



SHORELINE
CITY COUNCIL

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September 7, 2018

Honorable Members of the Snohomish County Council
Snohomish County Council
Robert J. Drewel Building – 8th Floor
3000 Rockefeller Avenue, M/S 609
Everett, Washington 98021

Via Email to: contact.council@snoco.org

RE: BSRE Point Wells LP Appeal of Hearing Examiner's
August 3, 2018 Decision

Honorable Members of the Snohomish County Council:

The Snohomish County Council should deny BSRE Point Wells LP's ("BSRE") request to reverse the Snohomish County Hearing Examiner's decision in its appeal of the August 3, 2018 Amended Decision Denying Extension and Denying Applications without Environmental Impact Statement in File Nos. 11-01457 LU/VAR, 11-101461 SM, 11-101464 RC, 11-101008 LDA, and 11-1010008 LDA. The Hearing Examiner's decision is supported by substantial evidence, is a correct application of the law, and conformed to all procedural requirements.

As the County Council is aware, the City of Shoreline ("Shoreline") has a pivotal interest in the development of Point Wells given that it is immediately adjacent to Shoreline's northern boundary and, currently, has only one point of vehicular access – Richmond Beach Road, a local street passing through the City's Richmond Beach residential neighborhood. Every analysis that Shoreline has conducted in regards to development of Point Wells reveals that Shoreline will be the primary recipient of impacts arising from the development. And, these impacts will not be limited to traffic but will include impacts to a variety of the City's public services as well.

Shoreline submitted written comments to the Hearing Examiner, testified during the public comment portion of the public hearing and was present for all days of the hearing, which spanned nine days.¹ After considering the entirety of

¹ Written comments submitted by Shoreline for the Public Hearing are found in Exhibits I-411, Q-5, Q-6, and Q-7 and are attached to this letter for the County Council's reference. Testimony was provided by City Manager Debbie Tarry, City Traffic Engineer Kendra Dedinsky, Director of Planning & Community Development Rachael Markle, City Attorney Margaret King, and Assistant City Attorney Julie Ainsworth-Taylor.

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Exhibit S-3 Written Argument City of Shoreline Sept 7 2018
PFN: 11-101457 LU

PW_021644

the record, on June 29, 2018, the Hearing Examiner granted the Snohomish County Planning and Development Services' ("PDS") request to terminate review of the above-mentioned applications pursuant to Snohomish County Code ("SCC") 30.61.220, and to deny BSRE's request for an extension of these applications ("Decision"). On July 9, 2018, BSRE requested reconsideration and clarification of the Decision. With its request, BSRE submitted some 60 pages of "new evidence" to the Hearing Examiner for which there was absolutely no opportunity for public comment. As to the substance of BSRE's request, after considering the additional evidence, the Hearing Examiner appropriately denied the motion but did issue an Amended Decision on August 3, 2018 ("Amended Decision") to correct the appropriate appeal process.

BSRE has failed to provide any valid reason why the Snohomish County Council should reverse the Hearing Examiner's Amended Decision. The Amended Decision is well supported by findings of fact and conclusions of law. For the purpose of these comments to the County Council, Shoreline limits its arguments to the provision of High Capacity Traffic and the denial of an additional extension. However, in doing so, Shoreline does not waive any of its rights related to all of the issues that it has provided comments to County Staff and to the Hearing Examiner.

1. The Hearing Examiner made no error in regards to High Capacity Transit.

As the City pointed out in its final comment letter to the Hearing Examiner (Exhibit Q-7) access to High Capacity Transit (HCT) is an essential element to an Urban Center in Snohomish County. The requirement for HCT is important for BSRE because without it, BSRE cannot secure the additional building heights provided in SCC 30.34A.040(1) for 21 of the 46 buildings it proposes. No matter how BSRE attempts to argue the HCT issue, it is indisputable that there are no tangible plans to provide HCT to the Point Wells area. Nothing that BSRE presented at the public hearing or in its request for reconsideration (which was not additional evidence) demonstrates otherwise. The Hearing Examiner made no error in determining that there is no HCT - existing or planned for Point Wells - nor has BSRE provided any credible evidence to indicate otherwise.

• There are no plans for a Sound Transit Station at Point Wells

BSRE contends it has diligently *attempted* to reach agreement with Sound Transit for a station at Point Wells and that the record shows Sound Transit is *considering* or *contemplating* a stop in the general vicinity of the Richmond Beach/Shoreline area.² But attempts, consideration, and contemplation, even if true, do not amount to actual, tangible plans which is what SCC 30.21.025(1)(f) and SCC 30.34A.040(1) demand.

² BSRE Request for Reconsideration/Clarification at 11; BSRE Appeal to Council at 16.

BSRE states it has had “substantial contact”³ with Sound Transit and demonstrates its “diligence” in regards to HCT by two exhibits - H-24 and H-26 – and the testimony of one of BSRE’s attorneys. H-24 is a 2014 letter from BSRE requesting that Sound Transit include a station in its *Draft* Supplemental Environmental Impact Statement (Draft SEIS), which Sound Transit included as a “representative project” for the purposes of modeling and impact analysis in an appendix to the *Final* SEIS (Exhibit H-26).⁴ Sound Transit’s inclusion of a speculative station in a 2014 EIS does not meet SCC 30.21.025(1)(f)’s mandate for a “planned” station. Nor, does BSRE’s testimony that it contacted Sound Transit more than a decade ago rise to the level of a “planned station.” In fact, the record before the Hearing Examiner speaks to the contrary, such as a May 2018 email from Sound Transit stating that there is no voter-approved funding for the provision of a station at Point Wells and that it would also require additional easements from BNSF, the actual owners of the rail tracks (Exhibit H-30); that Sound Transit currently does not include a Point Wells station within its Regional Transit System Plan (Exhibits H-27 and H-28) or its System Expansion Implementation Plan (Exhibit H-29), a plan that spans almost 30 years; and testimony of County Staff, Ryan Countryman.⁵ And, as the City noted in its final comment letter (Exhibit Q-7), the relationship between Sound Transit and BNSF is not only a complex one but an expensive one that is not capable of being resolved only by BSRE given the multi-jurisdictional aspect of such a project.⁶

The County Council’s role in this appeal is not to decide whether BSRE has been derelict in its duties to satisfy SCC 30.34A.040(1) and SCC 30.21.025(1)(f)’s mandate for HCT but whether there is a substantial conflict with the SCC. Here, the Hearing Examiner correctly concluded that the lack of evidence in the record as to the actual provision of HCT to Point Wells had been demonstrated and that this is a substantial conflict with the relevant SCC provisions warranting termination of project review as provided in SCC 30.61.220.

- **Water Taxi Service between Point Wells and City of Edmonds is Speculative**

For the first time, at the public hearing BSRE put forth the concept of a “free” water taxi to temporarily satisfy SCC 30.34A.040(1) and SCC 30.21.025(1)(f)’s requirement for HCT at Point Wells. But, just like BSRE’s statements about the Sound Transit station at Point Wells, this water taxi is speculative at best. In its Request for

³ BSRE Request for Reconsideration/Clarification at 11. Except for the testimony of Mr. Luetjen, BSRE submitted no actual documentation in this regard except Exhibit H-24/H-26 which is in juxtaposition to Exhibit H-30

⁴ Exhibit H-26 at A-1,

⁵ In his testimony, Mr. Countryman requested that Snohomish County wanted, at the minimum, some type of memorandum of understanding between Sound Transit, BNSF, and Town of Woodway to demonstrate planned HCT at Point Wells. While BSRE submitted a plethora of documentation with its Request for Reconsideration/Clarification to address the deficiencies identified by the Hearing Examiner in his June 29, 2018 decision, BSRE submitted nothing to support the findings and conclusions related to the provision of HCT.

⁶ See also Exhibit I-375 Correspondence from Town of Woodway about not having any communications from BSRE in regards to a station within the Town’s municipal boundaries.

Reconsideration/Clarification, BSRE includes a declaration from Mr. Luetjen in regards to conversations it has had with the State of Washington Department of Natural Resources starting in August 2017.⁷ Importantly, this declaration is silent as to a water taxi. Nor has BSRE presented any additional evidence on its ability to legally operate a water taxi. As Shoreline pointed out in its final comment letter (Exhibit Q-7), BSRE does not reveal any communications with the City of Edmonds, a private marina owner, the State of Washington, or the US Coast Guard as to its ability to actually provide the hypothetical water taxi and how passengers will get from the water taxi to the Edmonds Sounder Station. Just like the provision of a Sounder Station at Point Wells, the ability to provide a water taxi is not completely within BSRE's control, but is largely within the control of outside governmental agencies.

In addition, while the Hearing Examiner did not expressly address it, BSRE's reliance on a water taxi for the provision of HCT is based on current SCC 30.93H.108 which includes "passenger-only ferries" in the definition of High Capacity Transit. As Shoreline noted in its final comment letter (Exhibit Q-7), BSRE is bound by the regulations it vested in 2011 not those adopted years later in 2013. If BSRE would like to benefit from SCC 30.93H.108, then the entirety of its project must be reviewed under the regulations in place at the time that SCC provision was adopted. Of course, by 2013 Point Wells had been stripped of its Urban Center designation resulting in a project being subject to the County's Urban Village regulations.⁸

- **A transit route without access does not fulfill an Urban Center's purpose.**

BSRE presents an illogical, strained analysis as to SCC 30.34A.040(1)'s language that to be entitled to additional building height, a project just needs to be located "near a high capacity transit route *or* a station" which, since a Sounder Train line passes through its property, BSRE asserts this requirement has been met. While Shoreline agrees the general rule is that a regulation should be read so that no words are rendered meaningless or superfluous, at times surplusage in a regulation may be ignored in order to implement legislative intent. *State v. Evergreen Freedom Foundation*, 1 Wn. App. 2d 288, 299 (2017) (citing *Washington Water Power Co. v. Graybar Electric Co.*, 112 Wn.2d 847, 859 (1989)). In addition, a literal reading of a regulation can be avoided if it leads to a strained, unlikely, or absurd result. *Id.* at 300.

Shoreline is not asking the County Council to ignore SCC 30.34A.040(1)'s language but, rather, to read it in conjunction with the purpose of the Urban Center designation so as not to produce an unreasonable result. SCC 30.21.025(1)(f)⁹ provides that that an Urban Center is to be located within one-half mile of existing planned stops or stations for *high capacity transit routes*. Thus, the purpose of the zone clearly states that

⁷ See Appendix 9 to BSRE's Request for Reconsideration/Clarification.

⁸ See, Snohomish County Amended Ordinance Nos. 12-068 and 12-069.

⁹ Based on Ordinance 09-079.

it is not satisfied by a route passing through the area when there is no opportunity for residents to actually *access* the HCT being provided by that route. In other words, the express purpose of the Urban Center zone would not be fulfilled.

The Hearing Examiner made no err when he determined the project substantially conflicted with SCC 30.34A.040(1) because the mere passage of a Sounder Train through Point Wells, with no tangible ability to access that train, negates the purpose and intent of an Urban Center.

2. BSRE has failed to diligently prosecute its applications and was entitled to no further extensions.

SCC 30.70.140(2)(b) gives the Hearing Examiner discretion to extend the expiration date of an application. BSRE provides no evidence that the Hearing Examiner's denial was manifestly unreasonable or based upon untenable grounds or reasons. *State v. Black*, 422 P. 3d 881, 885 (2018).

Although BSRE's applications were filed in 2011, more than seven years ago, the Hearing Examiner concluded that a determination as to whether BSRE has been reasonably diligent in moving its applications forward should start in 2013 given litigation during that time.¹⁰ BSRE cites to certain findings and conclusions that it asserts demonstrates diligence.¹¹ In doing so, BSRE sidesteps the fact that it did *nothing* from April 2013, when it received PDS' first review completion letter, until four years later in April 2017 when it responded to that letter, a response that only adequately responded to one of PDS' concerns.¹² As PDS Director Mock stated in her January 24, 2018 decision to deny any further extensions (Exhibit K-40), in addition to the standard processing time for an application, BSRE had been granted extensions totaling 3.5 years and still had not demonstrated its project could meet applicable codes and regulations. What the record demonstrates, and the Hearing Examiner noted, is BSRE's 11th hour attempts to save its applications by submitting still incomplete information to PDS,¹³ but only after PDS elected to pursue dismissal via SCC 30.61.220. In addition, BSRE also ignores the fact that nothing in the law requires PDS to inform it that an application will expire or that an extension may/may not be granted.¹⁴ Despite this, BSRE spends a considerable amount of time twisting the facts to assert just that.¹⁵

Much of BSRE's argument that the Hearing Examiner's denial is not supported by the evidence goes to certain phrases, conclusions, or mischaracterizations that BSRE cannot

¹⁰ Amended Decision, Conclusion C.4

¹¹ BSRE Appeal at Section G, Pg 23-27

¹² See Exhibit K-31 at Pg 13, Table 2

¹³ Submittals from BSRE were done even up to and at the Public Hearing.

