

April 14, 2005

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
(Acting on behalf of the City of Sammamish
by Interlocal Agreement)
400 Yesler Way, Room 404
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-1654**

REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L02MI029**
(Previously referenced as **L99SH007**; City of Sammamish File No. **SDP003001**)

EAST LAKE SAMMAMISH INTERIM USE TRAIL (ELSIUT)
Shoreline Management Substantial Development Permit

Applicant: King County Department of Executive Services
Facilities Management Division *represented by*
Mike Lozano, Project Manager
500 – 4th Avenue, Room 320
Seattle, Washington 98004
Telephone: (206) 296-4240
Facsimile: (206) 296-0186

and

Scott Johnson, Attorney
KC Prosecuting Attorney's Office
500 Fourth Avenue, Room 900
Seattle, Washington 98104
Telephone: (206) 296-0430
Facsimile: (206) 296-0420

King County: Department of Development and Environmental Services,
Land Use Services Division, *represented by*
Karen Scharer
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-7114
Facsimile: (206) 296-6613

and

Cass Newell, Attorney
KC Prosecuting Attorney's Office
516 3rd Avenue, Room E550
Seattle, Washington 98104
Telephone: (206) 296-9015
Facsimile: (206) 296-0191

SUMMARY OF DECISION/RECOMMENDATIONS:

Department's Preliminary Recommendation:	Approve with conditions
Department's Final Recommendation:	Approve with conditions
Examiner's Decision:	Approve with conditions

EXAMINER PROCEEDINGS:

Hearing Opened:	March 24, 2005
Hearing Continued for Administrative Purposes:	March 24, 2005
Hearing Closed:	March 30, 2005

RELEVANT PROCEDURAL BACKGROUND:

1. In December 2000, the King County Council adopted the East Lake Sammamish Interim Use Trail Plan by Motion No. 11101. The motion provides that the East Lake Sammamish Interim Use Trail (“ELSIUT,” “interim use trail,” “interim trail” and “trail”) would remain in operation until a master plan for a permanent trail is approved and a permanent trail is constructed on the railbed and/or other alignment, or until interim trail use authority expires in December 2015.

2. The application for a Shoreline Management Substantial Development Permit was filed with King County DDES on May 7, 1999, and on June 3, 1999 was deemed complete as of the date of submittal. Submittal occurred prior to the incorporation of the City of Sammamish, which included the subject trail portion, and annexation by Issaquah of the southernmost portion of the trail. (A second annexation by Issaquah has since annexed the intervening portion immediately to the south.) Also submitted at the same time to DDES was clearing and grading permit application L99G0062. The applications are vested under the land use regulations in effect as of May 7, 1999.

3. In order to track the trail’s SSDP reviews for Sammamish, Issaquah and King County, DDES established separate SSDP files within the master L99SH007 file for each of the three jurisdictions:

L02MI027 for the portion within the City of Issaquah prior to 2003,
L02MI028 for the portion which was unincorporated prior to 2003 (and as noted has since been annexed to Issaquah effective January 1, 2003, after separate SSDP approval by King County), and
L02MI029 for the portion within the City of Sammamish, the subject portion.¹

(The trail segments both north and south of the City of Sammamish have been constructed and are open and in use.)

¹ DDES cross-references the original SSDP file number, L99SH007, as a link between the three segments and for internal administrative purposes.

4. The Applicant is the lead agency under the State Environmental Policy Act (SEPA) and issued a Determination of Significance (DS) on November 4, 1999. A Draft Environmental Impact Statement (DEIS) was issued for this project on May 19, 2000 and a Final Environmental Impact Statement (FEIS) was issued August 25, 2000. The adequacy of the FEIS was challenged in *Citizens for a Safe and Legal Trails v. King County*, King County Superior Court Case No. 01-2-00794-SEA. The Superior Court dismissed the appeal on summary judgment. In an unpublished decision, Division I of the Court of Appeals affirmed the Superior Court and held that “the County prepared an EIS that quite adequately discusses the relatively limited environmental consequences of the interim trail.” [118 Wn. App. 1048, 2003 WL 2217293 (2003) (unpublished opinion); review denied, 151 W.2d 1029, 94 P.3d 960 (2004)] See Hearing Exhibit 53.
5. The City of Sammamish entered into an interlocal agreement with the county on processing of permits that were pending at the time of incorporation, as provided by County Council Motion No. 10739. In October 2004 an amendment to the agreement was signed, revising procedures for processing the City of Sammamish trail SSDP in part by establishing that the King County Hearing Examiner act as the City of Sammamish Hearing Examiner and that DDES provide administrative review of the permit application. See Hearing Exhibit 51. (The Examiner is the final local government decisionmaker for the SSDP; appellate jurisdiction lies with the state Shorelines Hearings Board.)
6. In review of the SSDP and grading applications, King County DDES determined that a Public Agency Utility Exemption (PAUE) would also be required under county code provisions and the processing of the grading application could not be completed until a PAUE was issued. On April 13, 2001, PAUE application file PUC01-001 was filed with the City of Sammamish and the city decided to process the permit itself rather than the county. See Hearing Exhibit 52.
7. On April 12, 2002, the City of Sammamish issued a PAUE subject to a number of conditions. The Applicant and the East Lake Sammamish Community Association (“ELSCA”) filed administrative appeals. The City of Sammamish Hearing Examiner Pro Tem in the PAUE case (a different examiner than the undersigned; hereinafter the “Sammamish Hearing Examiner”) reversed and denied the PAUE for the interim trail on April 24, 2003. That decision was appealed by the Applicant and ELSCA to Snohomish County Superior Court. On January 20, 2005, the Court remanded the case to the Sammamish Hearing Examiner for further proceedings. At a March 1, 2005 conference, the Sammamish Hearing Examiner ordered that the remanded matter would be decided without hearing and set a briefing schedule that would lead to a decision in mid-May 2005. Subsequent to the conference, ELSCA withdrew its PAUE appeal. The Applicant and the City have submitted stipulated findings to the Sammamish Hearing Examiner.
8. On January 5, 2005, the United States District Court for the Western District of Washington entered an order ruling that 16 U.S.C. § 1247(d) preempts the application of state law and local government regulation with respect to the allowance of trail development on any railbanked railroad right of way. The effect of the order is that state and local governments have the authority to impose appropriate safety, land use and zoning regulations on the development of the trail, but only to the extent that those regulations do not frustrate development of a trail on the railbanked right of way. [USDC, WDWA, case no. C03-2793C, January 5, 2005 Order, pp. 14-16. See Hearing Exhibit 57.] An appeal was filed with the United States Court of Appeals for the Ninth Circuit on March 15, 2005. No stay has been requested.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **General Information:**

