CHRIS and TARA  
8 LARGE, ANNETTE MCNABB, JORDAN  
9 AND MISTILYN MILLER, ELIZABETH  
10 and EUGENE MOREL, TRACY and  
11 BARBARA NEIGHBORS, DOUG  
12 SCHUMACHER, IRIS and IVAN  
STEWART, and GORDON CONGER,

Petitioners,

v.

CITY OF SAMMAMISH,

Respondent.

SHB No. 18-004c

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER

13 **INTRODUCTION**

14 These consolidated appeals involve a King County Department of Natural Resources and  
15 Parks (County) application for a shoreline substantial development permit (SSDP) to upgrade a  
16 portion of the East Lake Sammamish Trail (ELST). The City of Sammamish Hearing Examiner  
17 (Hearing Examiner) denied the application and the County appealed to the Shorelines Hearings  
18 Board (Board). Landowner Arul Menezes filed a petition with the Board seeking review of the  
19 same decision. Landowners Reid and Teresa Brown, Shawn and Trina Huarte, York Hutton,  
20 Chris and Tara Large, Annette McNabb, Jordan and Mistilyn Miller, Elizabeth and Eugene  
21

1 Morel, Tracy and Barbara Neighbors, Doug Schumacher, Iris and Ivan Stewart, and Gordon  
2 Conger (Brown) also filed a petition with the Board seeking review of the permit decision.

3 The Board considering this matter was comprised of Neil L. Wise, Presiding, and Board  
4 Members Grant Beck and John Bolender.<sup>1</sup> Senior Deputy Prosecuting Attorneys Barbara  
5 Flemming and Devon Shannon represented the County. Attorneys Kim Adams Pratt and David  
6 A. Linehan, Kenyon Disend, PLLC, represented the City of Sammamish (City). Attorneys  
7 Duncan Greene and Sophia Amberson, Van Ness Feldman, LLP, represented Mr. Menezes.  
8 Attorney Craig Simmons, Romero Park, PS, represented Brown. Capitol Pacific Reporting Inc.  
9 provided the court reporting services for the hearing.

10 The Board held a five-day hearing and participated in a site visit. Frank Overton, Jenny  
11 Bailey, Jeffrey Meyer, Kevin Brown, James Bower, and William Schultheiss testified on behalf  
12 of the County. David Pyle, Nell Lund, and Charles Alexander testified for the City. Arul  
13 Menezes testified on his own behalf. Witnesses for the remaining group of landowners were  
14 Trina Huarte, Tara Large, Annette McNabb, Eugene Morel, Tracy Neighbors, and Doug  
15 Schumacher. At the hearing, the Board received into evidence 25 exhibits from the County, 84  
16 exhibits from the City, 59 exhibits from Mr. Menezes, and 12 exhibits from Brown. The parties  
17 also submitted written closing arguments. Mr. Menezes included rebuttal arguments, a  
18 declaration, and four exhibits with his Post-Hearing Brief.<sup>2</sup>

19  
20 <sup>1</sup> A three-member panel heard this case pursuant to RCW 90.58.185. Two members of the three must agree to issue  
a final decision of the Board. *Id.* at (1); WAC 461-08-330(1). Board Member Beck was present at the hearing,  
participated in the decision-making, but was not available for review and signature of the final order.

21 <sup>2</sup> No party objected to Mr. Menezes' rebuttal evidence. However, the Board realizes that surrebuttal evidence was  
not allowed and no counsel was able to cross examine Mr. Menezes on his rebuttal testimony. Therefore, even

1 Having fully considered the record, the Board enters the following:

2 **FINDINGS OF FACT**

3 **Procedural Background**

4 1.

5 The County submitted its application for the SSDP permit to the City's Department of  
6 Community Development on October 19, 2016. The City deemed the application incomplete  
7 and requested additional information on November 15, 2016. The County submitted additional  
8 information on the application by November 30, 2016, and the City declared the application  
9 complete on December 13, 2016. Ex. R-1, p. 12.

10 2.

11 The City published a Notice of Application on December 28, 2016, which gave notice of  
12 a public comment period extending through January 27, 2017. The City received a significant  
13 number of public comments regarding the project and as a result requested additional  
14 information from the County on April 12, 2017. The County responded to this request on July  
15 11, 2017. Ex. R-1, p. 12; Pyle Testimony.

16 3.

17 The City prepared a Staff Report and Recommendation which recommended approval of  
18 the application with 16 conditions. Ex. R-1. City staff determined that the County's proposed  
19  
20

21 \_\_\_\_\_  
though the Board will consider the rebuttal evidence, it will be given the appropriate weight under the  
circumstances.

1 project, with the City's conditions, would be in compliance with the Sammamish Municipal  
2 Code (SMC) and the City's Shoreline Master Program (SMP). *Id.*, p. 17; Pyle Testimony.

3 4.

4 The Hearing Examiner held an open record hearing on November 3, 6, 7, and 20, 2017.  
5 On January 5, 2018, the Hearing Examiner denied the application without prejudice. Ex. M 217.  
6 The petitioners filed timely appeals before the Board, and the appeals were consolidated.

7 **The Project**

8 5.

9 Burlington Northern Santa Fe operated a rail line that ran roughly parallel to the east  
10 shore of Lake Sammamish from 1855 to 1996, when the railroad company shut down the line.  
11 Ex. R-12, p. 1-1. The company's railroad right of way was generally between 100-200 feet  
12 wide. In 1997, the Cascade Land Conservancy purchased the railroad corridor and requested that  
13 the federal Surface Transportation Board (STB) grant interim trail status for the corridor right of  
14 way. The federal process allows an inactive rail line to be converted to a recreational trail, as  
15 long as the trail sponsor agrees to preserve the right of way intact for potential reactivation of the  
16 rail service in the future. In 1998, the STB approved the request, and that same year the Cascade  
17 Land Conservancy sold the railroad corridor to the County. Exs. R-1, p. 5; P-70.9, p. 1-5.

18 6.

19 The ELST is an 11-mile trail that is part of the County's regional trail system and is  
20 intended as a multi-use recreational trail and a non-motorized, alternative transportation corridor.  
21 Ex. P-71, p. 1; Ex. R-6, p. 1. The trail is designed to accommodate a variety of user groups such

1 as bicyclists, pedestrians, runners, wheelchair users, and in-line skaters. Ex. R-9, p. 2. The  
2 ELST has been an element of the County's Regional Trails Plan since at least 1992. Ex. P-71, p.  
3 1; Ex. P-70.9, pp. 1-3, 1-4; Overton Testimony.

4 7.

5 The ELST lies between the east shore of Lake Sammamish and Lake Sammamish  
6 Parkway. Ex. R-16, p. 1-2. The terrain in the area generally slopes down to the lakeshore from  
7 higher ground east of the Parkway. The ELST runs at right angles to the slope, with the higher  
8 ground to the east and lower ground to the west. Exs. R-55, p. 3; R-16, pp. 1-2, 3-1; R-7.

9 8.

10 Pursuant to the State Environmental Policy Act (SEPA), the County issued a Final  
11 Environmental Impact Statement (FEIS) for an interim ELST in 2000. Ex. P-70.9, pp. 1-7, 5-1.  
12 An interim trail was constructed along the railroad right of way and completed in 2006. It  
13 consists of a crushed rock/gravel trail whose width varies between 8 and 12 feet. Exs. R-12, p.  
14 1-1; P-70.9, p. 1-6.