¹⁴ See, SCC 30.70.140(3)

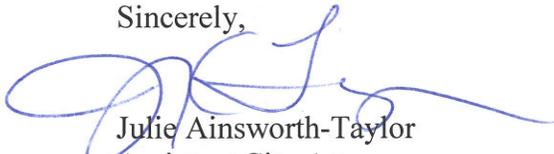
¹⁵ BSRE Appeal at Section G at Pgs. 24-25.

gleam from an exhibit or simply has another memory of the event.¹⁶ The Hearing Examiner's use of words to paraphrase the content of an exhibit does not mean the denial is not supported by the record or that the Hearing Examiner misunderstand that exhibit. What the Amended Decision reveals is that the Hearing Examiner considered the entire record that was presented and correctly determined BSRE has had more than enough time to demonstrate its project's compliance with Snohomish County codes and regulations, even taking into consideration a two year delay for litigation. Moreover, the Hearing Examiner correctly determined BSRE's actions to date do not amount to reasonable diligence in prosecuting its applications; a determination that Shoreline agrees with. Thus, the Hearing Examiner did not abuse his discretion when he denied an extension to BSRE.

3. Conclusion

The Snohomish County Council should deny BSRE Point Wells LP's appeal of the Snohomish County Hearing Examiner's August 3, 2018 Amended Decision Denying Extension and Denying Applications without Environmental Impact Statement. The Hearing Examiner's decision is well-reasoned and supported by the record and BSRE has provided no rationale reason for the County Council to reverse the August 3rd Amended Decision.

Sincerely,



Julie Ainsworth-Taylor
Assistant City Attorney

Enclosures

¹⁶ See, e.g. BSRE Appeal at 24 complaining of the Examiner's use of "extraordinary circumstances" or mischaracterizations of meetings between BSRE and PDS. Shoreline feels the need to reiterate that the Transportation Corridor Study was never completed not because of "votes on the Shoreline Council" but because, as the testimony of the City Traffic Engineer Kendra Dedinsky and Exhibit I-411 and Exhibit Q-7 denote, BSRE and Shoreline had reached an impasse because BSRE was unwilling to comply with the technical requirements of the Memorandum of Understanding.

From: Darcy Forsell
To: [Davis, Kris](#)
Cc: [Margaret King](#); [Julie Ainsworth-Taylor](#)
Subject: BSRE Point Wells LP Urban Center Application - Hearing 5/16/18
Date: Wednesday, May 16, 2018 1:27:52 PM
Attachments: [Shoreline Comment Letter.pdf](#)

Attached is the City of Shoreline's comment letter regarding the above application scheduled for hearing today.

Darcy Forsell

Legal Assistant

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NOTICE: All emails, and attachments, sent to and from City of Shoreline are public records and may be subject to disclosure pursuant to the Public Records Act (Chapter 42.56 RCW).

**I-411 Tarry, Debra City of Shoreline -- May 16, 2018
PFN: 11 101457 LU**



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May 16, 2018

The Honorable Peter Camp, Hearing Examiner
Snohomish County
Office of Hearings Administration
3000 Rockefeller Ave M/S 405
Everett, WA 98201

VIA EMAIL: hearing.examiner@snoco.org

**RE: BSRE Point Wells LP Urban Center Application
Hearing Date May 16, 2018**

The Honorable Peter Camp:

The City of Shoreline (“Shoreline”) submits these comments in support of the Snohomish County Departments of Planning and Development Services and Public Works (collectively, “Snohomish County”) recommendation to deny the Point Wells Project applications¹ pursuant to Snohomish County Code (SCC) 30.61.220. As the Snohomish County Staff Reports denote, BSRE has failed to provide Snohomish County with the information necessary to facilitate permit and environmental review. Accordingly, the County, Shoreline, or the public, should not incur the needless time and expense of proceeding with a State Environmental Policy Act (“SEPA”) process when the project simply cannot meet the mandatory Snohomish County Code (“SCC”) requirements.

As set forth in more detail in this comment letter, the Point Wells Project proponent, BSRE Point Wells LP (“BSRE”), has had more than enough time to provide the information necessary to demonstrate that the project complies with Snohomish County’s plans and regulations. In fact, BSRE has had over seven years to respond to the repeated requests from Snohomish County to provide the necessary information. Yet, BSRE remains unable to demonstrate that vital components of its Urban Center proposal can actually be provided. More specifically, BSRE is not able to demonstrate that:

¹ The Point Wells project applications are denoted as Snohomish County File Nos. 11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP, and 11-101457 VAR. These applications and the development sought pursuant to them will collectively be referred to in this comment letter as the “Point Wells Project”.

1. A required viable second access road to provide for safe, efficient circulation and access for vehicles to and from the Point Wells site can be provided;
2. High-capacity transit is available which is necessary to support increased building heights;
3. Neighboring lower density land uses are protected with appropriate building height setbacks;
4. The public interest in the Puget Sound shoreline will be protected;
5. The function and values of critical areas will be maintained; and
6. Adequate transportation and parking infrastructure will be provided so as to not have adverse effects and impacts on neighboring communities.

The Point Wells Project that BSRE proposes is simply not viable under the Urban Center land use designation and zoning that it vested to years ago no matter how BSRE attempts to modify its application package. To construct the project at that density it desires, BSRE needs a variety of deviations and variances from SCC requirements but, more importantly, it needs *high capacity transit* and a *second access road*. Without high capacity transit or a second access road, BSRE simply cannot build at a density that would make the project viable.

BACKGROUND

The development at issue in these proceedings is a proposal to redevelop a 61-acre industrial site in the southwestern corner of Snohomish County, known as Point Wells, adjacent to the City of Shoreline and Town of Woodway but, solely accessed through Shoreline by Richmond Beach Drive. Point Wells was developed for and continues to be utilized for various industrial purposes (oil refinery, tank farm, and asphalt plant) for more than a century, leaving a legacy of heavy contamination on the land. The site of the proposed development is bordered by two-thirds of a mile of Puget Sound shoreline to the west and a very steep bluff projecting up to 220 feet high to the east.²

BSRE seeks to create an Urban Center on the site with more than 3000 residential units and approximately 125,000 square feet of commercial amenities, with buildings towering to 180 feet, along with open space and public services at Point Wells. The ability for Point Wells to be redeveloped has been a source of controversy for over a decade, with the most recent occurring in 2009 when Snohomish County redesignated Point Wells from a comprehensive plan land use of Urban Industrial to a comprehensive plan land use of Urban Center. This redesignation spurred legal challenges before the Growth Management Hearings Board³ and then to the Courts,

² See Attachment A, Topographical Map.

³ *City of Shoreline, et al v. Snohomish County*, CPSGMHB Coordinated Case Nos 09-3-0013c and 10-3-0011c. The challenge presented to the Growth Board was to the 2009 redesignation of Point Wells to Urban Center and the subsequent Urban Center development regulations along with the State Environmental Policy Act (SEPA) documents prepared by Snohomish County to support these

ultimately finding its way to the Washington Supreme Court in 2014.⁴ The City of Shoreline has been involved and present throughout this controversy because of the immense impacts that it almost singularly will endure if the Point Wells Project is realized as BSRE envisions.

As the Hearing Examiner is aware, Shoreline borders the King-Snohomish County line and is immediately south of Point Wells with its northwest boundary abutting the area. This creates a situation where the only current point of vehicular access to the Point Wells site is via Shoreline and its transportation network.⁵ Accordingly, a major obstacle to the Point Wells re-development is the limited access to the area. Due to the steep bluffs rising eastward to the Town of Woodway, access is potentially only available from the south through Shoreline via Richmond Beach Drive, a two-lane street that dead ends at Point Wells after passing through a historic single-family residential neighborhood. The nearest major highway is Aurora Avenue (State Route 99), approximately 2.5 miles east, with Interstate 5 located over 4 miles to the east, both of which bisect Shoreline north to south. Accordingly, future residents of the Point Wells Project will utilize Shoreline streets when entering or leaving the area for work and every other aspect of their everyday lives. Moreover, given the topographical limitation, Shoreline will be the primary receiver of not just impacts to its transportation network (see Attachment C, Key Transportation Connections with Volumes) but also impacts to both public and private services within Shoreline as residents seek these services from outside of Point Wells. Thus, even though Shoreline is not the governmental entity ultimately responsible for the permitting of the redevelopment of Point Wells, it will be responsible for absorbing many of the impacts arising from any future development of the area.

actions. The Growth Board largely found Snohomish County failed to comply with the Growth Management Act (GMA) because the Urban Center designation of Point Wells did not comply with criteria Snohomish County had established for such a designation but also that Snohomish County's environmental review was flawed under SEPA. *Final Decision and Order* (April 25, 2011). It took Snohomish County until December 2012 to achieve compliance which it did by changing the designation of Point Wells to Urban Village and applying Planned Business Community zoning thereby reducing the permit level of density the site could support. *Order Finding Compliance* (Dec. 20, 2012).

The proceedings before the Growth Board can be reviewed at: <http://www.gmhb.wa.gov/>

⁴ *Town of Woodway v. Snohomish County*, 180 Wn.2d 165 (2014). In this case, the Supreme Court was asked to determine if the Point Wells Project was vested under the Urban Center land use designation and development regulations because they were later found to be flawed under SEPA by the Growth Board and the Courts. The Supreme Court answered in the positive, the Point Wells Project was vested despite the flawed SEPA analysis.

⁵ Shoreline acknowledges that a small portion of Richmond Beach Drive, approximately 250 feet in length, is located within the Town of Woodway. However, this nominal portion of the road can only be accessed through Shoreline.

It was for these reasons that Shoreline, even before the Point Wells Project was contemplated, anticipated the impact that redevelopment of the area would have on the City and began to plan for annexation of Point Wells. In 1998, just three years after incorporation, Shoreline designated Point Wells as a “potential annexation area” (PAA)⁶ with the adoption of Shoreline’s first GMA Comprehensive Plan.⁷ Planning efforts for this area culminated in the adoption of the Point Wells Subarea Plan in 2010 with the area now being labeled as a “future service and annexation area” (FSAA). The Point Wells Subarea Plan articulates the future vision Shoreline has for the area, which is a world class, environmentally sustainable community providing for a mix of land uses, including a wide range of residential, commercial, and recreational uses. This vision is different from Snohomish County’s Urban Center designation and BSRE’s proposed Point Wells Project.

COMPLIANCE ANALYSIS

Shoreline largely concurs with Snohomish County Planning Staff’s detailed analysis in its April 17, 2018 Staff Report and May 9, 2018 Supplemental Staff Report (collectively “Staff Reports”) that the Point Wells Project is in substantial conflict with adopted plans, regulations, and laws, and that this substantial conflict cannot be cured. The only exception to Shoreline’s concurrence is in relation to Snohomish County Staff’s statements regarding the Traffic Report and Assumptions and Public Transportation and Transit Compatibility in the May 9 Supplemental Staff Report.

In this comment letter Shoreline will discuss its support for the recommendation in the Staff Reports in relation to how the documentation submitted by BSRE for the Point Wells Project, from its original application package of 2011 to its most recent April 27, 2018 submittal, fails to demonstrate that the Point Wells Project can be built at an Urban Center intensity.

- 1. BSRE has failed to demonstrate that the Point Wells Project can provide a viable second access road to provide for safe, efficient circulation and access for vehicles to and from the Point Wells site.**

SCC 30.53A.512 and SCC 13.05.020, along with the Snohomish County Engineering and Development Standards (EDDS) 3-01, require a second access road for the Point Wells Project. This second access road will be triggered by Phase I of the Point Wells Project. BRSE conceptually proposes to construct the required second access road traversing a landslide hazard area (geological hazard), crossing Chevron Creek, and

⁶ A potential annexation area (PAA) is the terminology utilized by the GMA (RCW 36.70A.110(7) and King County for unincorporated areas that are anticipated to be annexed to the adjacent municipality. The GMA also uses the term urban service area. Snohomish County’s use of a Municipal Urban Growth Area (MUGA) serves the same purpose as these terms.

⁷ Attachment B, Shoreline Comprehensive Plan Land Use Map

wetlands. See, *Critical Areas Report* Exhibit C-30 – Appendix A. These factors question the feasibility of actually being able to construct this second access road.

In its most recent submittal, BSRE has provided the April 20, 2018 Hart Crowser *Subsurface Conditions Report* for Point Wells, which includes additional boring data and analysis of soils, potential for liquefaction, lateral spreading, and seismic induced hazards, and provides additional information on the existing conditions of the site. See, Exhibit C-33. The Hart Crowser Report acknowledges the need for *more* testing to verify conditions and hazards specifically in the area where the proposed second access road would be located. In addition, the Hart Crowser Report only provides generalized descriptions of *possible* engineering solutions that could be used to mitigate predicted hazards related to construction of the second access road. These proposed mitigating engineering solutions, which have never been provided by BSRE before, would require piping of Chevron Creek and dewatering of the wetland (both of which would likely require State and, potentially, Federal permitting)⁸ along with needing to acquire multiple easements from adjacent private property owners. Accordingly, the ability to implement these solutions is so tenuous and problematic that the proposed second access road amounts to a “theoretical” one.

Furthermore, the 2018 Second Access Plan (Exhibit B-8) shows a grade of 15% for the second access road – this is the maximum grade allowed by Snohomish County⁹ which would not only be problematic in inclement weather but a grade at this level would discourage use. The 2018 Second Access Plan also does not show how the road would connect to the Town of Woodway’s transportation network and, since the road is within Woodway’s jurisdictional authority (thus, outside of the Snohomish County permit process), Shoreline has concerns about the mechanism for enforcing the actual construction of the road. Given the lack of clear construction feasibility, Shoreline has serious concerns about the implications to the Shoreline street network.