Project: Establishment of East Lake Sammamish Interim Use Trail, improvements for trail usage, and vegetation and drainage maintenance

File Nos.: L02MI029 (Previously referenced as L99SH007; City of Sammamish File SDP003001)

Request: Shoreline Management Substantial Development Permit (SSDP) for interim trail improvements:

- a) improving the gravel surface of the existing ballast base on the East Lake Sammamish Trail right-of-way;
- b) providing fencing and gates;
- c) adding bollards to limit access; and
- d) signage to mark trail crossings.

Date of Complete Application: May 7, 1999

Zoning as of 1999: R-4 and R-4 w/ SO-190
(King County zoning prior to incorporation)

Shoreline Designations: Lake Sammamish / Conservancy and Rural

Sensitive Area(s): Class 1, 2 and 3 wetlands and their buffers
Class 2 and 3 streams and their buffers

PROJECT DESCRIPTION:

Construction of an 8- to 12-foot wide interim trail for pedestrian and bicycle use on the former Burlington Northern Santa Fe (BNSF) railbed. The interim trail or portions of it would remain in operation until a master plan for a permanent trail is completed, approved, and a permanent trail is constructed on the railbed or other alignment, or until interim use expires in the year 2015. The types of trail users will be split among walkers, joggers, and bicyclists. Interim use will not include equestrian use. Hearing Exhibit 9 details the location of the trail alignment and station points.

Public access to the trail within the City of Sammamish portion will be available at Station 597 (50 feet south of the north city boundary/187th Ave. NE), Station 578 (Park Property), Station 471 (at the foot of Inglewood Hill Road), SE 33rd Street and Station 238.5 (206th Ave. SE).

Other access locations north include: NE 70th St., NE 65th St, and Station 634.5. South of Sammamish other access points include: SE 43rd Way, Sammamish State Park entry to the boat ramp area, SE 51st Street, SE 56th Street, SE 62nd Street, Pickering Trail and Gilman Blvd.

Construction Activities inside the City Limits:

- Placement of approximately 4,500 cubic yards of gravel equaling a four inch depth of 5/8" minus gravel along the 7.2 miles of railbed in the City of Sammamish.
- Installation of one removable bollard at each side of all trail/roadway intersections.
- Permanent fencing at intervals along the trail for safety or for security of private property and to protect adjacent sensitive areas.
- Guardrails in areas where the trail is immediately adjacent or very close to roads that access adjacent properties where trail delineation is required.
- Railing at the existing bridge at Stationing 488 (Tributary #0143J)
- Signage at regular intervals along the Interim Use Trail, adjacent to sensitive areas, and at all intersections.
- Trail Use Rules posted at public street access points and including park hours and leash laws.
- Staging for construction and equipment storage located off-site and outside of the shorelines jurisdiction and sensitive areas.

Resource Protection Measures:

- Split rail cedar fencing adjacent to environmentally sensitive areas.
- Placement of signs at environmentally sensitive locations.
- Litter and dog waste control – waste receptacles at each public street access point – within the City of Sammamish: Station 597 (50 feet south of the north city boundary/187th Ave. NE), Station 578 (Park property), Station 471 (at the foot of Inglewood Hill Road), SE 33rd Street (approx. Station 282.50) and Station 238.5 (206th Ave. SE).

Ongoing Maintenance:

- Vegetation management for hazard trees, sight distance, invasive non-native species and noxious weeds.
- Ditch and culvert maintenance and repair.

Other Support Facilities:

- Public parking - No new parking proposed for interim use. Existing parking available at public parks and public streets. (See Finding 5.)
- Portable toilet buildings will be installed at three locations along the trail: 1) between Gilman Blvd. and I-90, at SE 43rd Way, and at approximately 187th Ave. NE. These facilities will supplement other restrooms available within Lake Sammamish State Park and King County's Marymoor Park.

Location: Along the former Burlington Northern Santa Fe Railroad corridor on the east side of Lake Sammamish, within the City of Sammamish from the Issaquah city limits (approximately 1,700 feet north of the Sammamish State Park boat launch entrance on E. Lk. Sammamish Parkway SE) north to the Redmond city limits at approximately 178th Ave. NE.

STR: T24N, R6E, Sections 6, 7, 8, & 17
T25N, R6E, Sections 18, 19, 20, 29, 31, & 32

2. The Applicant seeks a Shoreline Management Substantial Development Permit (SSDP) for the East Lake Sammamish Interim Use Trail portion within the Sammamish city limits. The purpose of the Interim Use Trail is to provide for interim public use of the 11 mile-long railbanked Burlington Northern and Santa Fe Railroad (BNSF) railroad corridor as a pedestrian and bicycle trail, and to manage the corridor in a way that protects human safety and the environment, until a decision regarding a permanent trail is made and implemented. Development of the trail will

connect the Sammamish River Trail and the Mountains-to-Sound trail system, completing an east-west trail that spans the state. The trail corridor will also provide a recreational trail link between King County's Marymoor Park and Lake Sammamish State Park, and bicycle commuter routes to Redmond and Issaquah at the north and south ends of Lake Sammamish.