15 9.

16 The County, Washington State Department of Transportation, and the Federal Highway  
17 Administration jointly prepared a separate FEIS for the entire 11-mile ELST corridor and issued  
18 it on May 28, 2010. Ex. P-71, p. 2. Because federal funding was being used in the development  
19 of the ELST, a Record of Decision (ROD) was issued on August 4, 2010. Exs. P-70.9, p. 1-7; R-  
20 9. The FEIS considered a range of trail designs and widths, from 27 feet to 18 feet. Ex. P-71, p.  
21 2; Ex. R-55, p. 2. The preferred alternative in the County's FEIS was called the "Corridor

1 Alternative.” Ex. R-9, p. 2. This alternative would locate a trail almost entirely within the  
2 former railroad right of way. The alternative was chosen in part because it would not require  
3 acquisition of private property and it would follow the route of the existing interim trail and  
4 would require less excavation, grading, and pile driving than other alternatives. *Id.*, p. 5; P-70.9,  
5 pp. S-11, 2-31. The alternative proposed a 12 foot wide paved trail with 2 foot gravel shoulders,  
6 separated from a 4 foot equestrian/pedestrian soft-surface path by a 3 foot median. The total  
7 width of the proposed trail was 27 feet. Ex. P-70.9, p. 2-18; Bailey Testimony.

8 10.

9 Subsequently, the County reduced the scope of the Corridor Alternative and developed  
10 the Master Plan Trail. This version eliminated the separate soft-surface equestrian/pedestrian  
11 trail. The Master Plan Trail is proposed to be 18 feet wide: a 12 foot paved surface with 2 foot  
12 gravel shoulders and a 1 foot clear zone on each side. Ex. R-16, p. 5-1; Ex. P-70.5. The design  
13 change was made for two primary reasons: (1) to minimize impacts to the environment; and (2)  
14 to minimize impacts to adjacent landowners. Ex. P-71, p. 2; Overton Testimony.

15 11.

16 In its shoreline application, the County proposes to upgrade three and a half miles of the  
17 interim ELST to a Master Plan Trail configuration (the Project). The Project would extend from  
18 SE 33<sup>rd</sup> Street to Inglewood Hill Road. Ex. R-6, p. 1. The Project site consists of 12 County tax  
19 parcels. Ex. R-7; Ex. R-1, p. 4. Seventy-five private properties are divided by the railroad  
20 corridor and the proposed Master Plan Trail. Ex. P-70.9, p. S-19.



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12.

Property disputes between various landowners along the ELST right of way and the County are being litigated in state and federal court. Huarte, Large, McNabb, Morel, Neighbors, and Schumacher Testimony. Instead of the title report normally required by SMC 20.05.040, the County submitted numerous property related documents, including federal and state court judgments. Overton Testimony; Exs. R-20, 21, 67. Based on a review of these documents, the City waived the title report requirement. Exs. R-26; R-1, p. 7; Pyle Testimony.

13.

The County prepared a Critical Areas Study (CAS) for the Project. Ex. P-70.8. The Watershed Company conducted a third party review of the Project and determined that the CAS was a generally accurate description of critical areas impacted by the project, but recommended further review of certain critical areas. Lund Testimony; Ex. R-42. The County reviewed the Watershed Company's comments and submitted a revised CAS on July 11, 2017. Exs. R-16; R-1, p. 9; Lund Testimony.

14.

In response to the revised CAS, the Watershed Company submitted a memorandum to the City, outlining continuing concerns. Ex. R-65. The memorandum stated that, while the project generally met the requirement of no-net-loss, further refinements could be made to reduce impacts. For example, the trail could be narrowed where the project passed through critical areas and associated buffers. Ex. R-1, p. 9; Ex. R-65, p. 4.

1 15.

2 Five types of critical areas are present on the project site: wetlands, streams, fish and  
3 wildlife habitat, geologic hazard areas, and a critical aquifer recharge area. Ex. R-6, p. 2.  
4 County experts identified 37 wetlands and 17 stream crossings affected by the project. Ex. R-1,  
5 p. 8; Ex. R-6, p. 4; Exs. R7, R12, R16. All 37 affected wetlands are Category III or IV, the  
6 lowest wetland category ratings. Ex. R-55, p. 4. Portions of 13 wetlands would be permanently  
7 affected by the project, covering a total area of 0.22 acres, and 29 wetlands would be temporarily  
8 impacted. One and a half acres of wetland buffers would also be permanently affected. Exs. R-  
9 6, p. 2; R-55, p. 4; R-16, p. 4-2.

10 16.

11 The County's revised CAS proposed on-site mitigation to compensate for critical area  
12 impacts and the study also describes mitigation for unavoidable impacts. The County designed  
13 the project to avoid and minimize impacts to critical areas. For example, the County avoided  
14 permanent impacts to 24 of 37 wetlands. Meyer Testimony; Ex. R-55, p. 3. Sixteen wetlands  
15 were avoided by shifting the trail alignment away from the resource, and six were avoided by  
16 using retaining walls. Ex. R-55, p. 3.

17 17.

18 The County proposes to mitigate for wetland impacts at 26 sites in the ELST corridor  
19 and at an off-site wetland mitigation bank. The on-site mitigation will consist of 0.65 acres of  
20 wetland enhancement, 1.53 acres of wetland buffer addition, and 0.77 acres of wetland buffer  
21 enhancement. Wetland restoration credits equaling 0.22 acres will be purchased in an off-site

1 wetland mitigation bank. Ex. R-16, p. 5-2; Ex. R-55, p. 8. The revised CAS also proposes  
2 fencing and signage to limit human intrusion into sensitive areas. Ex. R-6, p. 3; Meyer  
3 Testimony.

4 18.

5 Most of the 17 regulated streams are short, perennial waterbodies. Ex. R-16, p. 3-65; Ex.  
6 P-70.9, p. 2-7. For eight of the streams, impacts to the stream channel are avoided by using the  
7 existing interim trail route. Where streams parallel the trail, the trail alignment is adjusted to  
8 avoid permanent impacts to the stream channel. Ex. R-55, p. 3. Eight fish passage  
9 improvements are planned as part of the Project. For six of the streams, fish passage  
10 improvements will result in a net gain of stream channel. The improvements will enhance  
11 connectivity to approximately 660 feet of upstream habitat between the interim trail and East  
12 Lake Sammamish Parkway, with the potential for access to an additional 46,450 feet of habitat  
13 upstream of the Parkway. Stream buffer impacts will be mitigated by enhancing 0.24 acres of  
14 existing stream buffer within the ELST corridor. Ex. R-16, p. 5-6.

15 19.

16 Kokanee, a non-anadromous form of sockeye salmon, reside in Lake Sammamish. The  
17 kokanee population is not increasing and year-to-year numbers are extremely variable.  
18 However, there is no evidence showing that the Project will have adverse impacts on these fish.  
19 Bower Testimony; Ex. P-241. The Project's replacement of culverts and stream restoration will  
20 actually result in a gain in fish habitat. Bower Testimony.

1 20.