The Hart Crowser Report also contends that enough analysis has been done to move the Point Wells Project into environmental review. The City of Shoreline disagrees. Since the ability to permit any development that will generate more than 250 Average Daily Trips (ADT) from the Point Wells Project is predicated on the ability to provide secondary access as described in EDDS 3-01 (B)(05), SCC 13.05.020, and SCC 30.53A.512, it is reasonable to require BSRE to at least provide preliminary engineering of alternatives prior to a determination that environmental review should proceed.

Lastly, one of the primary reasons for the second access road is to provide for a means to safely access and leave the Point Wells site, especially in the event of an emergency.

⁸ In addition, to pipe a stream and dewater a wetland is contrary to current development practices that seek to preserve and protect this critical areas in their natural state.

⁹ SCC 30.53A.512

This alone is problematic as BSRE proposes to provide over 1,000 “senior housing” units which will undoubtedly have an impact on emergency services. While BSRE intends to satisfy emergency services by providing on-site fire and police services within the Urban Plaza area of the Point Wells Project, these would be intermediate services and still require the potential for delivery to hospitals. At a 15 percent grade, emergency vehicles could face substantial obstacles to providing services. In addition, the Urban Plaza is below a 60 foot retaining wall positioned at the base of a landslide hazard area. If the second access road should fail, which is entirely possible based on known risk factors, the safety of residents, visitors, and first responders would be put in jeopardy even if there are on-site services.

The provision of the second access road is pivotal to the Point Wells Project. If a second access cannot be provided, the Point Wells Project cannot be approved. To undergo environmental review before such a pivotal aspect has moved beyond a hypothetical concept would needlessly expend public resources.

2. *BSRE has failed to demonstrate that the building heights and setbacks within the Point Wells Project comply with Snohomish County Code.*

A. *BSRE has failed to demonstrate that high-capacity transit will be provided so as to support increased building heights of over 90 feet.*

BSRE fails to provide credible evidence of access to high capacity transit.¹⁰ Therefore, buildings over 90 feet in height are not permitted pursuant to SCC 30.34A.040(1). The Point Wells Project Architectural Plans (Exhibit B-7) now show twenty-one (21) residential or mixed use towers substantially over 90 feet – ranging from 125 to 180 feet. Several of these towers are proposed to be located within a public view corridor enjoyed by Shoreline residents within the historic Richmond Beach neighborhood as well as the Town of Woodway residents to the east.

The Point Wells Project, however, cannot benefit from the height increase since the Point Wells Project is not located *near* a high capacity transit route or station that its residents can use. Allowing for 21 towers to exceed the SCC’s maximum height of 90 feet based on BSRE’s statement of speculative “interest” of high capacity transit potentially coming to the area sometime in the future simply fails as does their proposal to provide shuttle to stations miles away. This clearly does not meet the intent of SCC 30.34A.040 (2010). This provision demands that the project be *near* a high capacity transit route or station before height may be increased. While a

¹⁰ SCC 30.91H.108 defines high capacity transit as any transit technology that functions to carry high volumes of passengers quickly and efficiently, and preferably on exclusive or semi-exclusive rights-of-way, such as bus rapid transit, light rail, commuter rail, and passenger-only ferries. RCW 81.104.015 defines a high capacity transportation system to be one that operates principally on exclusive rights-of-way at a substantially higher level of passage capacity, speed, and service frequency than traditional public transportation systems operated on general purpose roadways.

Sounder rail line passes through the Point Wells site, it provides no service to Point Wells. More importantly, BSRE's documentation continues to only envision, as part of Phase 3 of the Point Wells Project, a future Sound Transit commuter rail station (See, Exhibit A-32 at Page 7; Exhibit A-35 at Page 4) - an idea that neither Shoreline nor Snohomish County has been able to substantiate with Sound Transit. Plus even BSRE's Exhibit A-35 falls far short of a *commitment* to high capacity transit stating only that Sound Transit has "*expressed an interest in providing commuter rail service.*"¹¹ When one looks at Snohomish County's other urban centers, all are on major transit corridors such as Interstate 5 and State Route 99 which provide frequent transit service, including bus rapid transit.

Until somebody commits to providing high capacity transit at Point Wells, BSRE proposes to use shuttles to transport residents to high capacity transit miles away, including the future Sound Transit Lynnwood Link light rail station at N 185th and the park-n-ride lot at Aurora Village, both in Shoreline. Shuttle service does not meet the intent of SCC 30.34A.040 because it is not high capacity transit. In order for the benefits of high capacity transit to be realized, it must be supplied without exception and at a level that meets the definition of "high capacity." Appendix D of Exhibit A-35 describes a shuttle service that will only be supplied frequently once the Point Wells Project is generating trips approaching BSRE's arbitrary "trip threshold" and, then, service will only be available weekdays during the AM and PM peak periods.¹² Not only would infrequent shuttle service fail to meet the definition of high capacity transit in SCC 30.91H.108 and RCW 81.104.015, but SCC 30.34A.085 describes requirements for stops or stations to be within one-half mile and for shuttles/van pools to be on a regular schedule, not an intermittent schedule. If Appendix D of Exhibit A-35 is intended to satisfy the criteria for high capacity transit, it once again falls short and does not comply with regional standards for high capacity transit service.

If the Point Wells Project is to become the thriving dense commercial and recreational area illustrated by BSRE's documentation, how will people access it during off peak hours or weekends? Given that the very limited shuttle service proposed in the future, and due to the isolated nature of Point Wells, vehicle dependence (most likely single-occupancy) and ownership is probable. Such dependence is not consistent with the goals of Urban Center development Snohomish County articulates in its regulations and Comprehensive Plan. Furthermore, BSRE has not determined how this shuttle service will be integrated into Sound Transit's

¹¹ Exhibit A-35 at Page 4. A Sounder station is currently located in the City of Edmonds, just a few miles to the north. Sound Transit has projects planned out to 2036 and commuter rail to this site is not listed as a project in any current Sound Transit plans. Sound Transit's System Expansion Implementation Plan can be reviewed at: <https://www.soundtransit.org/sites/default/files/project-documents/system-expansion-implementation-plan.pdf>

¹² Exhibit A-35, Appendix D: "*The frequency of service shall be determined in part by the demand therefor from Point Wells' residents.*"

Lynnwood Link Extension station slated to be constructed within Shoreline at 185th Street along Interstate 5. Based on the designs presented by Sound Transit, there is very limited space for transit and passenger loading/unloading at these future light rail stations and so far, no attempt to fund or even generally set aside space within or near the transit center has been communicated by BSRE to any transit agencies or Shoreline.

Beyond the “high capacity” problems previously listed, Exhibit A-35 paints a picture that the shuttle service will provide the “minimum required” in order to stay under the arbitrary 11,587 daily trip cap, as opposed to an hourly cap based on a Level of Service Standards (LOS) analysis and mitigation (See Item 4 below for discussion of daily trip cap). If the claim is to capture 15 percent of trips via transit, robust and frequent service needs to be provided to achieve that rate, otherwise the reduction in trips is unrealistic and should not be credited toward traffic impacts. Perhaps more important, due diligence and proof of commitment to this shuttle plan should be required before this singular measure is used to justify 90 foot building heights. There is also a claim that the shuttle service will connect to Sound Transit’s Lynnwood Link Light Rail stations at N 185th in the future. However as noted previously, no attempt has been made to secure drop-off-/pick-up space from Sound Transit for this or for Sound Transit to even consider such a proposal. There is no guarantee that the station area will be able to support an unaccounted for frequent shuttle service and this very conceptual plan may not be viable at all.

Snohomish County Urban Center regulations require access to high capacity transit in order to allow structures over 90 feet. All BSRE has provided is wishful thinking that there *may* be access to high capacity transit in the future. No plans which include buildings over 90 feet should be approved until there is existing or confirmed planned access to high capacity transit.

B. BSRE has failed to protect neighboring lower density land uses with building setbacks as required by Snohomish County regulations.

The City of Shoreline Comprehensive Plan identifies the 61 acre Point Wells site as a Future Service and Annexation Area (FSAA). A FSAA is the same as a Municipal Urban Growth Area (MUGA) in Snohomish County. In 2010, Shoreline adopted the Point Wells Subarea Plan.¹³ Shoreline’s Point Wells Subarea Plan includes specific policies related to the maximum height of structures because of the potential to significantly impair public views given the topography of the area. These policies were developed to identify measures to reasonably preserve views of Puget Sound and the Olympic Mountains that currently exist from neighboring properties. These height related policies support and supplement the Snohomish County Code. The policies are as follows:

¹³ A copy of the Point Wells Subarea Plan can be viewed at:
<http://www.shorelinewa.gov/home/showdocument?id=12491>

- “Policy PW-5: New structures in the NW subarea [North Village] should rise no higher than elevation 200. New buildings east of the railroad tracks [Urban Plaza] would be much closer to existing single family homes in Woodway and Richmond Beach. To reflect this proximity, buildings of a smaller scale are appropriate.”
- “Policy PW-6: New structures in the SE Subarea [South Village] should rise no higher than six stories.”
- “Policy PW-7: The public view from Richmond Beach Drive in Shoreline to Admiralty Inlet should be protected by a public view corridor across the southwest portion of the NW [North Village] and SW [South Village] subareas.”
- “Policy PW-8: New structures in the NW subarea [North Village] should be developed in a series of slender towers separated by public view corridors.”

The Point Wells Project Architectural Plans dated April 17, 2017, and the April 24, 2018, revisions (see Exhibits B-1 and B-7), denote the areas of the project that are within the public view corridor that is designated in Shoreline’s Point Wells Subarea Plan as the South Village and the Central Village. The Overall Section – South Village and Central Village found on Page A-311 (Exhibit B-7) of the new buildings east of the railroad tracks in the area labeled by BSRE as “Urban Plaza” would be much closer to existing single family homes in Woodway and Shoreline’s Richmond Beach neighborhood. To reflect this proximity, buildings of a smaller scale, ideally 55 feet or lower, are more appropriate to preserve the public view corridor. Yet, BSRE seeks a variance to excuse it from SCC 30.34A.040(2)(a) which, like Shoreline’s Point Wells Subarea Plan, seeks to have development scaled down when in proximity to single family development. See, Exhibit A-29.

Shoreline’s Point Wells Subarea Plan polices supports SCC 30.34A.040(2) which limits building heights in Urban Centers adjacent to lower density zoning to a height that is no greater than half the distance the building or that portion of the building is located from the adjacent low density zone. The heights of the buildings proposed in the “Urban Plaza” do not meet the SCC and do not meet the intent of Shoreline’s Policy PW-5. If the buildings were designed to comply with SCC 30.34A.040 (1) and SCC 30.34A.040 (2), Shoreline Policy PW-5 with regards to the “Urban Plaza” would also be met.

With regard to the heights of the buildings proposed in the North Village, it is unclear without further study as to whether or not the heights and placement of the eight (8) proposed buildings meet Shoreline’s policy to limit building height elevation to 200 feet. Limiting the height to 90 feet or less in this area would likely comply with Shoreline’s Policy PW-5.

3. *BSRE has failed to demonstrate that the Point Wells project preserves and protects the public interest in the Puget Sound Shoreline as required by Shoreline Management regulations.*

The Puget Sound shoreline is a shoreline of statewide significance under the Shoreline Management Act (SMA), chapter 90.58 RCW, and as such, entitled to the optimum implementation of the SMA policies based on a statewide interest. RCW 90.58.090(5). As described in the Staff Reports, the environmental impacts to the shoreline, one of Washington's most valuable and fragile natural resources, cannot be determined without the requested information and corrections to existing documents.

The Point Wells site west of the railroad tracks is designated as both a Conservancy Shoreline (water's edge) and an Urban Shoreline, but despite these designations BSRE has neglected to provide information on compliance with applicable regulations despite Snohomish County's repeated requests. Without the information to determine how the Puget Sound shoreline and shore lands will be impacted, such as the intensity of use proposed, environmental analysis cannot even begin. For instance, it is unknown what types of commercial uses for the pier will be allowed in light of Snohomish County's Shoreline Management Master Program's prohibition on commercial uses in this area and, also, the traffic and parking related impacts. See, Exhibit A-24; SCC Chapter 30.67; RCW 90.58.

Additionally, Shoreline's Point Wells Subarea Plan states that any improvements in the western most 200 feet (the shoreline jurisdiction) of the NW and SW subareas of Shoreline's Subarea Plan should be limited to walkways and public use or park areas. For the most part, structures are proposed to be located outside of the 200 feet setback but portions of structures in the North, Central, and South Villages are proposed to encroach in this area.

4. *BSRE has failed to demonstrate that the Point Wells Project can be supported by transportation and parking infrastructure so as to not have adverse effects on neighboring communities.*

A. Failure to document feasibility of supportive transportation infrastructure.

Many of the aforementioned issues inform and effect the yet-to-be drafted Draft Environmental Impact Statement and Expanded Traffic Impact Analysis (Exhibit C-28) Methods and Assumptions. Each of the issues represents a weak point in which the transportation analysis assumptions could fall apart, or at the very least create significantly more impact to Shoreline's transportation network than what has been characterized by BSRE.¹⁴

¹⁴ Additionally, the second access road significantly impacts the transportation assumptions utilized in the Expanded Traffic Impact Analysis.