3. The criteria for SSDP approval require that a substantial development permit be consistent with the policies and procedures of the Shoreline Management Act (SMA) of 1971 (Chapter 90.58 RCW), the King County Shoreline Management Master Program and Title 25 KCC (county shoreline regulations). [Chapter 25.32 KCC and WAC 173-27-140(1) and -150]
4. As of September 1998 King County acquired the BNSF corridor after the right-of-way became a federally railbanked railroad corridor. Rail salvaging activities undertaken have included spike removal, bolt cutting, rail removal, and tie removal. The salvage activity was performed pursuant to federal Surface Transportation Board (STB) authority. Removal of railroad infrastructure does not qualify as "development" under the SMA and therefore does not require a shoreline development permit. Some tie removal remains to be performed prior to completion of the interim trail. Currently the trail right-of-way within the City of Sammamish is closed under King County Council mandate. The interim improvements are proposed to improve the trail surface and signage for safety, provide privacy and protection from trespass for neighboring properties, and to deter access to and through environmentally sensitive areas adjacent to the trail (wetlands, streams and shorelines). The trail segments to the north and south of the City of Sammamish have been constructed and are open and in use.
5. Parking for interim trail users is available at Marymoor Park (1,950 parking spaces), Lake Sammamish State Park (2,300 parking spaces), and along local public streets near the public access locations. Anticipated peak parking associated with the full use of the interim trail corridor is estimated between 38 to 75 vehicles. Portable toilet buildings to serve interim trail users will be located: 1) just south of I-90 north of Gilman Blvd., 2) at SE 43rd St., and 3) at 187th Ave. NE. Additional public restrooms are located at Marymoor Park and Lake Sammamish State Park.
6. For ongoing maintenance of the interim trail, the Applicant has prepared a Vegetation Management Plan (dated June 2002) as a guide for King County Parks personnel who are responsible for maintenance of the trail. (Hearing Exhibit 21) Development of a vegetation management plan with Best Management Practices (BMP's) was encouraged by DDES during the review and processing for the SSDP as a means of clarifying and coordinating maintenance protocols at all operational levels including project review and on-site implementation of maintenance. The Plan describes maintenance tasks for hazard trees, safe sight distance, control of noxious weeds, drainage, vegetation replacement, access and monitoring. It is anticipated that over time the Plan will be updated to reflect the most current BMP's as applicable. To monitor ongoing maintenance activities within shoreline jurisdiction, King County requires annual Shorelines Exemption approval to confirm that the most current BMP's are implemented for maintenance. The annual approval is a recommended condition of the SSDP approval.
7. Shorelines of the State adjacent to the trail location include property within 200 feet of the shoreline, wetlands associated with Lake Sammamish and all of the 100-year floodplain. These shorelines are designated Rural and Conservancy by the King County Shoreline Management Master Program. There are approximately 7.2 miles of Lake Sammamish shoreline in the City of Sammamish. Approximately 1.8 miles of the 7.2 mile length are outside of the defined

shoreline and thus do not fall under shoreline jurisdiction.² Of the approximately 5.4 miles within shoreline jurisdiction, approximately 3.4 miles are designated as Rural shoreline and two miles are designated as Conservancy (see Attachment A-2 of Hearing Exhibit 59 for shoreline designations at station points). The existing rail bed is at an elevation ranging from 45 to 55 feet MSL, elevated above the 100-year floodplain of the lake, which is 33 feet MSL according to FEMA floodplain mapping datum (NGVD 1929).

8. The wetlands associated with the Lake Sammamish shoreline are identified, described in detail, classified and mapped within a Wetlands Technical Report (Hearing Exhibit 19, as updated by Hearing Exhibit 33), and the Updated Wetland Atlas (Hearing Exhibit 27). They adjoin the trail on both the east and west sides of the right-of-way. There are approximately 50 wetlands adjacent to the trail within the City of Sammamish; four of the wetlands are outside of shoreline jurisdiction (Wetlands 12, 16A, 24 and 25). The wetlands are rated Class 2 or Class 3, or are not large enough to be classified (less than 2500 square feet in size). Some are riparian wetlands associated with salmonid-bearing, perennial, or intermittent streams. Some are hillside seeps. A few are hydrologically isolated areas entirely within the trail right-of-way.
9. The interim trail development will avoid direct impacts to nearly all wetlands because the trail will be built on the existing railbed, and very little wetland area occurs over the top of the railbed. However, direct impacts due to interim trail construction would occur on portions of several wetlands on the top of the railbed. The affected wetlands are 16A, 24A/B, 28A, 29A, 30B and 31B. All but 24A/B are either Class 3 wetlands or too small to be regulated. Wetland 24A/B is rated Class 2. The portions of these wetlands on top of the railbed have formed in fill material, are fed by groundwater or surface ponding, and are sparsely vegetated with mostly non-native emergent species and grasses. Due to their small size, non-native soils, and modified vegetation and hydrology, these wetland areas provide minimal if any valuable wetland function. The trail development would result in approximately 0.112 acres of wetland fill. No vegetated wetland buffers will be affected by construction of the project, although vegetation management activities will occur in some wetland buffers.
10. Compensatory wetland mitigation is required for filling wetlands. As required in the King County Sensitive Areas Code, impacts to these wetlands must be compensated with replacement or enhancement at a 2:1 ratio for Class 1 or Class 2 wetlands, and 1:1 ratio for Class 3 wetlands. Enhancement at a 4:1 ratio has been proposed in the Draft Wetland Mitigation Plan (Hearing Exhibit 20, Section 3.2) and is anticipated to provide sufficient mitigation of all wetland impacts, including recently discovered additional wetland fill impacts, for which the mitigation plan has not been formally updated. A detailed final Wetland Mitigation Plan is required and will be reviewed and approved under the clearing and grading permit review process prior to permit issuance. A minimum of five years of monitoring is anticipated to be required to ensure that the mitigation functions as designed. Maintenance measures will be required/implemented during the monitoring period and in general compliance with the Draft Wetland Mitigation Plan.