2 Pursuant to SMC 21A.37.220, the County retained a Certified Arborist to inventory  
3 “significant trees,” which are defined as conifers eight inches Diameter Breast Height (DBH) and  
4 deciduous trees twelve inches DBH. SMC 21A.15.1333; Ex. R-61, p. 1. The inventory  
5 identified 847 significant trees along the Project portion of the trail. Ex. R-61, p. 1; Ex. R-55, p.  
6 4. According to the 60% plans, the County proposes to retain 574 significant trees and remove  
7 273. Ex. R-7; Ex. R-61, p. 1. The County has submitted plans depicting significant trees to be  
8 retained, monitored, or removed. Ex. R-7; Overton Testimony. The retention rate for significant  
9 trees in the shoreline zone will be 75%. Ex. R-55, p. 4. The County’s tree retention plan  
10 emphasizes native species and large trees. Ex. R-55, p. 4. A vegetation management plan will  
11 also be submitted for review. Exs. R-6, p. 4; R-9, p. 10. The County will minimize areas of soil  
12 exposure and retain vegetation where possible. Ex. R-9, p. 8; Bailey Testimony.

13 21.

14 Widening the interim trail will require excavation (7,000 cubic yards) and fill (4,300  
15 cubic yards). Ex. R-6, p. 2. A total of 27 retaining walls will be constructed to reduce the  
16 footprint of the Project and to stabilize slide prone areas. Ex. R-55, p. 3; Ex. R-7. The total  
17 length of the proposed retaining walls is approximately 7,784 lineal feet. Ex. R-16, p. 5-1.  
18 Fences will be installed where the retaining walls or slopes create a safety hazard. Ex. R-9, p.  
19 11; Ex. R-10, p. 3.

1 22.

2 The Project will disturb a land area of approximately 10-15 acres, with a proposed  
3 impervious surface of approximately 8.4 acres. Ex. R-6, p. 2. The County will provide  
4 permanent stormwater management facilities. The County will also develop and implement a  
5 temporary sediment and erosion control plan, a spill containment plan, and a stormwater  
6 pollution prevention plan for the Project. Ex. R-9, p. 8. The Project will comply with the City's  
7 stormwater regulations (SMC 25.06.050; 15.05) and use erosion Best Management Practices  
8 during construction. Ex. R-6, pp. 4-5.

9 23.

10 No lighting is proposed for the Project. Chain-link fencing will be built to prevent  
11 intrusion onto adjacent private property. Ex. R-6, p. 3. There will be approximately 60,800  
12 lineal feet of fencing. Ex. P-70.9, p. 2-15. The County plans to place signage notifying trail  
13 users of adjacent residences; provide signs at critical intersections; and construct sidewalks and  
14 crosswalks at congested public access locations. Ex. R-10, pp. 3-4.

15 24.

16 The County plans to install rest areas at six locations along the trail. These areas will be  
17 equipped with benches and trash receptacles. One site will contain picnic tables. Ex. R-7. The  
18 County will provide litter receptacles and trail etiquette signs at public access points. Ex. R-10,  
19 p. 5. The County will build three new parking areas and two new restrooms with drinking  
20 fountains. Ex. P-70.9, pp. S-9, 2-16 (Table 2-1).

1 25.

2 The Project area is rapidly urbanizing and nearby cities have increased significantly in  
3 population growth with both residential and business development. Ex. P-70.9, p. 2-2. The trail  
4 will become a critical transportation facility for residents and commuters in East King County.  
5 Mr. Schultheiss, the County's expert, conducted a trail demand analysis for the Project and  
6 concluded that peak hourly volumes of use could exceed 600 users per hour, with 5-7,000 users  
7 per day when the Project is complete. Ex. R-59. Mr. Alexander, the City's expert, critiqued the  
8 demand analysis (Ex. R-124), and Mr. Schultheiss submitted rebuttals to this critique. Exs. P-  
9 113, P-130. Mr. Schultheiss concluded that the Project should be designed for increasing use  
10 and be able to accommodate projected future demands while providing a safe operating  
11 environment for all users. Ex. R-59, p. 12.

12 26.

13 The County has submitted a SEPA compliance narrative (Ex. R-10), a critical areas study  
14 (Ex. R-16), a mitigation sequencing narrative (Ex. R-55), a no net loss of shoreline ecological  
15 functions analysis (Ex. R-56), a tree preservation plan (Ex. R-62), a spreadsheet with responses  
16 to public comments (Ex. R-68)(199pp.), and a County response to the City's staff report (Ex. P-  
17 71).

18 27.

19 At the Board hearing, the parties submitted a list of 16 conditions intended for the  
20 shoreline permit. The County and the City agreed on all but three of those conditions. These  
21

1 proposed conditions are documented in Exs. 242 and 246, and are attached as Appendices A and  
2 B.

3 28.

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

5 Based on the foregoing Findings of Fact, the Board enters the following:

6 **CONCLUSIONS OF LAW**

7 1.

8 The Board has jurisdiction over the parties and the subject matter in this case pursuant to  
9 RCW 90.58.180 and WAC 461-08-315. The Board's scope and standard of review of this case  
10 is *de novo*. WAC 461-08-500(1). The Board generally makes findings of fact based on the  
11 preponderance of the evidence. *Id.* at (2). As the challenging parties, the petitioners have the  
12 burden of proof. *Id.* at (3).

13 2.

14 The Board considers the following legal criteria:

- 15 a) Consistency with the State Environmental Policy Act (SEPA), ch. 43.21C;  
16 b) City of Sammamish Shoreline Master Program (SMP) and Sammamish Municipal  
17 Code (SMC);  
18 c) Shoreline Management Act (SMA) provisions, ch. RCW 90.58; and,  
19 d) Ecology's implementing regulations, ch. 173-27 WAC. WAC 461-08-505.

20 WAC 173-27-150 and SMC 25.08.020 also contain general review criteria for shoreline permits.

1 3.

2 Upon request by the Presiding Officer, the Parties submitted a joint list of legal issues,  
3 which were incorporated into the Amended Prehearing Order. These issues are as follows:

- 4 1. Whether the City's denial of SSDP 2016-00415 was unlawful and unjust because the  
5 information submitted by King County met the requirements of SMC 20.05.040 and  
6 WAC 173-27-180(9)(f) and was sufficient to allow the City to evaluate and approve  
7 the proposed development as compliant with applicable shoreline policies and  
8 regulations? (County)
- 9 2. Did the City err in denying SSDP 2016-00415 where any omission under SMC  
10 20.05.040 and WAC 173-27-180(9)(f) was harmless error because the information  
11 submitted by King County was sufficient to allow the City to evaluate and approve  
12 the proposed development as compliant with applicable shoreline policies and  
13 regulations? (County)
- 14 3. Whether the City's denial of SSDP 2016-00415 was unjust, unlawful, barred by  
15 estoppel, standards of due process and the doctrine of finality because the denial is  
16 inconsistent with the City's prior actions and representations, including a  
17 determination of complete application issued in December of 2016 and a January  
18 2017 settlement of a related appeal? (County)
- 19 4. Whether the City's denial of SSDP 2016-00415 is unjust and unlawful because the  
20 Hearing Examiner, as an agent of the City in a Type 4 land use decision, lacks  
21 authority to vacate the City's own determination of completeness on an SSDP  
application and deny a permit on that basis? (County)
5. Whether the City's denial of SSDP was unjust and unlawful because it precludes the  
siting of an Essential Public Facility pursuant to RCW 36.70A.200(5)? (County)
6. Whether the Decision fails to give appropriate consideration to adverse impacts to  
neighboring private property, and fails to require adequate mitigation for and  
"minimize" those impacts (including without limitation impacts to private property  
rights, aesthetic impacts, drainage impacts, and water quality impacts), in violation of  
provisions of the Shoreline Management Act ("SMA") and implementing regulations,  
the City's Shoreline Master Program ("SMP"), and the Sammamish Municipal Code  
("SMC"), including without limitation the following: RCW 90.58.020; WAC 173-26-  
186; SMC 16.20.275; SMC 20.05.040; SMC 21A.25.030(A); SMC 21A.30.210(2);  
SMP 25.01.050(3) (SMC 25.01.050(3)); SMP 25.03.030(1) and (4); SMP