While there are many components of BSRE's *Point Wells Expanded Traffic Impact Analysis* (Expanded TIA) that may not be a concern to Snohomish County, they are of concern to Shoreline. Of particular note is the characterization of Shoreline's LOS standard as it relates to the traffic volume to capacity ratio. See, Exhibit C-28. Pages 85 and 86 of the Expanded TIA qualitatively describe how the traffic BSRE is proposing to add to Shoreline's street network would cause failures of Shoreline's traffic volume to capacity (V/C) ratio standard. The Expanded TIA then goes on to say that Shoreline has allowed exceptions to this standard in specific cases and that Shoreline has the ability to exercise this exception again, effectively just for the sake of accommodating the Point Wells Project traffic as proposed by BSRE.

What the Expanded TIA fails to state in this section is quantitatively how much the Point Wells Project traffic increases the V/C ratio beyond Shoreline's adopted standard. Shoreline's V/C standard is .90 and only in just a few isolated cases has Shoreline allowed a V/C of up to 1.10. Table 29 of the Expanded TIA shows V/C ratios far exceeding the 1.10, with some ratios as high as 1.44. The Expanded TIA does not address or propose any mitigation related to this Shoreline LOS standard failure, nor does it acknowledge the very significant increase beyond not only the baseline LOS standard, but also the maximum that Shoreline has ever allowed.

Compounding this is the assumption of trip reductions beyond standard methodologies. Based on the Point Wells Project plans, the estimated trips generated by the site is aggressively low and likely underestimated in general. As many of the ambitious Point Wells Project promises fail to materialize, such as an adequate and functional second access road or a transit ridership capturing 15 percent of trips, the already unmanageable traffic impacts that exceed Shoreline's LOS standard become that much greater, especially given the lack of mitigation measures. Also noteworthy is the fact that the project reduces its anticipated impacts by 15 percent based on an undefined shuttle service, but doesn't account for trips to a future rail stop it is planning and reliant upon to satisfy requirements for High Capacity Transit.

Included in the first two sections of BSRE's April 27, 2018 revisions were Exhibit A-35 *Supplement to Urban Center Development Application* and a reliance on the 2013 Memorandum of Understanding between BSRE and Shoreline (2013 MOU). Exhibit A-35, Exhibit A. The purpose of the 2013 MOU was to establish a process and parameters for developing the Richmond Beach Corridor Study, a study that was to analyze the transportation impacts on Shoreline's street network arising from the Point Wells Project.¹⁵ BSRE, in Section 1 and 2 of Exhibit A-35, focuses on the 11,587 Average Daily Traffic (ADT), the "trip cap," set by the 2013 MOU and how

¹⁵ Information on the Richmond Beach Corridor Study can be viewed on Shoreline's website at: <http://www.shorelinewa.gov/government/projects-initiatives/point-wells/transportation-corridor-study>

to monitor this trip cap. While the 2013 MOU did provide a not to exceed assumption of 11,587 ADTs, this assumption was never intended to represent the number of trips that the Shoreline street network can support; it was simply a study benchmark – an upper limit of what Shoreline was willing to partner for further study.

In addition, BSRE's statement that the Richmond Beach Corridor Study has not been finalized is disingenuous. The Corridor Study, which commenced in 2014, has not been completed because Shoreline reached an impasse with BSRE in determining an appropriate mitigation strategy to meet Shoreline's LOS standard for the proposed number of ADTs that the Point Wells Project would add to Shoreline's street network. In other words, the finalization of the Corridor Study is not possible given not acceptable mitigation strategy and utilizing mitigation that has not been finalized does not satisfy Snohomish County's transportation requirements for the purpose of continuing environmental review on the Point Wells Project.

More importantly, the focus should be on Shoreline's LOS standard, also a term of the 2013 MOU, which BSRE makes no mention of in Exhibit A-35. The 2013 MOU clearly states the LOS standards which the Point Wells Project would need to meet – a LOS D for intersections with no through movement less than a LOS E and a street segment V/C ratio no greater than 0.9. See, Exhibit A-35, MOU Exhibit B. While Shoreline would expect a mechanism for monitoring LOS included as part of environmental impact statement (EIS) documentation, terms have not been discussed, defined or agreed to between BSRE and Shoreline. Furthermore, any trip cap and resulting monitoring would necessarily be based upon a newly determined peak hour trip cap resulting from actual LOS analysis and mitigation.

B. Failure to demonstrate adequate parking infrastructure.

The City of Shoreline wants to ensure that any development of Point Wells meets or exceeds the applicable regulations for parking in SCC Chapter 30.26. BSRE previously requested a variance to allow it relief but has since withdrawn that request. See, Exhibit A-10; Supplemental Staff Report. Parking along Richmond Beach Drive would be unacceptable and does not meet Shoreline's current and long range plans for this area. Pedestrian and bicycle facilities are a higher priority on Richmond Beach Drive than on-street parking. Additionally, overflow parking on side streets in Shoreline would also be an unacceptable impact to the Richmond Beach neighborhood.

The ability to provide the required parking is a major determining factor for the ultimate size and design of any development. The parking information provided by BSRE is incomplete and contains gross inaccuracies such as BSRE's interpretation of what constitutes "senior housing" so as to justify a lower level of parking. Exhibit A-35 states that BSRE proposes to provide over 1,000 "senior housing" units. These units will have an impact on parking especially with the age requirement of 55 and the allowance that not all residents have to satisfy that requirement. Shoreline agrees with

Snohomish County staff that this definition does not represent the intent of a senior housing category in relationship to required parking. The occupant composition suggested is representative of a non-classified residential unit with the parking based on the size of the unit. This is a misrepresentation of the parking demand, as these types of units would have significant parking impacts on the project and the surrounding neighborhoods.

Additionally, only providing forty-two (42) spaces for public parking to access the beach, which is likely to become a regional park, seems woefully inadequate. Without due diligence to verify the ability to provide parking as required by Snohomish County for the Point Wells Project, it is impossible to adequately study the environmental impacts of this Project.

Lastly, related to the requirement for High Capacity Transit and the project's plan to work with Sound Transit to implement a Sounder train stop on site; BSRE plans fail to demonstrate how parking for a rail station could be accommodated both for onsite trips, and for the trips that would be attracted from the surrounding neighborhood.

Shoreline is very concerned by the fact that Snohomish County has communicated the parking requirements to BSRE and the need for a parking demand study, which clearly illustrates the location, use and quantity of all parking and associated land use and yet, since April 2013, BSRE has failed to successfully provide such a study.

5. *BSRE has failed to demonstrate that the Point Wells Project complies with Snohomish County Code provisions regarding Critical Areas, including Geologically Hazardous Areas, Wetlands and Fish and Wildlife Habitat Conservation Areas, and Critical Aquifer Recharge Areas.*

SCC 30.62B.340 does not allow development activity in landslide hazard areas or the buffers unless a deviation has been granted. BSRE has requested such a variance. See, Exhibit C-27. BSRE's April 24, 2018 Project Narrative (Exhibit A-32) states: "*Landslide hazard buffers can be reduced if supported by geotechnical and engineering studies. The design team has assumed that by implementing these studies and low impact development techniques Snohomish County will approve modifications to the prescriptive setbacks.*" This statement assumes the future studies are enough to justify modification of setbacks. Shoreline agrees with Snohomish County's Supplemental Staff Report in that the Hart Crowser memorandum supporting its deviation request (Exhibit C-33) failed to demonstrate the criteria necessary to obtain a deviation to reduce the landslide hazard buffers.

Shoreline also has previously advised Snohomish County that BSRE should be required to perform some level of geologic and seismic hazard analysis of Richmond Beach Drive NW, as this road has experienced water intrusion failures in the past which resulted in temporary road closures. As stated before, even if a secondary

access road is provided, Richmond Beach Drive will be the primary ingress and egress for the entire Point Wells community.

In addition, Exhibit C-30, the *Critical Area Report* does not satisfy the requirements of SCC Chapter 30.62A. First, it does not include the required Habitat Management Plan as required by SCC 30.62A.460. Second, it does not include mitigation and restoration for any of the wetland or stream impacts as required by SCC 30.62A.150. The site specific analysis of these critical areas has not yet been done and it is therefore premature to assume what the impacts will be to these areas. The only mitigation and restoration plan (approximately five (5) pages) provided by BSRE is for the marine shoreline with the idea that this restoration would serve as mitigation for the impacts to the Chevron Creek and Wetland-A related to the second access road.

Again, it is difficult to conclude anything other than the Point Wells Project does not meet SCC requirements. There will be significant impacts to wetlands, streams, shorelines, and fish and wildlife habitat areas that will not be capable of mitigation because incomplete and inaccurate information has been submitted to date, and it is impossible to demonstrate compliance with even the minimum standards. Further, BSRE bases the project design on critical area buffer reductions, which have not been approved, for all of the critical areas based on this generalized, incomplete and inaccurate depiction of the resources.

CONCLUSION

As the Hearing Examiner can see from the Snohomish County Staff Reports and the public and agency comments received, BSRE's Point Wells Project is based on a "Trust Us" premise that all of the hypothetical scenarios and conditions subsequent can be realized, with the end results being an Urban Center that fulfills the goals and intent of Snohomish County's Plans and Regulations for this type of development. The Snohomish County Planning Staff has not accepted this premise and the Hearing Examiner should not accept it as well.

In conclusion, for the reasons set forth in this letter and those articulated by the Snohomish County Planning Department in the April 17, 2018 and May 9, 2018 Staff Report recommendations, except as to Snohomish County Staff's statements regarding the Traffic Report and Assumptions and the Public Transportation and Transit Compatibility in the May 9 Supplemental Staff Report, the City of Shoreline agrees that to continue preparation of an environmental impact statement would be futile and an unwarranted expense of resources for not only Snohomish County but all parties interested in the Point Wells Project.

The Honorable Peter Camp, Hearing Examiner
May 16, 2018
Page 15

Therefore, the City of Shoreline requests that the Hearing Examiner accept the Snohomish County Staff recommendation and deny File Numbers 11-101457 LU; 11-101461SM; 11-101464 RC; 11-101008 LDA; 11-1011007 SP; and 11-101457 VAR.

Sincerely,

CITY OF SHORELINE


Debra Tarry
City Manager

Attachments

- Attachment A - Topographical Map
- Attachment B - Shoreline Comprehensive Land Use Map
- Attachment C - Key Transportation Connections with Volumes

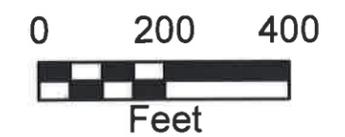


Point Wells Topography

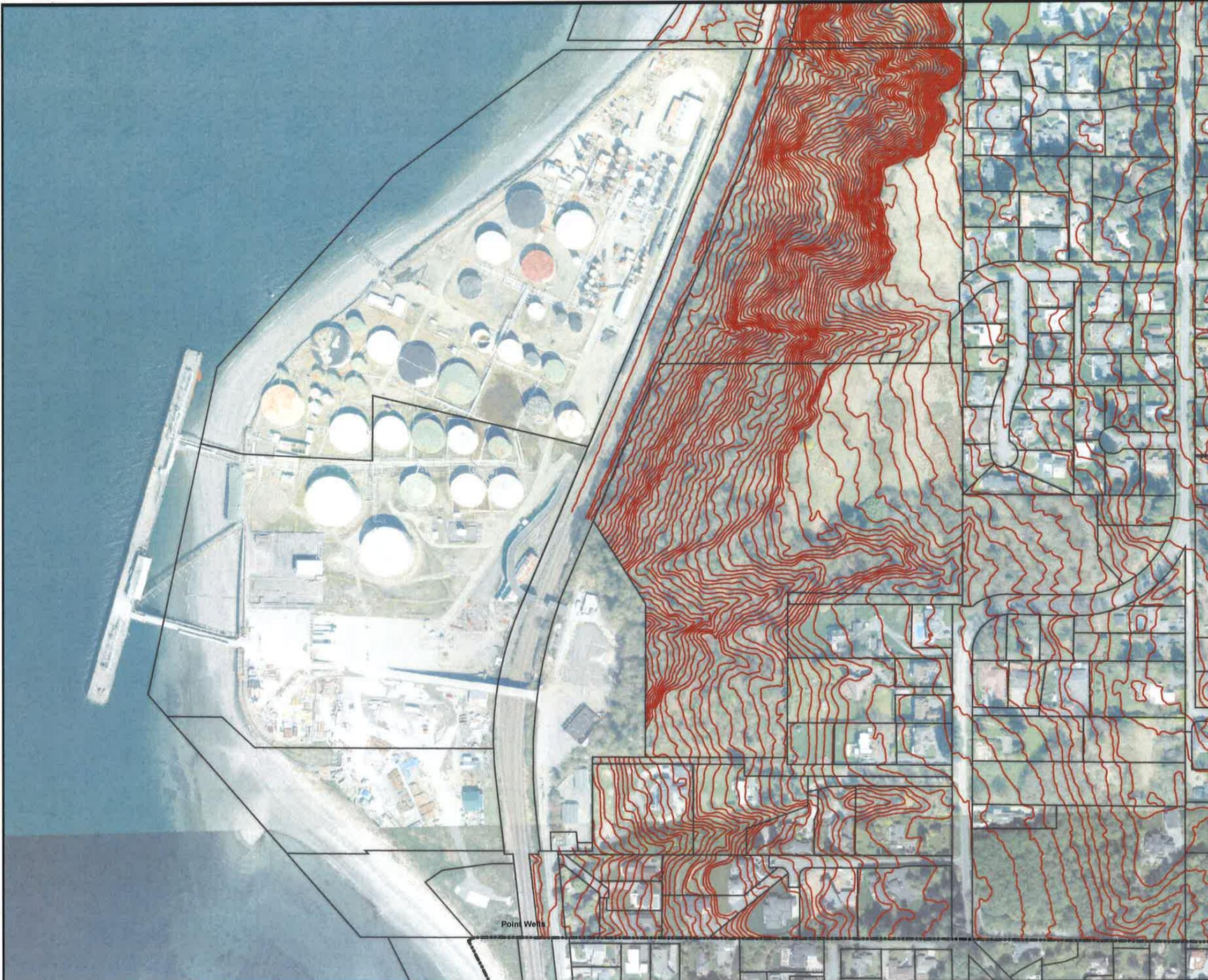
Contours and Boundaries

— Intervals (5 FT)

□ Tax Parcels



Date: 5/7/2018



Point Wells
Future Service
Annexation Area

Woodway

Edmonds

Lake
Ballinger

Mountlake Terrace

**Comprehensive Plan
Land Use
Designations**

- Station Area 1
- Station Area 2
- Station Area 3
- Low Density Residential
- Medium Density Residential
- High Density Residential
- Institution/Campus
- Planned Area 3
- Mixed Use 2
- Mixed Use 1
- Town Center District
- Public Facility
- Public Open Space
- Private Open Space
- Future Service and Annexation Area

See LU20-LU43 for light rail station study area policies.