² Early correspondence in this matter from ELSCA (Hearing Exhibit 50) suggested that the entirety of the trail, including the portions outside of the defined shoreline (which by definition includes adjacent defined “shorelands” [RCW 90.58.030(2)(d)]), is subject to SSDP jurisdiction. Although it is true that “the intended use of adjacent lands should be considered when taking any action under the SMA in order to achieve the coordinated development of the shorelines which is the object of the SMA” [*Weyerhaeuser v. King County*, 91 Wn.2d 721, 736, 592 P.2d 1108 (1979), citing *Merkel v. Port of Brownsville*, 8 Knapp. 844, 509 P.2d 390 (1973)], that consideration has and will continue to be given via the environmental review conducted under SEPA (which culminated in the FEIS sustained on appeal) and the required grading permit. Only those development activities actually within the defined shorelines are subject to regulation by shoreline permits. [*Weyerhaeuser, supra*, at 736; also see RCW 90.58.040]

11. The Interim Use Trail design includes several measures to protect sensitive areas during construction and operation, including minimization of excavation along the trail, using coir-wrapped fabric to stabilize the trail shoulder adjacent to streams, wet ditches and wetlands, installing split-rail fencing and informational signs adjacent to sensitive areas, and locating litter and dog-waste receptacles at public access points. Dog waste receptacles will be a minimum of 50 feet from all nearby streams to avoid potential impacts to streams from such facilities. BMP's will be used during construction to protect wetlands and fish habitat, including silt fences, use of hand tools for gravel placement, monitoring by a special inspector when working near sensitive areas, and implementation of both a Temporary Sediment and Erosion Control and Construction Monitoring Plan and a Stormwater Pollution Prevention Plan.
12. The Vegetation Management Plan will be implemented to minimize the removal of vegetation within sensitive areas and their buffers and minimize the environmental impacts of necessary vegetation removal. Native riparian vegetation would be restored at stream crossings to improve habitat and shading.
13. The trail would cross forty-seven streams within the City of Sammamish. Several streams are outside of shorelines jurisdiction where they cross under the trail (George Davis Creek, Zaccuse Creek, Ebright Creek, 4C-5 [#0150A] and #0163B). Many streams are perennial, and several streams are identified as salmonid-bearing, including George Davis Creek, Zaccuse Creek, Ebright Creek, Pine Lake Creek, and unnamed streams #0143L and #0163B. The majority of the perennial streams crossed by the trail historically supported salmonids, and still may downstream of fish-passage barriers such as culverts and other human-made structures. The presence of human-made barriers under the trail prevents or hinders salmonid use of these streams upstream of the trail. Some of these culverts are undersized, poorly aligned with the stream channel, do not pass winter flows, and are directly contributing to sedimentation upstream of the culvert inlets, resulting in ongoing maintenance dredging of streams.
14. Culverts scheduled for maintenance at the inverts will be evaluated and replaced with an adequately designed crossing for fish passage and flood conveyance as needed, instead of continuing with maintenance stream dredging. The Applicant proposes repair of culverts within the City that have damaged inlets or outlets. All in-stream culvert maintenance would occur between June 15 and September 15 to avoid potential impacts during critical salmonid spawning periods. Routine maintenance of culverts and ditches will be done during the dry season. Construction activities near stream crossings would be completed outside of fish-spawning periods as stipulated by required Washington State Department of Fish and Wildlife (WDFW) permits, which will further reduce the potential disturbance from the presence of construction activity and increased noise. Drainage maintenance activities such as ditch cleaning will be performed using BMP's from the Regional Road Maintenance Endangered Species Act Program Guidelines per the Vegetation Management Plan (Hearing Exhibit 21, Section 5.3).
15. A Biological Evaluation has been prepared to determine the potential effects of the trail on species listed as threatened or endangered or candidate species under the Federal Endangered Species Act. The Evaluation considered the potential impacts from construction and operation of the interim trail on Chinook salmon, Bull trout, and Kokanee salmon. Other fish species present in the streams include coho and sockeye salmon, rainbow and cutthroat trout, brook and river lamprey, and a few other occasionally observed species. Many of the smaller waterways offer habitat for amphibians, and a wide variety of invertebrates. The Evaluation concludes that potential short-term water quality impacts could easily be controlled by use of specific erosion

and sedimentation control measures. Increased use of the trail could also increase erosion of the railbed that could be limited by adequate stabilization of the trail prior to use.

16. Bald eagles are the only terrestrial wildlife species addressed in the Biological Evaluation. Nesting territories for Bald eagle are identified at both ends of Lake Sammamish. The southern nest is located within the City of Sammamish. Wintering bald eagles forage along Lake Sammamish and perch in large cottonwood trees in the project vicinity. Placement of trail bed material, construction of fences at some stream crossings, and equipment noise during construction could disturb bald eagles. Operation of the trail would increase the presence of people and pets along the trail. However, bald eagle roost or nest sites are at least one-quarter mile from the trail and the birds are already active near the parks at either end of the Lake, showing that they may be habituated to human activity.

Approximately midpoint along the trail portion in the City of Sammamish, an additional nesting location is used by the Marymoor pair of eagles. This nest is approximately 600 feet due east of the trail on the east side of East Lake Sammamish Parkway. It is estimated that 1,000 lineal feet of trail are within 800 feet or less of the nest. Construction in this area should be restricted during the early nesting season.