1 25.03.040(2), SMP 25.04.010(4)(b). (Menezes)

- 2 7. Whether the Project's proposed location, design, width, and surfacing, resulting in an  
3 improperly-sited and unnecessarily wide cleared, graded, and paved corridor that  
4 encroaches on private property, violates provisions of the SMA and implementing  
5 regulations, the SMP, and the SMC, including and without limitation the following:  
6 RCW 90.58.020; SMC 21A.25.030(A) and Note 4.a, SMC 21A.30.210(1)–(3) and (7);  
7 SMP 25.03.070(4); SMP 25.04.010(4)(b); SMP 25.04.010(7)(b); SMP  
8 25.04.010(8)(a); SMP 25.04.050(4); and SMP 25.07.100(7) (SMC 25.07.100(7)).  
9 (Menezes)
- 10 8. Whether the Decision failed to follow required critical areas mitigation sequencing,  
11 resulting in impermissible temporary and permanent impacts to wetlands, in violation  
12 of provisions of the SMA and implementing regulations, the SMP and the SMC,  
13 including without limitation the following: SMC 21A.30.210(1) and (4); SMC  
14 21A.50.135(1); SMP 25.03.020(7) and (8); SMP 25.04.010(2)(c); SMP  
15 25.04.010(8)(a); and SMP 25.06.020(1) (SMC 25.06.020(1)). (Menezes)
- 16 9. Whether the Decision failed to follow tree retention requirements and standards,  
17 resulting in unnecessary significant tree and vegetation removal, in violation of the  
18 SMA, the SMP, and the SMC, including without limitation the following: RCW  
19 90.58.020; SMP 25.04.010(7)(a) and (b); SMP 24.04.010(8)(a); SMP 25.06.020(5)  
20 (SMC 25.06.020(5)); SMP 25.07.100(7) (SMC 25.07.100(7)); and SMP 25.07.110(9)  
21 (SMC 25.07.110(9)). (Menezes)
10. Whether the Decision violates the State Environmental Policy Act ("SEPA") and  
implementing regulations and related provisions of the SMP and the SMC, including  
without limitation the following, because the Final Environmental Impact Statement  
for the Project does not adequately address the site-specific issues and impacts  
discussed above: RCW Chapter 43.21C; WAC Chapter 197-11; SMC Chapter 20.15;  
and SMP 25.01.060 (SMC 25.01.060). (Menezes)
11. Whether the Decision included procedural errors that were not harmless, including  
without limitation the following: the City's determination that the application was  
complete; the City's processing of an incomplete application; the City's granting of  
vested rights to the incomplete application; and the City's analysis of the incomplete  
application beyond the decision to deny the application, in violation of provisions of  
the SMP and the SMC, including without limitation SMC 20.05.040 and SMP  
25.08.080 (SMC 25.08.080). (Menezes)

1 12. Whether the Decision is unreasonable, arbitrary and capricious, discriminatory, and  
2 violates the Petitioner’s constitutional rights. (Menezes)

3 13. Whether the County’s SSDP application (the “Application”) fails to meet the  
4 requirements of the Shoreline Management Act and Sammamish Municipal Code  
5 20.05.040, because the County did not establish that the real property potentially  
6 impacted by the Application is exclusively owned by the County, that the County has  
7 obtained consent from all of the owners of the real property potentially impacted, or  
8 that the County has provided a title report from a reputable title company indicating  
9 that the applicant (the County) has marketable title to the real estate that is being  
10 developed.

11 4.

12 The County filed a motion for partial summary judgment on Issues 1-5, 10 and 13. The  
13 Board denied the County’s motion. Prior to the hearing, the County and City agreed that the  
14 County’s application was complete and therefore the County withdrew Issues 3 and 4. No party  
15 presented evidence at the hearing on Issue 5, and the Board deems this issue withdrawn or  
16 abandoned.<sup>3</sup> This Order addresses Issues 1 and 2, and 6- 13.

17 **Complete Application (Issues 1, 2, and 13)**

18 5.

19 The City and the County argue that the County’s application was sufficiently complete  
20 and that any omissions were harmless error. Pyle Testimony; City of Sammamish’s Prehearing  
21 Brief (City Prehearing Brief), pp. 3-5; King County’s Closing Brief (County Closing Brief), pp.  
2-5. Mr. Menezes argues that the County’s application materials were not sufficient to support a  
permit decision by the City or the Board. Petitioner Arul Menezes’ Posthearing Brief (Menezes

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<sup>3</sup> The City and Mr. Menezes make arguments regarding Issue 5 in their Closing Briefs; however, a closing brief is limited to a summary of evidence presented at the hearing and not additional arguments unrelated to the hearing.

1 Closing Brief), pp. 1-2. Mr. Menezes stated that important information regarding utilities and  
2 other structures is still missing and the City's failure to require this information before  
3 recommending issuance of the shoreline permit was not harmless error. Menezes Testimony;  
4 Petitioner Arul Menezes' Prehearing Brief (Menezes Prehearing Brief), p. 14. Mr. Menezes  
5 contends that the County is effectively deferring any review of site-specific impacts to  
6 neighboring properties until after the shoreline permit is issued and this approach is not  
7 consistent with the law. *Id.*, p. 15.

8 6.

9 In its closing brief, Brown argues that the Board does not have jurisdiction over the  
10 sufficiency of the application materials.<sup>4</sup> Petitioners Reid and Teresa Brown, *et al.* Closing  
11 Argument Briefing (Brown Closing Brief), pp. 4-6. In the alternative, Brown contends that the  
12 City's waiver of the title report requirement created a fatal flaw in the County's application. *Id.*  
13 at pp. 7-11.

14 7.

15 The Board considers a shoreline application complete if it contains sufficient detail to  
16 enable the City or the Board to determine consistency with the SMA and its implementing  
17 regulations. *North park Neighbors v. City of Long Beach*, SHB No. 05-030, pp. 10-11  
18 (September 28, 2006); *Citizen's to Save Pilchuck Creek v. Skagit Co.*, SHB No. 98-004, CL II  
19

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20 <sup>4</sup> The Board has already ruled on this issue, rejecting Brown's jurisdictional arguments based on *Sammamish*  
21 *Homeowners, et al. v. City of Sammamish, et al.*, SHB No. 15-012c, pp. 10, 11 (Order Granting Partial Summary  
Judgment to King County, May 18, 2016) and *Friends of Seaview v. Pacific Co.*, SHB No. 05-017, pp. 11-14 (Order  
Granting Summary Judgment, October 19, 2005).