Potential Station Location

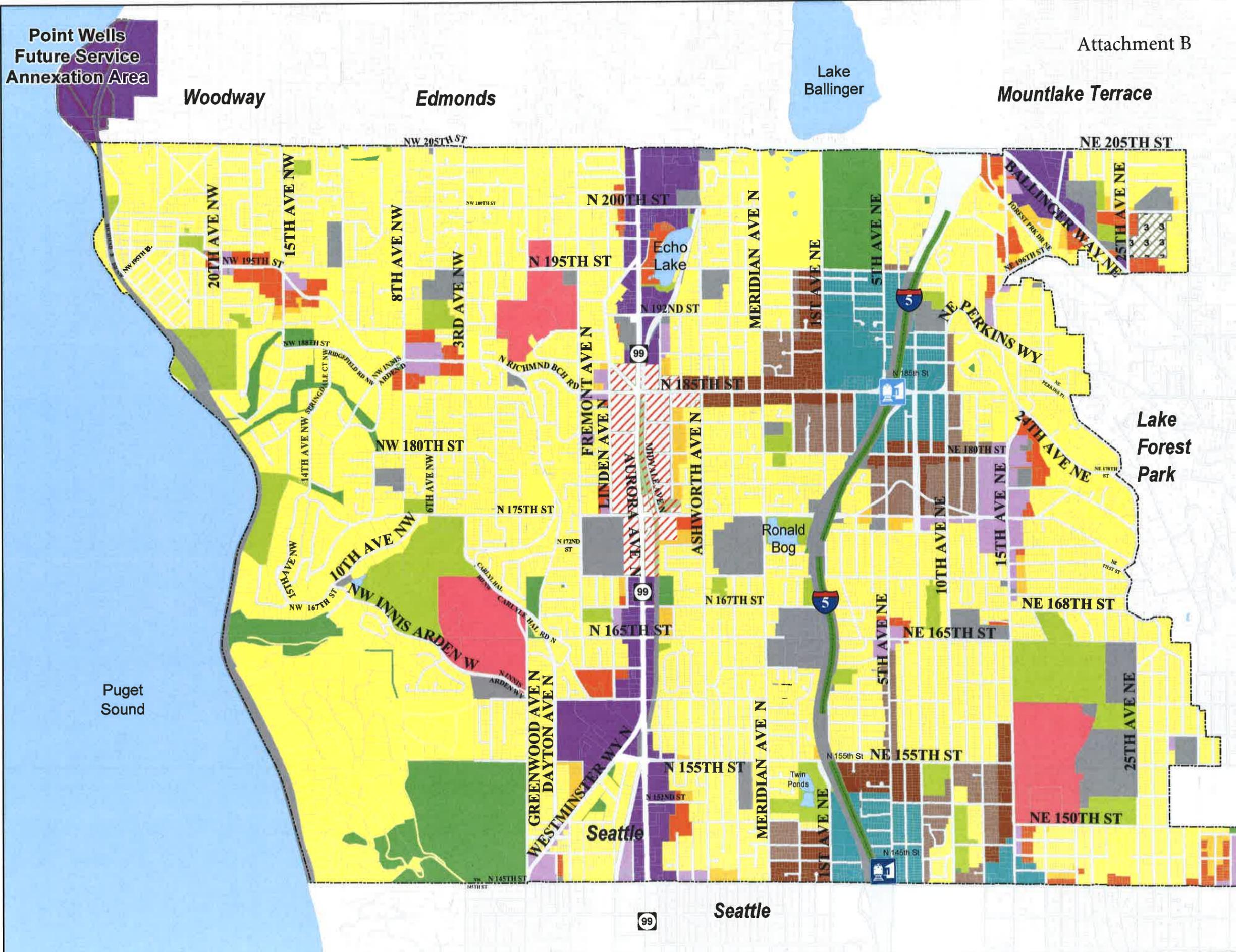
- 145th Station
- 185th Station
- Approximate Light Rail Alignment

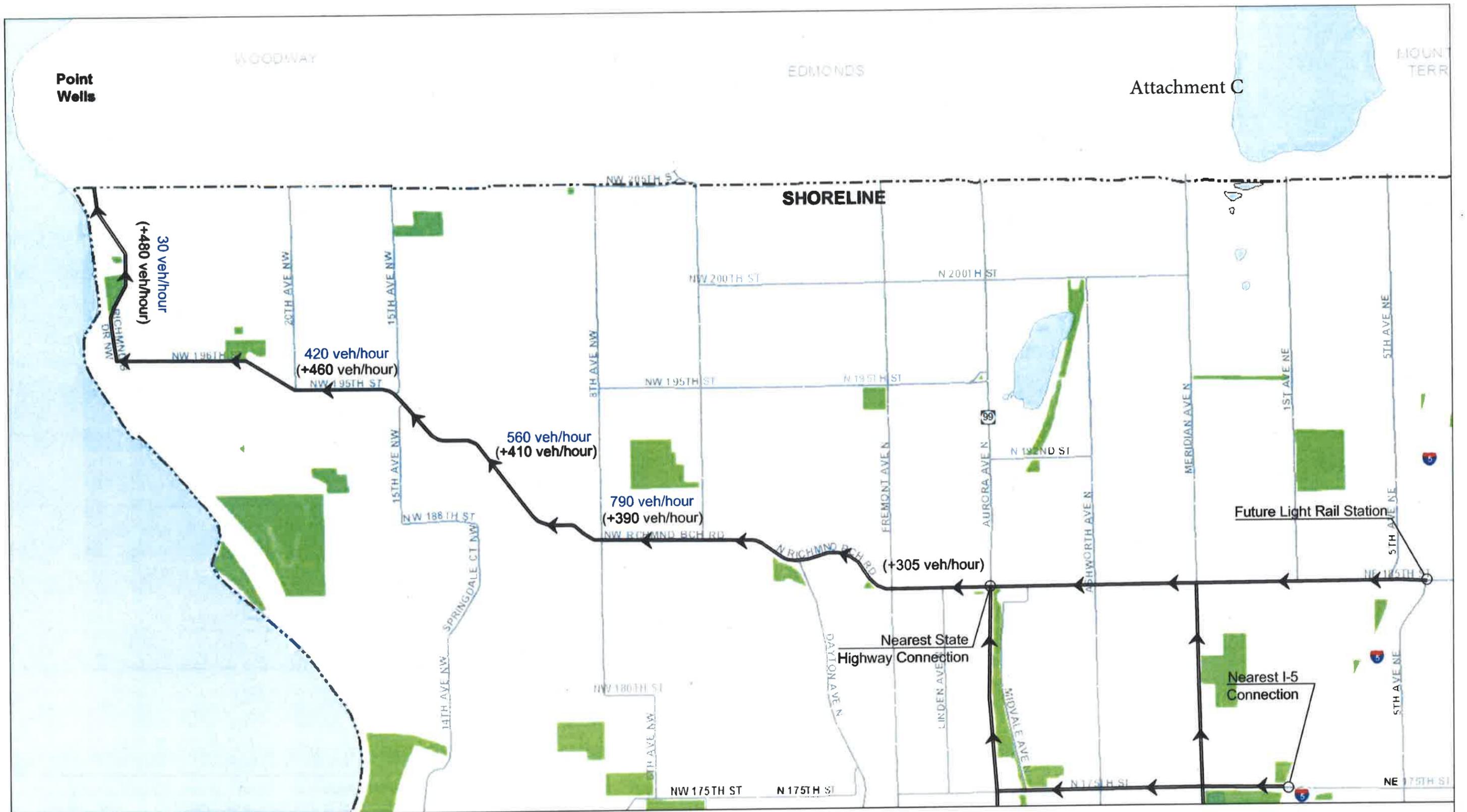


This map is not an official map. No warranty is made concerning the accuracy, currency, or completeness of data depicted on this map.

Land Use

Updated December, 2016





Legend

-  Shoreline arterials to/from key transportation connections¹
-  790 veh/hour Existing PM peak hour traffic volume (westbound vehicles per hour)²
-  (+390 veh/hour) Proposed Point Wells Project PM peak hour trips (westbound vehicles per hour)³

Notes

- 1 Other arterials in Shoreline will be impacted by project traffic; this map is focused on a few key transportation connections.
- 2 Counts shown are based on 2017 counts collected by a traffic consultant for the City of Shoreline Richmond Beach Road Rechannelization Project, rounded to nearest ten
- 3 Counts shown are based on BSRE's Transportation Technical Report Appendix E, Figure 8 for full buildout, PM Peak Hour Site Trip Distribution, rounded to nearest ten



From: Julie Ainsworth-Taylor
To: [Davis, Kris](#)
Subject: Supplemental Comments - BSRE Point Wells Urban Center Hearing
Date: Friday, June 01, 2018 10:42:32 AM
Attachments: [Shoreline Cover - Shannon & Wilson.pdf](#)
[Shoreline Geotechnical and Permit Supplemental Comments.pdf](#)

Snohomish County Hearing Examiner:

Attached please find supplemental comments from the City of Shoreline.



Julie Ainsworth-Taylor
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**Q-5 City of Shoreline Geotechnical Comments
PFN: 11 101457 LU**



OFFICE OF THE CITY ATTORNEY

Margaret King, City Attorney

June 1, 2018

The Honorable Peter Camp, Hearing Examiner
Snohomish County
Office of Hearings Administration
3000 Rockefeller Ave M/S 405
Everett, WA 98201

VIA EMAIL: hearing.examiner@snoco.org

**RE: BSRE Point Wells LP Urban Center Application
Hearing Dates May 16, 2018 – May 24, 2018**

The Honorable Peter Camp:

For inclusion in the record of the above referenced matter, attached please find supplemental comments, dated May 31, 2018, from Shannon & Wilson, the City of Shoreline's Geotechnical and Environmental Consultants in regards to the BSRE Point Wells Urban Center Application.

Thank you for allowing the City of Shoreline to provide additional comments.

Sincerely,

CITY OF SHORELINE

//Julie Ainsworth-Taylor

Julie Ainsworth-Taylor

Assistant City Attorney

Attachment

May 31, 2018

Ms. Margaret King
City of Shoreline
17500 Midvale Avenue N.
Shoreline, WA 98133

**RE: GEOTECHNICAL AND ENVIRONMENTAL COMMENTS REGARDING
PROPOSED POINT WELLS REDEVELOPMENT, SNOHOMISH COUNTY,
WASHINGTON**

Dear Ms. King:

This letter report presents our review comments on the geotechnical and environmental aspects of the proposed redevelopment at Point Wells in Snohomish County, Washington. We understand that the Point Wells project is in Snohomish County, but most of the traffic to and from the site would be through the City of Shoreline (Shoreline). Other public services in Shoreline would also be impacted by the proposed project. The purpose of our geotechnical/geologic/environmental services is to provide Shoreline with technical expertise that it does not have in house related to geotechnical and geologic aspects of the project. In addition, we have commented on some issues associated with the site contamination and State Environmental Policy Act (SEPA) regulations defining a single and complete project as it relates to the proposed project.

As part of our services for Shoreline, we attended two days of hearings at the Snohomish County Administration Building and reviewed the following documents:

- Hart Crowser, April 20, 2018, Subsurface Conditions Report, Point Wells Redevelopment, Snohomish County, Washington.
- Hart Crowser, May 15, 2018, Landslide Deviation Request Information, Point Wells Redevelopment, Unincorporated Snohomish County, Washington.
- MIG/SvR, April 19, 2018, Point Wells Second Access Exhibit.

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- Perkins+Will, April 28, 2018, Point Wells Redevelopment Preliminary Short Plat Subdivision.
- Snohomish County Departments of Planning & Development Services and Public Works, May 9, 2018, Supplemental Staff Recommendations, Point Wells Urban Center.
- Snohomish County Departments of Planning & Development Services and Public Works, April 17, 2018, Staff Recommendations, Point Wells Urban Center.
- City of Shoreline, May 16, 2018, BSRE Point Wells LP Urban Center Application, Hearing Date May 16, 2018.
- Sleight, R. R., May 9, 2018, Landslide Hazard Area Deviation Request Dated April 24, 2018.