Mitigation should include limiting construction activities to avoid the bald eagle nesting season for that portion of the trail within 800 feet of any nest per the Washington State Department of Fish and Wildlife Priority Habitat and Species Management Recommendations for Bald Eagles, 2001. The 800 foot dimension is the standard minimum recommended distance for construction activity during the nesting season; however other factors may justify reduction or increasing the distance or the defined season. In this case, the proximity of the heavily traveled East Lake Sammamish Parkway and lack of line-of-sight visibility once trees have bloomed in late spring allow for a reduction in the restrictions, permitting construction earlier than August 31 (typically the end of the nesting season).

17. Finding 17 set forth in the February 14, 2005 Revised DDES Report and Recommendation (Exhibit 59) regarding conformity of the application with cited King County Comprehensive Plan policies regarding shoreline environments; stormwater management; preservation of wetland; and stream and wildlife habitats is incorporated herein by reference as a formal Finding.
18. Finding 18 set forth in the Revised DDES Report regarding conformity of the application with cited King County Shoreline Management Master Program narrative and policies addressing a) Master Program elements, including public access, conservation, recreation and circulation; b) shoreline environments, including the respective Rural and Conservancy environments; and c) shoreline use activities, including landfill, transportation facilities, and recreation is incorporated herein by reference as a formal Finding.
19. Finding 19 set forth in the Revised DDES Report regarding conformity of the application with cited King County shoreline management code regulations (Chapters 25.20 and 25.24 KCC, referencing Chapter 25.16 KCC) addressing excavation, dredging and filling, and recreation activity in the respective Rural and Conservancy Environments is incorporated herein by reference as a formal Finding.
20. Finding 20 set forth in the Revised DDES Report addressing “areas of concern” (user safety, property owner safety, trail use, noise, aesthetics, public service support, drainage, erosion, water

quality, fish and wildlife impact, land use, property rights and alternative routes, and rail salvage and mitigation) is incorporated herein by reference as a formal Finding.

CONCLUSIONS:

1. King County Shoreline Management Master Program policies endorse public multifunctional trails and public access to shoreline areas (in this case, shoreline viewpoints) as a benefit to the local community and region. In addition, a trail linking two regional parks (Marymoor and Lake Sammamish) is encouraged by adopted public policy, particularly the 1998 King County Comprehensive Plan, Master Program policies and County Council Motion No. 11101, as is the extension of an east county pedestrian and bicycle trail system.
2. The Interim Use Trail encompassed by the requested SSDP conforms to the 1998 Comprehensive Plan by: (1) preserving wildlife, aquatic life and their habitats; (2) resulting in no net loss of wetland function and value; and (3) minimizing the impact on shoreline ecology and water quality. The proposal will replace filled wetlands and potentially improve fish passage, and will neither create additional impervious surface nor result in a pollution-generating surface. In addition, BMP's will control temporary impacts from construction and maintenance activities.
3. The use of the corridor as a trail and its appurtenances is permitted in the Rural and Conservancy Shoreline Environments as recreational development, subject to shoreline code regulations with which the application complies.
4. The proposed project filling is permitted in the Rural and Conservancy Environments, again subject to shoreline code regulations with which the application complies.
5. Issues of safety, signage, trail operating rules, availability of public support facilities, potential impacts to the shorelines environment, abutting wetlands and streams, and protocols for ongoing maintenance to minimize impacts to the surrounding environment have been addressed by the FEIS and supporting documentation submitted for the permit. The evidence in the record provides a sufficient basis for the imposition of permit conditions to ensure that the trail will be compatible with the surrounding environment and meet the goals and regulations of the SMA and the Master Program. With a few minor suggested revisions, the Applicant has no objections to the recommended conditions.
6. Subject to the conditions imposed below, the interim use trail is consistent with the goals, policies and objectives of the SMA, the county's Master Program and the comprehensive plan.
7. Subject to the conditions imposed below, the trail proposal is consistent with applicable shoreline regulations set forth in Title 25 KCC.

DECISION:

The Shoreline Management Substantial Development Permit for the East Lake Sammamish Interim Use Trail within the City of Sammamish is approved subject to the following conditions of approval:

1. Nothing in this permit shall be construed as excusing the Applicant from compliance with any federal, state, or local statutes, ordinances, or regulations applicable to this project other than the permit requirements of the Shoreline Management Act of 1971.
2. This permit may be rescinded pursuant to Section 14(7) of the Shoreline Management Act of 1971 in the event the permittee fails to comply with any conditions thereof.
3. Construction pursuant to this permit may not begin or be authorized until twenty-one (21) days from the date of filing the final decision of the City of Sammamish with the Department of Ecology (DOE) or the Attorney General; or until all review proceedings initiated within twenty-one (21) days from the date of such filing have been terminated.
4. Construction shall be commenced within two years of the effective date of this shoreline permit; Provided, that local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and DOE. Authorization to conduct development activities shall terminate five years after the effective date of a shoreline permit; Provided, that local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and DOE.
5. Construction shall occur in conformance to the project plans and information provided by King County DES/FMD on October 7, 2002 (Hearing Exhibit 9), Revised Wetland Atlas and Technical Information (Hearing Exhibits 27 and 33), the Vegetation Management Plan (Hearing Exhibit 21), and other file documents; as further reviewed and approved through the permit review process for clearing and grading permit.
6. Any subsequent changes to the approved shoreline plans may require the Applicant to obtain a new shoreline permit or a revision to this shoreline permit pursuant to WAC 173-27-100.
7. A Temporary Sediment and Erosion Control and Construction Monitoring Plan, and a Stormwater Pollution Prevention Plan will be reviewed and approved prior to issuance of a clearing and grading permit, with special attention to containing sediment washing off newly-placed gravel or from soil disturbance adjacent to streams and wetlands.
8. During construction, the Applicant must use materials and construction methods that prevent toxic materials, petrochemicals, and other pollutants from entering adjacent surface waters.
9. Prior to construction, silt fences shall be placed, as appropriate, along the perimeter of the construction zone. Appropriateness of fencing and location shall be approved and verified by staff responsible for clearing and grading permit implementation (King County DDES or the City of Sammamish) prior to commencement of any clearing, grading, or construction activities.
10. Erosion controls and Best Management Practices (BMP's) shall be implemented and maintained to prevent uncontrolled discharge of concrete, cement, water, petroleum products, soil, and other deleterious materials from entering adjacent surface waters.
11. Construction methods will emphasize the use of hand tools to minimize vegetation and soil disturbance adjacent to wetlands and streams. Care will be taken to avoid gravel spilling into adjacent wetlands and streams.