1 (March 9, 1999). Since the Board’s review is *de novo*, the Board considers an “application” for a  
2 proposed shoreline development to include the entire record created before the Board. *North*  
3 *Park Neighbors*, SHB No. 05-030, p. 11.

4 8.

5 The Board uses the harmless error standard in reviewing the completeness of a shoreline  
6 development application. *Id.* The Board has found an incomplete application harmless where  
7 the “Board can review the project under a *de novo* standard of review and find the detail  
8 provided in the shoreline development application materials sufficient.” When an application is  
9 complete enough to support the conclusion that the proposal complies with the applicable laws,  
10 its “incompleteness can be deemed harmless.” *Id.*

11 9.

12 The County’s application materials contained all of the information required in WAC  
13 173-27-180, except for the “dimensions and locations of all existing and proposed structures and  
14 improvements,” as indicated in subsection (9)(f). Further review by the City revealed that the  
15 County’s 60% plans had only missed three structures (two sheds and a sport court) that might be  
16 within the Project’s clearing and grading limits. Pyle, Bailey Testimony; Exs. R-140-143.

17 10.

18 The County responded to all of the City’s requests for additional information and  
19 submitted the materials requested. After receiving the County’s submittals, the City determined  
20 that the application was complete. Overton, Bailey Testimony.

1 11.

2 The County's application materials met all of the requirements of SMC 20.05.040, with  
3 the exception of the title report referenced in subsection (2)(d). Pursuant to SMC 20.05.040(3),  
4 the City waived this requirement. Pyle Testimony. Brown argues that this waiver was unlawful,  
5 considering the property disputes surrounding the trail project. Brown Closing Brief, pp. 7-11.  
6 The County submitted deeds, settlement agreements, easement documents, maps, title reports,  
7 and court decisions demonstrating its property rights along the Project corridor. Exs. R-20, R-  
8 21. The City's attorneys analyzed this information and concluded that the County had provided  
9 sufficient proof to justify a waiver of the normal title report requirement. Ex. R-67. The Brown  
10 witnesses testified regarding disputes with the County and concerns about future government  
11 actions. The Board acknowledges that the property disputes exist, but concludes that the  
12 property ownership information submitted by the County is sufficient to support a waiver by the  
13 City.

14 12.

15 The Board concludes that the Project application contained sufficient detail to allow the  
16 Board to determine consistency with the applicable law. Therefore, the City's determination that  
17 the County's application was complete is lawful and reasonable. Any missing information  
18 constituted harmless error.

19 **Adequate Mitigation (Issues 6, 8)**

20 13.

21 Mr. Menezes argues that the County did not provide adequate mitigation for impacts to

1 private landowners or critical areas. Menezes Testimony; Menezes Closing Brief, p. 5. Mr.  
2 Menezes also contends that the County did not fulfill mitigation commitments from the FEIS.  
3 *Id.*, p. 20; Menezes Testimony. The County responds that it has fully mitigated for landowner  
4 and critical area impacts and has acted consistently with all of the FEIS mitigation. Bailey,  
5 Meyer Testimony; County Closing Brief, pp. 6-10.

6 14.

7 As shown by Exs. R-10 and R-55, and the testimonies of Ms. Bailey and Mr. Meyer, the  
8 County has fully mitigated for Project impacts. Mitigation and SEPA compliance is further  
9 discussed in the SMA Compliance, Trail Width, and SEPA Compliance sections of this order.

10 The County's proposal avoids or minimizes impacts, and provides compensatory mitigation for  
11 unavoidable impacts.

12 15.

13 The Board concludes that the County's proposal fully mitigates for any impacts to private  
14 property, critical areas, and the environment, resulting from the Project.

15 **Trail Width (Issue 7)**

16 16.

17 The City argues that the County's use of a 27 foot trail as a baseline to measure  
18 mitigation sequencing is flawed; the County is incorrectly interpreting the FEIS to require 18 feet  
19 as a minimum width for the trail; the County's Regional Trail Standard<sup>5</sup> was not formally  
20

21 

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<sup>5</sup> See Exs. P-70.5, P-74.

1 adopted by the County or the City; and American Association of State Highway and  
2 Transportation Officials (AASHTO) guidelines are not mandatory standards. City of  
3 Sammamish's Closing Argument (City Closing Brief), pp. 9-11. Therefore, the City concludes  
4 that its proposed Condition 9 is necessary to compel the County to analyze on a case-by-case  
5 basis whether mitigation sequencing requires narrowing of the Project at particular locations.  
6 *Id.*, p. 12.

7 17.

8 Mr. Menezes also argues that the County has refused to engage in any case-by-case  
9 analysis on narrowing the trail in mitigation sequencing. Menezes Testimony; Menezes Closing  
10 Brief, p. 13. Mr. Menezes criticizes the County's safety and demands analyses and argues that  
11 the County is attempting to disguise its true objectives for the trail. Menezes Testimony;  
12 Menezes Closing Brief, pp. 14-16. Mr. Menezes also points out that the County has never  
13 identified any statute, regulation, or other relevant authority that requires a uniform minimum  
14 trail width of 18 feet. *Id.*, p. 17. Finally, Menezes argues that the County's goal of a uniform  
15 width trail does not allow the County to avoid the impact minimization requirements of the SMA  
16 and the City's SMP. *Id.*, pp. 18-19.

17 18.

18 In response, the County argues that trail narrowing is neither warranted nor desirable and  
19 there is no legal basis to require such modifications. County Closing Brief, p. 11. The County  
20 states that the proposed trail width is consistent with County policies, standards, and guidelines;  
21 long-term demand projections and current user conflicts support the proposed trail width; the

1 trail width is consistent with AASHTO guidelines; and there are no physical constraints or  
2 critical area considerations that would require trail narrowing beyond what the County has  
3 already proposed. *Id.*, pp. 11-18.

4 19.

5 The original Project proposed a trail that was 27 feet wide. After SEPA review and  
6 further Project development, the County narrowed its proposal to 18 feet. The SMP and the  
7 SMC contain no applicable mandatory standards for trail width that would apply to the Project.  
8 The AASHTO guidelines are not binding on the City or the County. The City's code provides  
9 that projects "should" comply with the guidelines, but does not require such compliance. SMC  
10 21A.30.210(3). The Regional Trail Standard is an internal County policy on trail width, but that  
11 is also not legally binding.

12 20.

13 However, the County's choice of trail width is justified and reasonable in this case. The  
14 County's experts have concerns about variable trail widths and the resulting impacts to public  
15 safety. The County's experts have also conducted an analysis of future use demands on the trail  
16 and concluded that the proposed width is necessary to accommodate future increases in use.  
17 Bailey Testimony; Schultheiss Testimony; Exs. R-59; P-109. Mr. Alexander and Mr. Menezes  
18 questioned the details of the County's demand calculations,<sup>6</sup> but the Board is not convinced that  
19 a trail in this location will not experience an increase in future use. It is reasonable for the

20  
21 <sup>6</sup> Alexander testimony; Ex. R-115 (Alexander presentation); Declaration of Arul Menezes Offering Rebuttal Exhibits and Testimony.