Based on the Snohomish County hearings and review of the documents, it is our opinion that there are four areas of the development or the development process that are in conflict with the Snohomish County code or require additional investigation or analysis at this stage of the development. The four issues are (1) liquefaction, (2) second access road, (3) Urban Plaza buildings, and (4) level of design/analysis.

Preliminary explorations and analysis indicate that the site soils are likely to liquefy during seismic shaking. The proponent states that this condition will need to be mitigated during design and construction. An analysis is presented for shaking based on the Seattle Fault to the south of the site; however, no analysis is presented to show whether the Seattle Fault or the Southern Whidbey Island Fault Zone controls the seismic design at the site. Such a seismicity analysis should have been performed.

The Hart Crowser subsurface conditions report states that deep foundations for structures could be a viable option to ground improvement in the liquefaction-prone areas. However, if the deep foundations are chosen for the buildings, areas other than those structures, including crucial lifelines such as critical utilities and roads, would still be susceptible to liquefaction.

There are several issues of concern about the level of design for the second access road. The second access road plan submitted on May 19, 2018, is basically a sketch with no profile and does not include information on grading and/or support that may be necessary to construct the road. The hillside on which the road is proposed is unstable, as shown in submitted maps and as indicated by the preliminary slope stability analysis. Subdrainage is listed in the Hart Crowser reports as a key to increasing the stability of the slope to an acceptable level; however, the

locations of drainage are not presented. The only subdrainage recommendations are general in nature, and insufficient evidence is available to ascertain what type of subdrainage could be effective. Furthermore, the subdrainage improvements would need to be on land that the project proponent does not own or have an easement.

The subject slope was not completely reconnoitered. The Hart Crowser report states, "the reconnaissance was limited to areas that were readily accessible and did not include a detailed survey of the slope." It further states that slope vegetation limited "observation of significant geologic contacts." This level of reconnaissance is not acceptable for assessing the feasibility of the proposed project.

Hart Crowser analyzed the global stability of one cross section in the slope above the Urban Plaza. This is insufficient information on which to determine the stability of the slope and the effects of the proposed facilities on slope stability. In our opinion, at least two additional cross sections, one of which is along Chevron Creek, should be analyzed at this stage of design to account for variations in topography, soil conditions, and groundwater conditions. Such analyses should consider the cuts and fills needed in order to construct the access road. We understand that a potential alternative is to move the Urban Plaza buildings to the western edge of this area. If so, then other structures, such as those related to the transportation center, would be in the landslide hazard zone.

The analysis produced by Hart Crowser indicates that the foundation and slab of the proposed building will provide lateral resistance against slope instability for the second access road wall and fill; however, the buildings will not be built until the project's second phase. Although Hart Crowser explained a complicated construction process at the Snohomish County hearing, the construction steps and the stability assessments of these intermediate stages have not been documented or presented. Furthermore, if the buildings are moved to the western side of the Urban Plaza (a noted potential alternative), the floor slab component of the resisting force will be lost.

Groundwater pressures are a significant influence on the instability of slopes. Proper groundwater pressure measurements and hydrogeologic interpretation are necessary for an accurate assessment of slope stability, especially in complex hydrogeologic environments such as those that exist in the slopes in the project vicinity. Hart Crowser installed a series of vibrating wire piezometers (VWPs) in borings HC-1, HC-10, HC-11, and HC-12. The

measurements from these instruments were used to inform the global stability analyses performed for cross sections B-B' and G-G'. Hart Crowser recognizes the complexity of the hydrogeologic environment and notes the presence of multiple piezometric surfaces within the slope. Their method of interpreting these surfaces and integrating them into their global stability analyses is inconsistent. In one case (B-B'), four independent piezometric surfaces are modelled, but in the other (G-G'), only one (the highest) is modeled. We recommend the analysis techniques be consistent. Secondly, in the case where multiple piezometric surfaces are modelled (B-B'), the associated groundwater pressures "were only applied to the adjacent sandy layers in the model." We disagree with this interpretation and its reasoning. Hart Crowser makes this crucial assumption based only on their "assumed presence of sand layers within the Lawton Clay" and not on measurements, observations, or soil samples. In fact, even if the VWPs in the Lawton Clay unit were measuring groundwater pressures in sand layers, we would still expect there to be groundwater pressure present in the Lawton Clay itself. Thirdly, it appears that no VWPs were installed in the glacial outwash/Qpnf soil unit underlying the Lawton Clay in the borings associated with the global stability analyses. Confined or artesian groundwater pressures are commonly observed in situations such as those present at the site (i.e., high-permeability soil unit underlying an aquitard with significant nearby topographic relief). In fact, Hart Crowser noted the presence of "shallow surface water and/or artesian conditions" at the base of the slope. Hart Crowser's global stability analyses should address this possibility. Lastly, given the complex hydrogeologic regime at the site and its critical influence on slope stability, it is our opinion that a groundwater seepage model and analyses be performed coupled with the global slope stability analyses. Such seepage analyses, using the observed groundwater pressures, would more accurately model the groundwater conditions in the slope and provide better groundwater pressure input to the global stability analyses.

Next to groundwater pressures, selection of soil strength values is of utmost importance in global slope stability analysis. For the subject slopes, the soil strength parameters selected for the Lawton Clay, in particular, will greatly influence the analyses results. Hart Crowser used two different sets of Lawton Clay strength parameters – one for Cross Section B-B' and another for Cross Section G-G'. Given that no soil strength tests were performed, the reasoning for the different soil strengths should be explained and justified. Secondly, the Lawton Clay strengths used appear to be for "intact" Lawton Clay. Once a clay has been disturbed (sheared), its strength will lessen considerably. Given the historic landsliding documented at the project site and given the documented slickensides in the boring logs (evidence of shearing), the use of lower

“fully softened” or residual shear strengths should be considered by the geotechnical engineer. Further, Hart Crowser should document the basis for their selection of the type of shear strength (e.g., peak/intact, fully softened, residual) used for the Lawton Clay in their analyses.

The applicant has not demonstrated how contaminated soils on site will impact the design and construction associated with ground improvement, deep foundations, groundwater and dewatering requirements, and the feasibility of containing the contamination from migrating or further impacting the environment. They suggest that the site will be cleaned up over the next 10 to 15 years under a separate remediation plan subject to Washington State Department of Ecology (Ecology) review and approval, but have not provided any reasonable assurance that the proposed development would be compatible with the cleanup and how the site remediation is compatible with project feasibility or county code. The remediation must be integrated with the potential future uses of the site to determine whether the proposed uses can even be compatible with the site and whether they can meet residential soil standards.

Under Washington Administrative Code 197-11-060(3)(b)(i) and adopted by reference under Snohomish County Code 30.61.020, the project proposal must be properly defined. Subsection (b) states in part, “proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document” assuming the proposal (i), cannot proceed unless the other proposal is implemented simultaneously with it. In the County staff report, they note that the applicant has stated that the site will be remediated under a separate remediation plan subject to review and approval by Ecology and that will require local land use permits from the County. Additionally, it appears that phases of the proposed project are proposed to go forward before cleanup has been completed or adequately addressed, since cleanup is predicted to take 10 to 15 years. This project cannot be completed without site remediation and therefore site cleanup must be discussed as part of the overall project as defined by SEPA regulations.

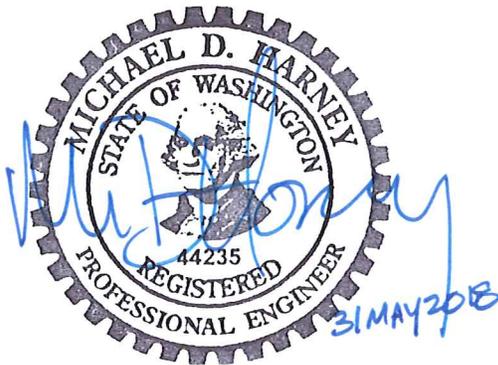
Ms. Margaret King
City of Shoreline
May 31, 2018
Page 6 of 6

SHANNON & WILSON, INC.

In general, it is our opinion that the reports and plans that have been presented by the proponent lack specificity or are not addressed in their proposal. Design of the key parts of the project have been deferred to "final design" or will be addressed under separate project review, in the case of site cleanup, and information provided by the applicant is not sufficient to judge the feasibility of the proposed project.

Sincerely,

SHANNON & WILSON, INC.



Michael D. Harney, PE
Senior Associate

A handwritten signature in blue ink that reads "Katie Walter".

Katie Walter, PWS
Vice President

WTL:MDH:KLW/wtl



William Thomas Laprade

William T. Laprade, LEG
Senior Vice President

From: Julie Ainsworth-Taylor
To: [Davis, Kris](#)
Subject: Supplemental Comments - BSRE Point Wells Urban Center
Date: Friday, June 01, 2018 10:45:23 AM
Attachments: [Shoreline Cover - Traffic Engineer.pdf](#)
[Shoreline Traffic Engineer Supplemental Comments.pdf](#)

Snohomish County Hearing Examiner:

Attached please find supplemental comments from the City of Shoreline's Traffic Engineer.



Julie Ainsworth-Taylor
Assistant City Attorney
206-801-2222 Work
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jainsworth-taylor@shorelinewa.gov

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Q-6 City of Shoreline Traffic Comments
PFN: 11 101457 LU



OFFICE OF THE CITY ATTORNEY

Margaret King, City Attorney

June 1, 2018

The Honorable Peter Camp, Hearing Examiner
Snohomish County
Office of Hearings Administration
3000 Rockefeller Ave M/S 405
Everett, WA 98201

VIA EMAIL: hearing.examiner@snoco.org

**RE: BSRE Point Wells LP Urban Center Application
Hearing Dates May 16, 2018 – May 24, 2018**

The Honorable Peter Camp:

For inclusion in the record of the above referenced matter, attached please find supplemental comments, date June 1, 2018, from Kendra Dedinsky, the City of Shoreline's Traffic Engineer in regards to the BSRE Point Wells Urban Center Application.

Thank you for allowing the City of Shoreline to provide additional comments.

Sincerely,

CITY OF SHORELINE

//Julie Ainsworth-Taylor

Julie Ainsworth-Taylor

Assistant City Attorney

Attachment



**SHORELINE
CITY COUNCIL**

Will Hall
Mayor
Jesse Salomon
Deputy Mayor
Susan Chang
Doris McConnell
Keith A. McGlashan
Chris Roberts
Keith Scully

June 1, 2018

The Honorable Peter Camp, Hearing Examiner
Snohomish County
Office of Hearings Administration
3000 Rockefeller Ave M/S 405
Everett, WA 98201

VIA EMAIL: hearing.examiner@snoco.org

**RE: BSRE Point Wells LP Urban Center Application
Hearing Dates May 16, 2018 – May 24, 2018**

The Honorable Peter Camp:

The City of Shoreline (“Shoreline”) thanks you for the opportunity to submit additional comments in the above referenced matter. Shoreline attended all days of the hearing in which Snohomish County and the BSRE Point Wells LP (“BSRE”) presented witnesses and I reviewed the testimony of the witnesses relevant to transportation.

The Traffic Impact Analysis (TIA) is a critical component of the project permit. While Snohomish County has concluded that problems with the Expanded TIA have largely been resolved and remaining issues can be addressed during the environmental review process, Shoreline believes this conclusion to largely be a result of mischaracterizations by BSRE and its technical staff both in testimony and within the TIA. In this regard, Shoreline submits the following additional comments:

- **The TIA’s underlying assumptions are a moving target.**

As has been discussed in great detail, the land use assumptions that inform the project trip generation continue to change even within the last two weeks. There has also been an assumption of 15% of trips using transit, however there is no proof that High Capacity Transit can or will be provided or how it will connect to existing or future facilities. Furthermore, the analysis does not account for trips to the site if High Capacity Transit is realized, despite the fact that it will undoubtedly draw trips to the site if it is. The build out years for each phase are clearly inconsistent (as recognized by BSRE’s traffic consultant); background traffic growth will continue to build between now and when the first phase is completed.



All of these factors are in addition to the meagerly documented methodology for trip generation and internal capture rates for a mixed use development.

There is no doubt that the current basis for the project's trip generation is inaccurate. Instead of addressing these inaccuracies by:

- Developing site plans that are consistent with County code;
- Scoping and providing clear documentation that High Capacity Transit can and will be provided; and
- Providing consistent and realistic build out years for each phase.

BSRE has chosen instead to “largely resolve” these issues through reliance on a highly unrealistic trip cap. While Shoreline agrees that monitoring of a cap will be necessary, monitoring of a trip cap alone is not mitigation for project impacts, nor is the arbitrary cap referred to shown to be feasible.

- **Feasibility of mitigation for project impacts has not been demonstrated.**

The Memorandum of Understanding (MOU) between Shoreline and BSRE set a *benchmark* of a maximum amount of trips that Shoreline would be willing to study. This 11,587 daily trips was simply a threshold; it was never intended to function as the maximum number of trips that Shoreline streets could support. This is why the MOU clearly states the conditions for studying this amount of trips and that any analysis and resulting mitigation must comply with Shoreline's Level of Service (LOS) standards. Instead of focusing on Shoreline's standards, BSRE has used the 11,587 trip threshold as a distraction to LOS failures in order to push their permit application through.