12. Coir fabric filled with a coarse material or similar method will wrap the edge of the ELSIUT to stabilize the trail shoulder in areas adjacent to streams and wetlands.
13. A special inspector shall be appointed by the City of Sammamish to monitor gravel placement in the vicinity of wetlands and streams, or may be appointed by King County DDES if directed by the City. Written reports shall be provided to King County Parks and the agencies responsible for SSDP and Clearing and Grading Permit implementation (King County DDES and/or the City of Sammamish) following each day's work in the vicinity of wetlands and streams.
14. Split rail fencing and informational signs shall be installed adjacent to sensitive areas such as wetlands, streams and steep slopes to discourage human intrusion and protect fish and riparian vegetation.
15. Excavation and vegetation removal during construction shall be minimized adjacent to wetlands, streams and their buffers.
16. A detailed Vegetation Management Plan has been prepared and will be implemented by maintenance personnel to minimize the removal of vegetation within sensitive areas and their buffers and minimize the environmental impacts of necessary vegetation removal.
17. Vegetation management activities, ditch cleaning and maintenance, and culvert repair and replacement beyond that included in this permit (Table 4-1, Hearing Exhibit 18) shall require a clearing and grading permit and a Shoreline Substantial Development Permit from the City of Sammamish. Compensatory mitigation will be required for alteration of wetlands, streams or their buffers. These activities may be addressed on a case-by-case basis, or through a programmatic permit for the entire trail alignment within the City of Sammamish.
18. Monitoring of the operation of the Trail in the vicinity of sensitive areas shall be required for five years following completion of the project. Monitoring shall occur as defined in the Vegetation Management Plan, or as specifically required by a clearing and grading permit. Reports shall be submitted to King County Parks, and the agencies responsible for SSDP and Clearing and grading permit implementation (King County DDES and/or the City of Sammamish) no later than December 31 of each monitoring year.
19. Compensatory wetland mitigation will be required for wetland fill of wetlands located on the railbed itself. As required in the King County Sensitive Areas Code, impacts to these wetlands must be compensated for at a 2:1 ratio for Class 1 or Class 2 wetlands, and 1:1 ratio for Class 3 wetlands. A detailed final Wetland Mitigation Plan will be reviewed and approved by King County DDES prior to issuance of a Grading Permit for this project. This plan will include a detailed landscape-style planting plan, along with project goals and objectives and performance standards to ensure that the goals are met. In no case shall the mitigation for wetlands be reduced to less than that shown in the Draft Wetland Mitigation Plan for this SSDP, Hearing Exhibit 20. A minimum of five years of monitoring will be required to ensure that the mitigation functions as designed. Maintenance measures will be required during the monitoring period.
20. Conditions of the Hydraulic Project Approval (HPA) from the Washington State Department of Fish and Wildlife shall be considered conditions of this shoreline permit.

21. Stream and salmonid fish habitat mitigation measures during construction shall include Best Management Practices (BMP's) for erosion and sedimentation control to protect fish habitat at the time of construction. Silt fences or other erosion control shall be installed at all stream crossings to mitigate potential erosion impacts during removal of remaining railroad ties, fence and sign installation. Placement of gravel near stream crossings shall be performed using hand tools or light equipment to prevent crushed rock from entering stream channels. Trail shoulders shall be stabilized in areas adjacent to streams to prevent erosion and sloughing. Construction activities near stream crossings will be completed outside of the fish-spawning periods as stipulated by required WDFW permits to further reduce the potential disturbance from the presence of construction activity and increased noise.
22. Litter and dog-waste control / waste receptacles shall be placed no closer than 50 feet from the high water mark of any nearby stream.
23. When culverts are scheduled for maintenance (refer to Hearing Exhibit 18, Table 4-1, or DDES February 14, 2005 Revised Report, Hearing Exhibit 59, Finding 14), they shall be evaluated for fish passage barriers and inadequate flood conveyance, and shall be replaced as necessary with structures designed to provide fish passage and conveyance of flood flows, debris and sediment. All in-stream culvert replacement shall occur between June 15 and September 15 to avoid potential impacts during critical salmonid spawning periods.
24. Routine maintenance of culverts and ditches shall occur during the dry season. Drainage maintenance activities such as ditch cleaning will be performed using Best Management Practices from the Regional Road Maintenance Endangered Species Act Program Guidelines per the Vegetation Management Plan (Hearing Exhibit 21).
25. Construction activities along approximately 1,000 feet of the trail corridor within 800 feet of the identified bald eagle nest located approximately 600 feet east of the trail (the "midpoint" nest identified in Finding 16 above) shall be restricted to avoid work from January 1 to May 31 to assure that late-spring tree foliage will screen construction activity.
26. All manmade debris from the project within the construction zone shall be removed and disposed of at a location licensed for such disposal.
27. Within 24-hours of project segment completion, all disturbed areas outside the trail surface will be replanted with vegetation.
28. A copy of the approved shoreline plans and any necessary revisions shall be kept on-site at all times during construction.
29. Approval conditions of King County Clearing and Grading Permit L99CG062 or other grading permit to implement construction shall be considered conditions of this shoreline permit.
30. Within 30 days after completion of work, at least thirty (30) photographs taken from different directions shall be provided to the agency responsible for SSDP implementation (KC DDES Shorelines Administrator or City of Sammamish) to document compliance with the SSDP approval.