1 County to design the Project to accommodate an increase in demand. The County presented  
2 evidence of their experience in having to widen other trails after construction, based on increased  
3 public use. Widening a trail after the initial construction is often difficult and expensive. Kevin  
4 Brown Testimony. The Board also shares the safety concerns raised by the County. Finally, the  
5 County has fully mitigated for Project impacts and trail narrowing should not be necessary to  
6 comply with mitigation sequencing requirements.

7 21.

8 The Board concludes that the County's proposed trail width of 18 feet is consistent with  
9 the SMP and the SMC.

10 **SMA Compliance (Issues 9 and 11)**

11 22.

12 Mr. Menezes argues that the Project does not comply with the SMA and the SMP.  
13 Menezes Closing Brief, pp. 7-8. Mr. Menezes bases this conclusion on contentions that the  
14 Project does not use existing corridors, minimize clearing, or avoid critical areas, or ensure  
15 compatibility with adjacent land uses. Menezes Closing Brief, pp. 8-12; Menezes Testimony. In  
16 his prehearing brief, Mr. Menezes argues that the Project is inconsistent with the SMA and SMP  
17 in two primary ways: (1) the trail is unnecessarily wide, and (2) the Project will result in the  
18 removal of hundreds of significant trees and other vegetation and will have other adverse impacts  
19 to the surrounding area. Menezes Prehearing Brief, p. 2; Menezes Testimony; Exs. M 159-208.

20 23.

21 The shoreline of Lake Sammamish is a shoreline of statewide significance. WAC 173-

1 20-370. The majority of the Project is within SMA jurisdiction and zoned Shoreline Residential.  
2 Ex. R-1, p. 15. The proposed trail is considered a Public Recreational Use under the SMP and  
3 the Project is considered a preferred water-oriented and water enjoyment use. *Id.*, p. 6.  
4 Transportation and Public Recreational Uses are permitted in the Shoreline Residential zones.  
5 SMC 25.07.010 (Table 25.07.010-1).

6 24.

7 The City's shoreline policies are contained in SMC 25.05.030. The Project: (1) is part of  
8 a regional trail system of statewide interest; (2) to the extent feasible, preserves the natural  
9 character and shoreline habitat; (3) will provide a long-term benefit; (4) protects the resources  
10 and ecology of the shoreline; (5) increases public access to the shoreline area; and, (6) will  
11 increase recreational opportunities for the public. The Board concludes that the Project meets  
12 the criteria in SMC 25.05.030.

13 25.

14 The following City requirements also apply to the County's Project: SMC 21A.30.210  
15 (trail development standards); SMC 21A.50 (critical areas); SMC 25.07.090 (recreational use  
16 regulations); SMC 25.07.100 (transportation regulations); and, SMC 21A.37 (development  
17 standards: trees).

18 26.

19 The Project uses the existing interim trail corridor. It was designed to be compatible with  
20 adjacent land uses and will be constructed to encourage users to remain on the trail. The Project  
21 will use signs, fencing, and revegetation to maintain privacy for adjacent landowners. There is

1 no proposed lighting along the trail. The trail is designed to be consistent with AASHTO  
2 standards. The Project uses mitigation sequencing to address impacts to sensitive areas and  
3 measures have been taken to minimize impacts to wildlife and their habitat. The Project  
4 complies with trail development standards for surfacing. The Board concludes that the Project  
5 complies with SMC 21A.30.210.

6 27.

7 The Board concludes that the Project complies with SMC 21A.50. For example, the  
8 County provided a revised CAS, which was reviewed by a third party. The revised CAS met the  
9 requirements of SMC 21A.50.130. The County's approach to mitigation used the sequencing  
10 required by SMC 21A.50.135. The Project attempts to avoid or minimize impacts, and  
11 compensatory mitigation is provided for unavoidable impacts. The County submitted a  
12 vegetation management plan. Signs and fences will be used to protect critical areas. The County  
13 used the required wetlands rating system when evaluating impacts. The Project meets the  
14 requirements for wetland and stream mitigation. *See Findings of Fact 16-19.*

15 28.

16 The Board concludes that the Project meets the requirements of SMC 25.07.090 and  
17 SMC 25.07.100. The trail is water-oriented and will provide visual access to the shoreline.  
18 Public recreational development on public land is a preferred shoreline use and is permitted  
19 when it meets the goal of no net loss of shoreline ecological functions. SMC 25.07.090(1). The  
20 County provided a document analyzing the no net loss standard and how the Project met this  
21 requirement.

1 29.

2 The County provided a tree assessment and a tree preservation plan prepared by a  
3 Certified Arborist. The Project avoided the removal of significant trees whenever possible and  
4 the Project area will be revegetated. The Project complies with SMC 21A.37.

5 30.

6 Since the Board has already determined that the County's application was complete, most  
7 of the alleged procedural errors are moot. The Board concludes that the City did not commit any  
8 significant procedural errors when processing the County's application.

9 31.

10 The Board concludes that the City has also complied with the substantive requirements of  
11 the SMP and the SMC in processing the County's application and that the application is  
12 consistent with the applicable laws.

13 **SEPA Compliance (Issue 10)**

14 32.

15 Mr. Menezes argues that supplemental SEPA review is required because the County has  
16 failed to honor mitigation commitments from the FEIS and the ROD. Menezes Closing Brief, p.  
17 20. Mr. Menezes also argues that there is new information, specifically on impacts to kokanee,  
18 which requires further environmental impacts analysis. *Id.*, p. 21. In his prehearing brief, Mr.  
19 Menezes contends that the current Project proposal is inconsistent with the FEIS and therefore an  
20 SEIS is required. In particular, Mr. Menezes references excessive tree and vegetation removal,  
21 and the lack of case by case impact review and context sensitive design. Menezes Prehearing

1 Brief, pp. 8-11; Menezes Testimony.

2 33.

3 The Board has held that a party must comment during the SEPA review process (thereby  
4 exhausting administrative remedies) or it will lack standing to pursue SEPA claims on appeal.  
5 *Spokane Rock Products, Inc. v. SCAPCA*, PCHB No. 05-127, p. 12 (Order Granting Motion for  
6 Summary Judgment and Denying Petition for Reconsideration, February 13, 2006). Mr.  
7 Menezes admits that he cannot recall ever commenting on the FEIS. Menezes Decl. ¶ 4.<sup>7</sup> Since  
8 he did not participate in the comment period, Mr. Menezes lacks standing to challenge the 2010  
9 FEIS.

10 34.

11 However, Mr. Menezes is not attempting to challenge the 2010 FEIS. Instead, he is  
12 alleging that an SEIS is required because of Project changes since the FEIS and the discovery of  
13 new information on Project impacts. An SEIS is only required when there are substantial  
14 changes to a proposal or there is new information indicating that the proposal will have probable  
15 significant adverse impacts. WAC 197-11-600(3)(b), (4)(d). An SEIS is not required if any  
16 probable significant adverse environmental impacts are covered by the range of alternatives and  
17 impacts analyzed in the existing FEIS. *Id.* at (3)(b)(ii).

18 35.