Figure 4 of the Expanded TIA shows 15 intersection failures (in consideration of Shoreline's already implemented rechannelization project). For three of these intersection the TIA simply proposes changes to signal timing. This is not an acceptable mitigation as these signals are coordinated and reviewed regularly; there are no additional efficiencies to be realized. Simply suggesting to change the timing or coordination type does not mitigate capacity failures and would likely have adverse effects on the broader network.

At least three additional intersections, and likely more, will require private property acquisition to mitigate for LOS failures, one of which would require coordination with three jurisdictions. No evidence was presented to demonstrate that efforts have begun to coordinate these property impacts or that BSRE has made any attempt to acquire this property which will be necessary to mitigate its impacts. In addition, there are at least six intersection LOS failures for which feasibility of mitigation has not been demonstrated.

Regarding Shoreline’s Volume to Capacity (V/C) Level of Service Standard, the Expanded TIA discusses three options; 1) eliminate bike lanes and safety benefits of the now implemented three-lane roadway by converting back to a four-lane roadway, 2) simply ignore the LOS for the sake of permitting more trips from this development, and allow it to exceed the maximum V/C ever allowed within Shoreline, or 3) a combination of exempting the V/C for some segments, and relying on Shoreline to widen the most constrained segment between 3rd and 8th Ave NW. None of these options are mitigation for the projects impacts and simply function to degrade Shoreline’s transportation infrastructure beyond a level that Shoreline has deemed acceptable and puts the burden on Shoreline to fix. Lastly, statements made during BSRE testimony that Shoreline has had “long standing plans” to widen the segment between 3rd Ave NW and 8th Ave NW to five lanes are simply untrue. This is verifiable by viewing Shoreline’s planning documents including the Transportation Improvement Plan, the Capital Improvement Plan, and the Transportation Master Plan; none of which even mention this idea.

The Summary of Impacts and Mitigation of the Expanded TIA, at Page 87, Section 5. States: “The impacts to this corridor and adjacent neighborhood streets as a result of the increased traffic due to the Project can be mitigated to an allowable LOS.” In BSRE’s recent testimony, they claim to have provided a “list of necessary mitigation to complete the project”. If Snohomish County during their review were to focus on these kinds of summary statements, and without the perspective of reviewing as the impacted agency, they may believe there to be only minor issues for the EIS to address however this is simply not the case as appropriate mitigations have not been demonstrated.

- **Failure to complete the TCS and comply with the terms of the MOU.**

Despite BSRE’s characterizations that completion of the Transportation Corridor Study (TCS) was imminent and not finalized due to politics, there are in fact many technical and MOU related gaps that remain. To date, the TCS has failed to demonstrate mitigations that can satisfy Shoreline’s Level of Service criteria:

LOS D for intersections with no through movement less than E and a street segment V/C ratio no greater than 0.9.

The MOU also sets a condition for:

ADA compliant non-motorized facilities to be provided to fill any gaps in non-motorized connectivity.



Shoreline understands a completed TCS to be a key component of Snohomish County's required TIA and while BSRE has characterized this process as largely completed, Shoreline believes the process to have met an impasse in the technical requirements set by the MOU which BSRE was unwilling to comply with. The testimony presented by BSRE's Traffic Consultation painted a picture of BSRE's investment in the TCS process and while true, Shoreline has invested an equally significant and non-reimbursable amount of staff time and resource, as well as hiring consultant assistance at key points throughout the process.

In conclusion, Shoreline continues to believe that the Point Wells Urban Center Project is not, nor can it, achieve compliance with Snohomish County's codes, plans, and regulations which include interjurisdictional coordination in regards to traffic for which Shoreline will be the primarily recipient.

Sincerely,

CITY OF SHORELINE

//Kendra Dendinsky

Kendra Dedinsky
City Traffic Engineer

From: Darcy Forsell
To: [Davis, Kris](#)
Cc: [Margaret King](#); [Julie Ainsworth-Taylor](#)
Subject: BSRE Point Wells LP Urban Center Application - Shoreline Comment Letter of 6/1/18
Date: Friday, June 01, 2018 4:04:43 PM
Attachments: [Shoreline Comment Letter.pdf](#)

Attached please find the City of Shoreline's comment letter dated 6/1/18.

Darcy Forsell

Legal Assistant

City Attorney's Office | City of Shoreline

17500 Midvale Avenue N.

Shoreline, WA 98133-4905

(P): 206-801-2223; (F): 206-801-2781

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Q-7 City of Shoreline Comments June 1, 2108
PFN: 11 101457 LU

PW_021683



SHORELINE
CITY COUNCIL

Will Hall
Mayor

Jesse Salomon
Deputy Mayor

Susan Chang

Doris McConnell

Keith A. McGlashan

Chris Roberts

Keith Scully

June 1, 2018

The Honorable Peter Camp, Hearing Examiner
Snohomish County
Office of Hearings Administration
3000 Rockefeller Ave M/S 405
Everett, WA 98201

VIA EMAIL: hearing.examiner@snoco.org

**RE: BSRE Point Wells LP Urban Center Application
Hearing Dates May 16, 2018 – May 24, 2018**

The Honorable Peter Camp:

The City of Shoreline (“Shoreline”) thanks you for the opportunity to submit additional comments in the above referenced matter. Shoreline attended all days of the hearing in which Snohomish County and the BSRE Point Wells LP (“BSRE”) presented witnesses. Nothing presented during this time has changed Shoreline’s general concurrence with the Snohomish County Departments of Planning and Development Services and Public Works (collectively, “Snohomish County”) recommendation to deny the Point Wells Project applications¹ pursuant to Snohomish County Code (SCC) 30.61.220.

As you know, SCC 30.61.220 provides, emphasis added:

When denial of a non-county proposal can be based on grounds which are ascertainable without preparation of an environmental impact statement, the responsible official may deny the application and/or recommend denial thereof by other departments or agencies with jurisdiction without preparing an EIS in order *to avoid*

¹ The Point Wells project applications are denoted as Snohomish County File Nos. 11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP, and 11-101457 VAR. These applications and the development sought pursuant to them will collectively be referred to in this comment letter as the “Point Wells Project”.

incurring needless county and applicant expense, subject to the following:

- (1) The proposal is one for which a DS has been issued or for which early notice of the likelihood of a DS has been given;
- (2) Any such denial or recommendation of denial shall be supported by express written findings and conclusions of *substantial conflict with adopted plans, ordinances, regulations or laws*; and
- (3) When considering a recommendation of denial made pursuant to this section, the decision-making body may take one of the following actions:
 - (a) Deny the application; or
 - (b) Find that there is *reasonable doubt that the recommended grounds for denial are sufficient* and remand the application to the responsible official for compliance with the procedural requirements of this chapter.

The purpose of this provision is to allow denial of an application for which the basis can be ascertained wholly apart from the environmental issues which would be disclosed through the SEPA review process. *Case ZA 9112425 Burgess/Grade Inc.*, Feb. 11, 1993 (applying former SCC 23.16.280). Or, as stated in the *Burgess* case, this provision allows Snohomish County, in those cases where it has identified one or more significant adverse environmental impacts and where a Determination of Significance (DS) has been issued, to save everybody time and money by denying a project which would be denied in any event because of shortcomings wholly unrelated to SEPA. *Id.*

Thus, the Hearing Examiner now has two choices before him: Deny the application if the evidence indicates there is substantial conflict with plans, ordinances, regulations, or laws; *or*, Remand the application if there is reasonable doubt that the grounds for denial are sufficient.²

It must be noted that the “reasonable doubt” standard only applies if the Hearing Examiner seeks to reject the Planning Department’s recommendation. In other words, in reviewing the recommendation of the denial the Hearing Examiner should

² Reasonable doubt is not a standard generally seen in land use proceedings but within the criminal or constitutionality realms. While Washington Courts have not quantified the level of certainty needed for the reasonable doubt standard, many reasonable persons may equate it to a greater than 90 percent standard of certainty.

give considerable deference to the Planning and Public Works Department's interpretation of the plans and regulations it administers³ and that the Planning Department's conclusion as to whether there is substantial conflict with the pertinent approval criteria need only be supported by a "preponderance of evidence."⁴ In fact, the Hearing Examiner must confirm the denial *unless* after reviewing the Planning Department's recommendation utilizing the above deference and standard the Hearing Examiner concludes there is a "reasonable doubt" regarding the Department's conclusion that such a conflict exists. This is a high standard, and nothing presented by BSRE in the hearing supports a finding that the Planning Department's conclusion of substantial conflict with the code was insufficient, much less a reasonable doubt that it erred in its conclusion.

At the hearing, the Hearing Examiner also inquired as to the meaning of "substantial conflict."⁵ Merriam-Webster online defines "substantial" as consisting of or related to substance; not imaginary or illusory; important, essential; being largely but not wholly that which is specified. As for "conflict" is defines it as a lack of agreement; a controversy. In prior Snohomish County Hearing Examiner cases, "substantial conflict" was interpreted as a "direct conflict." See, e.g. *Case 95 109077 West Coast Inc.*, Dec. 10, 1997; *Case 95 109067 Pacific Properties*, Nov. 4, 1997. The Hearing Examiner also inquired whether a "substantial conflict" includes a "resolvable conflict." In other words, if BSRE *could* somehow modify the Point Wells Project or if Snohomish County granted variances and deviations or imposed conditions, so that the conflicts were no longer substantial, then would a "substantial conflict" exist? Shoreline believes that the Hearing Examiner's review is not to consider a world of possibility under which BSRE might be able to demonstrate compliance, not that BSRE demonstrated that it could, but rather if the Departments conclusion that substantial conflict exists, then the recommendation of denial should stand.

³ See, e.g. *Case 04 112641 Rhod-Azalea and 35th Inc.*, Nov. 30, 2004; *Case 02 100529 Smokey Point Business Park*, June 19, 2003.

⁴ Preponderance of the evidence is the "more probable than not true" standard which here, would equate to a greater than 50 percent, however slight, of the evidence supporting substantial conflict. See, e.g. *Case 97 109702 Tor Corporation*, Jan. 31, 2005 and *Case 97 107104 West Coast Inc.*, Jan. 20, 1998 (both presented for denial pursuant to SCC 23.16.280 and applied preponderance standard).

⁵ It must be noted that SCC 23.16.280 was the predecessor to SCC 30.61.220 and contains virtually the same language. SCC 23.16.280 originally required "irreconcilable conflict" but was amended via Ordinance 93-077 to change the language to what it is today – "substantial conflict." The reason for changing the terminology may have come from a 1987 case that stated "'irreconcilable' was a very strong and restrictive word which basically means that the conflict must be of such a magnitude that it is impossible to overcome it by any action which the approving authority might undertake." *Case ZA84-0409 Horse County*, dated Feb. 11, 1987. Thus, by modifying the term the level of conflict was weakened.

1. THERE IS NO HIGH CAPACITY TRANSIT AT POINT WELLS

For the Point Wells Project, not only are there direct, substantial conflicts with Snohomish County's plans and regulations but these conflicts are not resolvable by Snohomish County. The primary conflict that is not resolvable by Snohomish County is that to develop an Urban Center, there must be high capacity transit.

Snohomish County Policy LU 3.A.3⁶ sets forth the County's adopted characteristics and criteria for Urban Centers:

Urban centers shall be located adjacent to a freeway/highway and a principal arterial road, and within one-fourth mile walking distance from a transit center, park-and-ride lot, or be located on a regional high capacity transit route.

In addition, Policy LU 3.A.2 provides, in relevant part:

Urban Centers shall be compact (generally not more than 1.5 square miles), pedestrian oriented areas within designated Urban Growth Areas with good access to higher frequency transit and urban services ...

As was noted by the Growth Management Hearings Board in 2011 and discussed below, good access to high-capacity transit services is at the core of Snohomish County's Urban Center policies. Based on Snohomish County's own words, the Growth Board concluded that transit access and linkage were essential characteristics of an Urban Center.⁷ Thus, an Urban Center at Point Wells was never consistent with these Comprehensive Plan Policies given that lack of high capacity transit and continues to be in direct, substantial conflict today.

As to development regulations, SCC 30.21.025(1)(f) states the intent of the Urban Center zoning district:

The intent and function of the Urban Center zone is to implement the Urban Center designation on the future land use map by providing a zone that allows a mix of high-density residential, office and retail uses with public and community facilities and pedestrian connections located within one-half mile of existing or planned stops or stations for high capacity transit routes such as light rail or

⁶ References to Policies and Code regulations are those BSRE is vested to, via Ordinances 09-038, 09-051, 09-079 and 09-080.

⁷ May 17, 2011 Corrected FDO at 1. The Growth Board stated an extension of a King County Metro bus line would not be express or high capacity transit.

commuter rail lines, regional express bus routes, or transit corridors that contain multiple bus routes or which otherwise provide access to such transportation as set forth in SCC 30.34A.085.

Thus, like the comprehensive plan policies articulated, the development regulations state that existing or planned high capacity transit is necessary for an Urban Center. At the time of BSRE's application, the SCC did not define "high capacity transit" but SCC 30.21.025(1)(f) provides examples of what classifies as high capacity transit. In addition, what should be considered "high capacity transit" in 2011 can be drawn from the Puget Sound Regional Council which denotes its transit designed to carry high volumes of passengers in an efficient and quick manner.⁸ Similarly, Chapter 81.104 RCW is Washington's high capacity transportation law in effect at the time of vesting stated that high capacity transit provides a substantially higher level of passenger capacity, speed, and service frequency than traditional public transportation operating principally in general purpose roadways and refers to such things as a rail fixed guideway system,⁹ commuter rail, and bus rapid transit.