31. Ongoing yearly maintenance within the Shorelines of the State shall require submittal of a Shorelines Exemption to the City of Sammamish each year after termination per RCW 90.58.143 of this permit.

ORDERED this 14th day of April, 2005.

Peter T. Donahue, Deputy
King County Hearing Examiner

TRANSMITTED this 14th day of April, 2005, to the following parties and interested persons:

Cervin F. Allen	Jim Anderson	Emily Arteche
Mary Askenazi	Chuck Ayers	Julie Barnfather
Donald & Jeannette Barrett	Karen Berens	Barry Bersch
Jan & Charlie Bird	Joanna Buehler	Mr. & Mrs. L.E. Burgess
Jim & Billie Cairns	Mrs. Chase Carr	Mike Carson
City of Redmond	City of Sammamish	Matthew Cohen
Kris Colt	Frederick & Gail Davila	Brian & Collette Deagle
Bruce Disend	Darci Donovan	David Favour
William & Coralee Green	Robert Gunther	Brian & Peggy Haberly
Karen Hamilton	R. G. Harms	Stacy Herman
Meadow Creek Office Park, Inc.	Lola Jacobsen	Barb Justice
Bruce Landis	Robert Lawrence	Richard & Beverly Luce
Matt Mathes	Willis McCormick	Tom and Yvonne Mechler
Muckleshoot Indian Tribe	D. R. Neuzil	Robert & Bente Pasko
Don Potter	Lemoine & Foster Radford	Jeff Reinhardsen
Darwin Roberts	City of Sammamish	Barbara & Darrell Scattergood
Richard Schroeder	Lawrence Schwedler	Ron Syria
Marvin & Elizabeth Taylor	D.R.J. Tott	Jerry VanHorn
Marianne Wilkins	Michael Witek	Steve Bottheim
John Briggs	Lisa Dinsmore	Bruce Engell
Scott Johnson	Bill Kerschke	Mike Lozano
Andrew Marcuse	Joe Miles	Cass Newell
Robert Nunnenkamp	Carol Rogers	Randy Sandin
Karen Scharer	Howard Schneiderman	Larry West
Joe Wilson		

NOTICE OF RIGHT TO APPEAL

This decision of the City of Sammamish may be appealed to the State Shorelines Hearings Board. Requests for review are governed by RCW 90.58.180 and Chapter 461-08 WAC. Information on appeal procedures may be obtained from the Shorelines Hearings Board at (360) 459-6327 or the Washington State Department of Ecology Shorelines Appeals Coordinator at (360) 407-6528. Requests for review by the Shorelines Hearings Board must be received by the Board within twenty-one (21) days of the “date of filing.” The “date of filing” is the date the local decision on the permit is received by the Department of Ecology.

MINUTES OF THE MARCH 24, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L99SH007.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Karen Scharer and Bill Kerschke, representing the Department; and Scott Johnson, representing the Applicant.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 Application for Shoreline Substantial Development Permit dated May 7, 1999
- Exhibit No. 2 Certificate of Applicant Status dated April 10, 2001
- Exhibit No. 3 Permit Application Worksheet (2 pages)
- Exhibit No. 4 Legal Description with Quit Claim Deed
- Exhibit No. 5 Shoreline Management Questionnaire received May 7, 1999
- Exhibit No. 6 Environmental Checklist received May 7, 1999
- Exhibit No. 7 Sensitive Area Notice received April 11, 2001
- Exhibit No. 8 SSDP – Plan for trail (Issaquah/King County/Sammamish) received May 7, 1999
- Exhibit No. 9 Revised Plan
 - A – Permitting drawings for the portion of the trail in the City of Sammamish Incorporation Area, received October 7, 2002 (13 pages)
 - B – Attached shorelines data maps (Appendix F, color maps, 23 pages)
- Exhibit No. 10 Assessors Maps (20 pages)
- Exhibit No. 11 Notice of Shoreline Substantial Development Permit Application dated June 15, 1999
- Exhibit No. 12 East Lake Sammamish Trail Interim Use and Resource Protection Plan Draft Report Dated August 27, 1999 by King County Parks & DCFM
 - A – Appendix A Wetland, Stream Drainage & Floodplain Report
 - B – Appendix B Wildlife Report
 - C – Appendix C Fisheries Report
 - D – Appendix D Section Descriptions
- Exhibit No. 13 Draft Environmental Impact Statement for East Lake Sammamish Interim Use Trail and Resource Protection by Parametric, Inc. dated May 19, 2000 (file copy on CD)
- Exhibit No. 14 Draft Environmental Impact Statement Appendices by Parametrix, Inc., Adolfson Associates, Inc. and Associated Firms, dated May 19, 2000
 - A – Geology Appendix
 - B – Surface Water Appendix
 - C – Plant Species Appendix
 - D – Wetlands Appendix
 - E – Wetlands Atlas April 2000 Draft
 - F – Fish Appendix
 - G – Wildlife Appendix
 - H – Interim Use Trail Intersections
- Exhibit No. 15 Final Environmental Impact Statement and Resource Protection Plan by Parametrix, Inc. Dated August 25, 2000
- Exhibit No. 16 Biological Evaluation by Parametrix, Inc. dated November 2000 with letters from U.S. NOAA, U.S. F&WS and Parametrix, Inc. (regarding date of document)
- Exhibit No. 17 National Permit 18, Seattle District Corps of Engineers dated October 4, 2001
- Exhibit No. 18 Technical Information Report dated October 2001, received October 7, 2002
- Exhibit No. 19 Wetlands Technical Report (Appendix F) dated April 27, 2000, received April 11, 2001 with attached Addendum received June 10, 2002
- Exhibit No. 20 Wetland Mitigation Plan Draft dated March 2002