19 Most of the “project changes” identified by Mr. Menezes were allegations that the  
20

21 

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<sup>7</sup> Submitted with Mr. Menezes’ Summary Judgment briefing.

1 County had failed to honor its mitigation commitments. The Board concludes that the County  
2 has not significantly failed to meet any prior commitments. Disputes with landowners continue,  
3 but this is not proof of County failures. Most of Mr. Menezes' concerns are hypothetical or  
4 contradicted by other evidence in the record. Mr. Menezes also did not meet his burden of  
5 producing evidence of any new information on probable significant adverse environmental  
6 impacts that were not analyzed in the existing FEIS. Mr. Menezes' lay opinions on potential  
7 Project impacts do not outweigh the expert testimony provided by the City and the County. *See*  
8 Bower Testimony; Bailey Testimony; Lund Testimony. The Board concludes that the County  
9 fully complied with all SEPA requirements applicable to the Project.

10 **Unreasonable, Arbitrary & Capricious, Discriminatory, and Unconstitutional (Issue 12)**

11 36.

12 At the hearing, none of the parties directly addressed this issue. However, evidence  
13 presented could be indirectly relevant to the issue, and so the Board will rule on portions of this  
14 claim.

15 37.

16 Based on the foregoing Findings of Fact and Conclusions of Law, the Board concludes  
17 that neither the County nor the City have acted in an unreasonable or arbitrary or capricious  
18 manner.

19 38.

20 At the hearing, no direct evidence was presented to show that the County or the City  
21 unlawfully discriminated against any of the persons involved with this Project or this appeal.

1 Therefore, Mr. Menezes has not met his burden of proof on this issue.

2 39.

3 The Board lacks the jurisdiction to decide constitutional issues. *Fladseth v. Mason Co.*,  
4 SHB No. 05-026, pp. 13-14 (Findings of Fact, Conclusions of Law and Order, May 1, 2007).

5 Therefore, the Board will not rule on this aspect of Issue 12.

6 **Proposed Permit Conditions**

7 40.

8 Since the City and the County have agreed on proposed Conditions 1, 2, 5-8, and 10-16,<sup>8</sup>  
9 the Board accepts these conditions as part of the Project proposal.

10 41.

11 The City's proposed Condition 3 (permitted structures) should be omitted. This  
12 requirement needlessly involves the City and the County in property disputes that must be  
13 resolved in state and federal courts. The County has provided sufficient evidence of its  
14 ownership within the Project area. Disputes over prior permitting and control of structures  
15 within the Project boundaries should be addressed on a case by case basis with the appropriate  
16 permitting agency. Finally, this condition has no legal nexus to the shoreline issues being  
17 reviewed.

18 42.

19 The City's proposed Condition 4 (shoreline setback) should also be omitted. According  
20

21 

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<sup>8</sup> As described in Ex. R-242.

1 to the City's code, shoreline setbacks only apply to structures. SMC 25.02.010(76)(setback is  
2 minimum distance between a structure and a specified line). The definition of a structure in  
3 SMC 25.02.010(87) excludes uncovered paved areas and structural fill, which would constitute  
4 the majority of the Project features. SMC 25.06.020(1) and (5) are cited in proposed Condition  
5 4, but these requirements apply to mitigation and not setbacks. With regard to the transportation  
6 element of the Project, transportation setback requirements expressly exclude trails. SMC  
7 25.07.100(3). Finally, the Board has already concluded that the County has provided adequate  
8 mitigation for the Project.

9 43.

10 The City's proposed Condition 9 (trail narrowing) should be omitted. This requirement  
11 could force the County to make major design changes to the Project after the shoreline permit  
12 has been issued. The County has already avoided or minimized impacts to critical areas and has  
13 proposed compensatory mitigation for unavoidable impacts. The wetland areas identified in  
14 proposed Condition 9 are not of sufficient extent or ecological value to support compromising  
15 public safety by narrowing the trail or to justify further County evaluation at this late stage of  
16 Project development.

17 44.

18 Any Finding of Fact deemed to properly be a Conclusion of Law is hereby adopted as  
19 such.

20 Based on the above Findings of Fact and Conclusions of Law, the Board enters the  
21 following:

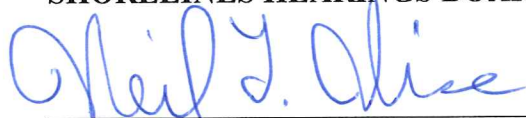


**ORDER**

1. The Hearing Examiner's decision, dated January 5, 2018, is reversed.
2. The County's Shoreline Substantial Development Permit Application No. SSDP2016-00415 is remanded to the City to approve and issue a shoreline substantial development permit in accordance with the Board's decision.
3. The City's proposed conditions (Ex. R-242) shall be included in the approved permit, except Conditions 3, 4, and 9 shall be omitted.

SO ORDERED this 7<sup>th</sup> day of November, 2018.

**SHORELINES HEARINGS BOARD**



NEIL L. WISE, Presiding



JOHN BOLENDER, Member

APPENDIX A

**1. City and County-agree:**

1. All permits required under SMC Titles 14 and 16 including right-of-way permits, grading and clearing permits, and building permits (together referred to hereafter as "Construction Permits") must be obtained before the County may commence Project construction. Final construction plans approved for Construction Permits showing the proposed Project shall be in substantial conformance with Exhibit R-7 and subject to applicable conditions of approval specified by the Shoreline Hearings Board in cause number S18-004c.

**2. City and County agree:**

2. Within one year prior to submittal or resubmittal of any clearing and grading permit applications, King County will verify the accuracy of the existing survey and, where the need for change is identified, update the site plan to accurately show dimensions and locations of all existing and proposed structures and improvements within or immediately adjacent to the construction limits, including but not limited to buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.

**3. City proposed condition:**

3. The County shall identify all structures or improvements not owned and controlled by the County, existing within the clearing and grubbing limits of the Project, constructed or installed pursuant to a permit that is not revocable by the County and that the County intends to remove or relocate from the clearing and grubbing limits ("Permitted Structures"). For each Permitted Structure, the County shall provide the City with a copy of the written permission authorizing removal or relocation signed by the owner or entity in control for the Permitted Structure.

**4. City proposed condition:**

4. For those segments of the Project that are located within the shoreline setback (located at approximately Stations: 600+00, 328+00 through 335+00, 340+00 through 344+00, 356+00 through 357+00 and 374+00 on the plan set Exhibit R-7) the County shall update the plan set to depict that no development, including clearing and grading limits, will occur waterward of the current interim trail alignment. In compliance with SMC 25.06.020(1) and SMC 25.06.020(5), this section of the Project must be minimized by either locating expanded improvements landward of the current interim trial alignment or by narrowing the Project section. No further reduction of the current interim trail shoreline setback will be allowed.

**5. City and County agree:**

5. For that portion of the Project area where King County will make trail improvements within the Lake Sammamish Shoreline Setback, the County owns the property to the lake edge, and the property is not currently in use, the County shall update the Project plans to establish and maintain a Vegetation Enhancement Area ("VEA") that is equal to the 15-foot portion of the 50-

Appendix A-1

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ORIGINAL

## APPENDIX A

foot Lake Sammamish Shoreline Setback immediately landward of the Ordinary High Water Mark (OHWM). SMC 25.06.020(9) and SMC 25.06.020(10). Within that portion of the established VEA that is not in current use, the County shall maintain at least 75 percent of the area with vegetation consisting of native trees, shrubs, and groundcover designed to improve ecological functions.

### 6. City and County agree:

6. In accordance with SMC 25.07.090(6), an updated and final landscaping plan shall be provided at the time of Clearing and Grading Permit application submittal to ensure that native, self-sustaining vegetation is utilized.

### 7. City and County agree:

7. The Project proposes to remove significant trees; therefore, all significant tree removal shall be in substantial conformance with the arborist report (Exhibit R-61) and tree preservation plans (Exhibit R-62). If more than two years elapse between the July 7, 2017 arborist report and submission of a Clearing and Grading Permit application, an updated arborist report and tree inventory will be required at application submittal.

### 8. City and County agree:

8. At the time of its submittal for clearing and grading permit, the County shall provide an update to the Tree Preservation Plans that reflect the 90% design, consistent with application of SMC 21A.37.270(7). These plans will show the arborist's disposition for each significant tree, the linear construction limits where fencing will be placed, and a fencing detail that complies with requirements specified in SMC 21A.37.270(5)(c).

### 9. City proposed condition:

9. The Project proposes to impact critical areas regulated under Chapter 21A.50 SMC and Title 25, SMC. Under SMC 21A.30.210(3), SMC 21A.50.135, SMC 25.06.020(1), and SMC 25.06.020(5), clearing and grading shall be the minimum necessary to accommodate the allowed use/development. The proposed Trail width is the primary driver of the amount of (width) of clearing and grading required. The extent of clearing and grading directly impacts the extent to which critical areas regulated under Chapter 21A.50 SMC and Title 25 SMC have been impacted and how the project is compliant with the Project FEIS, SMC 25.06.020(1), SMC 25.06.020(5), SMC 21A.30.210(3), and SMC 21A.50.135. The updated CAS shall also include more specific information about how impacts to the shoreline ecological functions are avoided and minimized.

### 10. City and County agree:

10. An updated final project mitigation plan meeting the requirements of SMC 21A.50.145 and demonstrating how the proposed mitigation for impacts to shoreline features will ensure no net loss of shoreline ecological functions shall be provided at the time of Clearing and Grading Permit submittal. To provide the greatest benefit, off-site mitigation should be in the same basin as feasible. The County should work with the King County Mitigation Reserve Program to identify

## **APPENDIX A**

an in-lieu site that is most beneficial on a landscape scale or an appropriate Mitigation Bank. If an in-lieu site is available within the East Lake Sammamish Basin, where the impacts will occur, it should be given priority. The updated final project mitigation plan must include a detailed analysis of mitigation compliance with SMC 21A.50.310 and SMC 21A.50.350. If off-site mitigation is proposed the updated final project mitigation plan must demonstrate how it is compliant with SMC 21A.50.310(4) and SMC 21A.50.350(2). The updated final mitigation plan shall also clearly document significant tree replacements within the shoreline overlay.

### **11. City and County agree:**

11. To ensure critical area functions and values are maintained through the proposed on-site mitigation, in addition to standard mitigation monitoring and maintenance requirements, prior to issuance of Clearing and Grading Permits, the County shall complete an ELST 2B segment-specific update to the ELST Vegetation Management Plan and King County trail maintenance program to ensure avoidance of impact to proposed mitigation sites through native plant clearing, pruning, gravel placement or other measures.

### **12. City and County agree:**

12. Fences over six (6) feet tall and retaining walls exceeding 48 inches in height, as shown in the Project plans (Exhibit R-7), will require structural review through the City's Building Permit review process prior to construction of those items.

### **13. City and County agree:**

13. Following complete mitigation installation, the County shall provide to the City an as-built report of the restoration and compensatory mitigation installed for the Project. After the City inspects and approves the as-built report, a required maintenance and monitoring period will begin pursuant to SMC 21A.50.145(7) and in accordance with the final approved project mitigation plan. A monitoring report shall be prepared by a qualified professional and provided to the City for review by October 31<sup>st</sup> of each monitoring year for the duration of the maintenance and monitoring period.

### **14. City and County agree:**

14. The grading, temporary erosion and sediment control, and drainage plans as shown on the approved Shoreline Substantial Development Permit (SSDP) are not approved for construction. Construction Permit(s) are required.

### **15. City and County agree:**

15. The time requirements of WAC 173-27-090 shall apply, except that, based on the requirements and circumstances of this project, the authorization to conduct development activities under the SSDP [SSDP2016-00415] shall terminate seven (7) years after the effective date of this permit. All extension and tolling allowances in WAC 173-27-090 will be available to the applicant.

## **APPENDIX A**

### **16. City and County agree:**

16. Except as provided in RCW 90.58.140(5)(a) and (b), construction pursuant to this permit shall not begin and is not authorized until twenty-one days from the date this permit is filed with the Washington State Department of Ecology and Attorney General as required by RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated.

## 9. City proposed condition:

a) The Project proposes to impact critical areas regulated under Chapter 21A.50 SMC and Title 25 SMC. Under SMC 21A.30.210(3), SMC 21A.50.135, SMC 25.06.020(1), and SMC 25.06.020(5), clearing and grading shall be the minimum necessary to accommodate the allowed use or development. The proposed width of the Project is the primary driver of the amount of (width) of clearing and grading required in the critical areas.

b) The choice made by King County to construct a uniform 18-foot-wide trail is not adequate analysis of mitigation sequencing under SMC 21A.50.135. This choice for uniformity by King County did not, in the order of preference, analyze avoidance, minimization, and mitigation of impacts to environmentally critical areas and associated buffers.

c) At the Project locations listed below, King County shall analyze under SMC 21A.50.135 1) narrowing the paved portion of the trail from 12 feet of paved surface to 10 feet of paved surface, and 2) constructing boardwalks to minimize permanent impacts to regulated wetlands:

1. Between Station 322-324 to avoid or minimize 2022 square feet of impacts to wetland 15E;
2. Between Station 353-355 to avoid or minimize 2087 square feet of impacts to wetland 20A;
3. Between Station 379-384 to avoid or minimize 2301 sf of impact to wetland 24B;
4. At Station 348 to avoid or minimize 268 square feet of impacts to wetland 19A;
5. Between Stations 365-366 to avoid or minimize 191 Square feet of impacts to wetland 22E;
6. At Station 374 to avoid or minimize 65 square feet of impacts to wetland 23B;
7. At Station 455 to avoid or minimize 455 square feet of impacts to wetland 26C near Zackuse Creek;
8. At Station 449 to avoid or minimize 175 square feet of impacts to wetland 28A;
9. At Station 456 to avoid or minimize 837 square feet of wetland impact to wetland 28C;
10. At Station 453 to avoid or minimize 201 square feet of impacts to wetland 28D;
11. At Station 458 to avoid or minimize 295 square feet of impacts to wetland 29B;  
and

## **APPENDIX B**

12. Between Station 458 - 459 to avoid or minimize 464 square feet of impacts to wetlands 29D.

c) Narrowing of the trail or construction of boardwalks shall be performed by King County as part of the Project in accord with SMC 21A.50.135.