- Exhibit No. 21 Vegetation Management Plan dated June 2002, received June 10, 2002 (final version After two previous drafts)
- Exhibit No. 22 Letter in response to questions regarding location and identification of wetlands from Laura Casey's August 30, 2000 letter and questions raised during a December 5, 2001 Mitigation site walk; received February 19, 2002
- Exhibit No. 23 Letter in response to questions raised by Steve Conroy in an e-mail dated May 22, 2001; received February 19, 2002
- Exhibit No. 24 Letter from Michael Sinsky (KC PAO) dated September 28, 2001; re: permitting certain Alterations of stream buffers with a PAUE
- Exhibit No. 25 Letter from Carol Eychaner to Sammamish dated October 1, 2001; re: review of trail
- Exhibit No. 26 Letter from Carol Eychaner dated October 21, 2001
- Exhibit No. 27 Updated version of the Sammamish Interim Use Trail Wetland Atlas dated August 2002, Received October 7, 2002; includes wetlands and streams added or revised per memos To Casey and S. Conroy – mapping includes trail portions in the City of Sammamish
- Exhibit No. 28 King County Motion 11101 for the E. Lk. Sam. Interim Use Trail
- Exhibit No. 29 Expanded Table F-11 – Wetland Functions Impacted by the Proposed Action and Alternative 1
- Exhibit No. 30 Ray J. White, Ph.D., Inspection of Salmonid Stream Crossings on the ELST dated July 11, 1999
- Exhibit No. 31 Review of White and Barrett Letters – ELSITP dated October 9, 2001
- Exhibit No. 32 Rundle-Haro Plan Alternative; Re: rerouting a portion of the ELS Parkway (3) Dated June 2000
- Exhibit No. 33 Revisions to Wetland Technical Information by Parametrix, Inc. dated January 27, 2003
- Exhibit No. 34 King County 1994 Comprehensive Plan w/Updates through 1998 – Copy in Shorelines File
- Exhibit No. 35 Portion of Title 21A. Zoning in file (updated to 2000) – Current Code available on line at www.metrokc.gov/mkcc/code
- Exhibit No. 36 King County Shorelines Master Program – Copy in Shorelines file w/KC Ord. 3692
- Exhibit No. 37 Title 25 Shorelines Management & also available on line at www.metrokc.gov/mkcc/code
- Exhibit No. 38 DDES Public Rules – Chapter 21A-24. Sensitive Areas: Public and Private Trails & also available on line at www.metrokc.gov/ddes/pub rule
- Exhibit No. 39 Referenced as guideline only – Chapter 21A-24. Sensitive Areas: SA Presumption Of Salmonids and also available on line at www.metrokc.gov/ddes/pub rule
- Exhibit No. 40 DDES March 13, 2003 Report & Recommendation to the City of Sammamish w/cover Letter to the City & attached list of interested parties & Attachment B (main file exhibits used in review)
- Exhibit No. 41 City of Sammamish Re-notice of Application dated March 12, 2004 w/ mailing list
- Exhibit No. 42 Letter from Richard & Beverly Luce dated April 15, 2004 w/concerns & 11 pages of pictures
- Exhibit No. 43 Letter from Earl C. Finch dated March 16, 2004 in support
- Exhibit No. 44 Email from Robert Gunther dated March 24, 2004 w/concerns
- Exhibit No. 45 Letter from Mrs. Chase Karr dated April 19, 2004 w/concerns
- Exhibit No. 46 Letter from Jim & Billie Cairns dated April 1, 2004 in support
- Exhibit No. 47 Letter form 'Save Lake Sammamish'/Joanna Buehler dated April 19, 2004 w/concerns
- Exhibit No. 48 Email from Darci Donovan w/complaint from Mathew Petrich dated June 22, 2004 concerns of trespassing
- Exhibit No. 49 Email from Darci Donovan dated May 12, 2004 regarding proposed City code changes and rules

- Exhibit No. 50 Helsell Fetterman LLP/Michael Witek letter dated April 19, 2004 w/concerns & attached April 24, 2003 City of Sammamish PAUE Decision (see file exh. 77)
- Exhibit No. 51 A. Amendment to Interlocal Agreement between King County and the City of Sammamish relating to processing of building and land use applications signed October 25, 2004, w/attachments including:
B. Amendment (extension) of 2002
C. Initial Interlocal &
D. Motion 10739
- Exhibit No. 52 April 24, 2004 Sammamish Hearing Examiner Decision (denying PAUE – File # PUE01-001)
- Exhibit No. 53 Citizens for Safe and Legal Trails vs. King County, et al., 118 Wash. App. 1048, 2003 WL 2217293 (2003) (unpublished opinion); Review denied, 151 Wash.2d 1029, 94 P. 3d 960 (2004)
- Exhibit No. 54 Superior Court’s Memorandum Decision of March 16, 2004
- Exhibit No. 55 Superior Court’s Supplemental Memorandum Decision of May 26, 2004
- Exhibit No. 56 January 20, 2005 Snohomish County Superior Court Judgment on Land Use Petition
- Exhibit No. 57 January 5, 2005 Order of United States District Court Western District of Washington (16 U.S.C. § 1247(d) pre-empts the application of state law and portions of the Sammamish Municipal Code with respect to the allowance of trail development On any rail banked railroad right-of-way)
- Exhibit No. 58 February 8, 2005 letter from Scott Johnson, King County PA representing the Applicant DES/FMD in response to the Helsell Fetterman LLP/Michael Witek, letter of April 19, 2004; with attachments – 20 pages (received February 10, 2005)
- Exhibit No. 59 DDES February 14, 2005 Report & Recommendation to the City of Sammamish Hearing Examiner
- Exhibit No. 60 March 23, 2005 DDES Revisions to Finding #16 & Condition #25
- Exhibit No. 61 Carl Shanahan email dated March 23, 2005 in support of ELSUIT

PTD:gao
L99SH007 RPT