Extensive testimony was presented to the Hearing Examiner from BSRE that the requirement for high capacity was satisfied. BSRE spoke about the *potential* for a Sound Transit Sounder Rail Station to be provided at Point Wells, the provision of off-site access to transit via shuttles and, for the first time, the *concept* of a water taxi between Point Wells and Edmonds was submitted. These do not save the Point Wells Project from the high capacity transit requirement for the reasons stated below:

- There is no existing or planned Sounder Rail Station at Point Wells.

Looking at the Point Wells site itself, it is indisputable that there is no existing Sounder Rail Station/Stop at Point Wells. There was no evidence provided to the Hearing Examiner demonstrating that there are any tangible, existing plans for a Sounder Rail Station/Stop at Points Wells. While BSRE testified at the hearing that it contacted Sound Transit more than a decade ago about a station,¹⁰ such superficial communications do not rise to the level of a "planned" station.

Shoreline contends that the Sounder Rail Station issue brings forth the concept of "resolvable" that the Hearing Examiner raised because the provision of a station is not within the control of Snohomish County, BSRE, or the Hearing Examiner. The ability to have a Sounder Rail Station at Point

⁸ See PSRC *Transit-Supportive Densities and Land Uses* – available at: <https://www.psrc.org/sites/default/files/tsdluguidancepaper.pdf>

⁹ RCW 81.104.015(3) includes light, heavy, rapid rail system, monorail, trolley, etc.

¹⁰ Testimony of Doug Luetjen noted the 2010 Letter and a request to consider a station in the Sound Transit 2 EIS in 2014.

Wells is solely within the control of Sound Transit and Burlington Northern Sante Fe (BNSF) Railroad. The fact that BSRE was willing to construct such a station at its own cost does not negate the control these two entities have.

The Sound Transit-BNSF relationship is a complex one with multiple agreements and easements controlling the Sounder Rail operations. See, Attachment A. First, there are easements that allow trains to operate during defined windows – with one easement per train that cost between \$27.5 million to \$79 million each. Will another one be needed for a station at Point Wells and, if so, who will pay for it? The record is silent in this regard. Second, there is a Commuter Rail Service Agreement that describes the terms of actual operation of the trains by BNSF and the compensation to be paid to BNSF which is based on a per train mile formula. Lastly, there is a Joint Use Agreement providing for mechanisms to determine the cost to Sound Transit for the maintenance of the corridor. How will Sound Transit fund the additional station operational costs under these Agreements? The record is silent in this regard. The Point Wells Project is in direct, substantial conflict with Snohomish County's plans and regulations as to a high capacity transit station for which only outside parties (and the taxpayers) can provide a resolution. In other words, this conflict is not resolvable by Snohomish County or BSRE alone.

- Van Pool/Shuttle Service does not meet the Urban Center's access to transit intent.

SCC 30.34A.085 provides that van pools or other means of transporting people on a regular schedule in high occupancy vehicles to operational stops or stations for high occupancy transit is one manner for addressing access to public transportation. BSRE relies on this provision to support its claim that providing van pools/shuttles to future light rail stations or existing park-and-ride lots satisfies the intent of the Urban Center. Shoreline while not elaborate on this except to say that as discussed below in 2011 the Growth Board said that high capacity transit was not satisfied by providing van pools to a park-and-ride lot 2.5 miles away.¹¹ If it didn't serve the comprehensive plan locational criteria in 2011, it doesn't satisfy it now and the light rail stations are even farther away than the park-and-ride lot.

- A Water Taxi does not meet the Urban Center's access to transit intent.

For the first time, BSRE has suggested it can satisfy the high capacity transit requirement by providing a water taxi between Point Wells and the City of Edmonds. Presumably BSRE bases this on SCC 30.34.085 but SCC 30.91H.108, a code provision that was not in existence at the time of vesting,

¹¹ May 17, 2011 Corrected FDO at 21.

which includes passenger only ferries as high capacity transit. The Hearing Examiner should not permit BSRE to rely on the current SCC's definition and still remain vested to the former SCC. *East County Reclamation Co. v. Bjornsen*, 125 Wn. App. 432, 439 (2005) (applicant may not "cherry pick" between old and new regulations). Regardless, for the same reason that a van pool/shuttle transporting residents to transit miles away does not meet the Urban Center intent, a water taxi fails as well.

More importantly, BSRE provides no evidence on what legal requirements it must meet to operate a water taxi in Puget Sound. Nor does BSRE provide any information on where in the City of Edmonds the water taxi would load and unload passengers. Shoreline believes that it is highly unlikely that Washington State would allow BSRE to utilize the Edmonds-Kingston Ferry Terminal for this purpose. This would leave the Edmonds Marina as the only known location, with the Marina appearing to be at least two (2) miles from the existing Sounder Rail Station. Given that transit planning generally considers 1/4 to 1/2 mile as a reasonable walking distance, it is unlikely that water taxi passengers would walk this distance to access the Sounder train. And, of course, BSRE would need to secure an agreement with the Marina for this purpose. Thus, similar to the Sounder Station, the provision of a water taxi is out of BSRE's control as one would assume the State of Washington or the US Coast Guard would control licensing and whether or not moorage is available at the Edmonds Marina was never presented.

BSRE's hypothetical or illusory plans for high capacity transit or access to it is insufficient to demonstrate substantial compliance. The evidence is clear that the Point Wells Project is in direct, substantial conflict with Snohomish County's comprehensive plan policies and development regulations for Urban Centers as there are no existing or planned stops or stations for high capacity transit of any type nor do BSRE's proposals to transport residents to transit miles away satisfy the intent of the Urban Center articulated by these policies and regulations. Denial of the project applications is warranted on this basis alone.

2. POINT WELLS NEVER SATISFIED THE URBAN CENTER CRITERIA

Shoreline would also like to take the opportunity to denote the first direct, substantial conflict with Snohomish County plans and regulations - the Urban Center designation itself. Over the course of the hearing, much was said about the Urban Center designation for the Point Wells site with BSRE asserting that since Snohomish County designated Point Wells as an Urban Center than it should be permitted to build an Urban Center regardless of the complexities of the site and relevant code provisions. While Shoreline does not dispute BSRE's vested rights, these rights do not equate to a right to build to the highest possible use of the site.

To demonstrate the direct, substantial conflict with Snohomish County's plans and regulations in regards to the Urban Center let's look at its history. In 2001, with the adoption of Ordinance 01-052, Snohomish County established an Urban Center Demonstration Program which targeted areas along Interstate 5, Highway 99, and Highway 527 and required developments to "front on or take access off a major transit corridor or be located within one-quarter mile of a transit agency's park-n-ride facility." In 2005, as part of Snohomish County's 10-year Comprehensive GMA Update, Ordinance 05-069 was adopted and, at Section 1(C)14(f) of the ordinance stated: "Property designated Urban Industrial at Point Wells will be considered for future re-designation to Mixed Use/Urban Center provided that the necessary studies addressing permitting, site development, and environmental impacts are submitted to the County."¹² This section became Policy LU 5.B.12 which stated: "Within the Southwest UGA, parcels designated Urban Industrial (on Point Wells) shall be considered for future resignation upon receipt of necessary studies addressing all permitting considerations such as site development, environmental impacts and issues."¹³ The need for studies was undoubtedly required because the 2005 Update Final Environmental Impact Statement made no reference to Point Wells and, in fact, Shoreline has been unable to find how this policy even became part of the 10 year update.

In 2008, BSRE's predecessor in interest, Paramount of Washington LLC,¹⁴ submitted a private comprehensive plan amendment and associated rezone, referenced as *Paramount – SW 41 Docket XIII* ("Paramount Amendment") to be included in Snohomish County's docketed amendments. A Draft Supplement Environmental Impact Statement (SDEIS) for the Paramount Amendment was issued February 2009.¹⁵ On March 30, 2009, prior to the publication of a Final Environmental Impact Statement, the Snohomish County Planning Commission provided "no recommendation" to the Snohomish County Council on the Paramount amendment. The County Council, on August 12, 2009, adopted Ordinance 09-038 which approved the Paramount Amendment and Ordinance 09-051 which served to further implement the Paramount Amendment. Appeals of these ordinances were filed with the Growth Management Hearings Board (Growth Board).¹⁶ Despite this

¹² Ordinance 05-069, at Page 24

¹³ Ordinance 05-069, Exhibit B, Page LU-7.

¹⁴ Paramount was also represented by Gary Huff, the attorney currently representing BSRE.

¹⁵ The SDEIS supplemented the environmental review Snohomish County completed in 2005 for the 10-year Update of its GMA Comprehensive Plan.

¹⁶ *Shoreline, Woodway, and Save Richmond Beach, et al v. Snohomish Count and Paramount of Washington (Intervenor)*, CPSGMHB Case No. 09-3-0013c, consolidated November 18, 2009.

appeal, on May 12, 2010, the County Council adopted Ordinance Nos. 09-079 and 09-080 establishing development regulations for Urban Centers. Appeals of these ordinances were filed with the Growth Board.¹⁷

The Growth Board coordinated these appeals for the convenience of the parties and, on April 25, 2011, issued a Final Decision and Order which found that Snohomish County's designation of Point Wells as an Urban Center violated the Growth Management Act, chapter 36.70A RCW, in four respects - the designation was inconsistent with the County's Urban Center comprehensive plan provisions; chiefly that access to high-capacity transit services is at the core of Snohomish County's Urban Center policies; the action thwarted GMA compliance by the City of Shoreline; the action lacked consistency with the comprehensive plans of adjacent jurisdictions; and the action was not guided by several GMA goals - with the Growth Board imposing the extraordinary remedy of invalidating Ordinance Nos. 09-038 and 09-051.¹⁸ The Growth Board additionally found that Snohomish County's actions in regards to the invalidated ordinances did not comply with the State Environmental Policy Act, chapter 43.21C RCW. Snohomish County's resolution for these violations was to "amend the County's Urban Center policies, deleting reference to Point Wells as an Urban Center, and reversing some of the amendments previously made in order to 'fit' Point Wells into the Urban Centers designation" and to do some superficial environmental analysis.¹⁹ It was this action that converted Point Wells to an Urban Village designation that remains on the site today.

Thus, while Shoreline recognizes the Hearing Examiner cannot change the past actions of Snohomish County in designating Point Wells as an Urban Center, this does not result in the ability to construct an Urban Center that does not conform to the intent of the designation and the applicable regulations as BSRE asserts.

3. THE NEED FOR VARIANCES AND DEVIATIONS DEMONSTRATES SUBSTANTIAL CONFLICT

Evidence presented to the Hearing Examiner demonstrated the need for BSRE to obtain several deviations or variances to build the Point Wells Project at the scale they desire. Of course the need for these mechanisms allowing a developer to be excused from compliance with regulations actually demonstrates direct conflict

¹⁷ *Shoreline, Woodway, and Save Richmond Beach v. Snohomish County and BSRE Point Wells (Intervenor)*, CPSGMHB Case No. 09-3-0011c, consolidated August 5, 2010.

¹⁸ The Growth Board's Order can be reviewed at:

<http://www.gmhb.wa.gov/Global/RenderPDF?source=casedocument&id=3600>

On May 15, 2011, the Growth Board issued a Corrected Final Decision and Order but only as to clerical errors and can be reviewed at:

<http://www.gmhb.wa.gov/Global/RenderPDF?source=casedocument&id=3127>

¹⁹ Order Finding Compliance and Rescinding Invalidity, December 20, 2012. The Order can be reviewed at: <http://www.gmhb.wa.gov/Global/RenderPDF?source=casedocument&id=3194>

because without approval the Point Wells Project won't be able to proceed. Some may assert that these mechanisms have the unintended effect of raising "reasonable doubt" about direct conflict with Snohomish County's regulations because, if granted, the conflict is resolved. But variances and deviations are discretionary actions of Snohomish County for which BSRE has failed to provide evidence showing a rational basis why its project should be uniquely benefitted.

4. THE SECOND ACCESS ROAD IS AN UNRESOLVABLE, SUBSTANTIAL CONFLICT

Much has been said about the second access road and the feasibility of its construction. This comment letter will not delve into the engineering details of construction but rather point out that not only is this roadway a necessary and required piece of infrastructure for the Point Wells Project for which private property rights acquisition is essential. BSRE has provided no evidence demonstrating ownership of property or easements necessary to connect this roadway into the Town of Woodway's transportation network. As was the case with the Sounder Train, the resolution of this conflict is in the hands of outside parties and cannot be resolved by BSRE and/or Snohomish County alone.

5. SNOHOMISH COUNTY'S ACTION IN DESIGNATING POINT WELLS AS AN URBAN CENTER DOESN'T RESULT IN COMPLIANCE WITH APPLICABLE REGULATIONS

BSRE testified that it has a right to build the Point Wells Project as it proposes because Snohomish County designated and zoned the property as an Urban Center. The mere fact that Snohomish County designated and zoned property at an intensity that may not be capable of being realized is not a basis for approval nor does it allow a developer to escape from the applicable regulations.

For example, at the hearing BSRE asserted that since the SCC 30.34A.030 sets a minimum Floor to Area Ratio (FAR) that it must be permitted to build at the intensity it proposes or it won't be able to satisfy the minimum FAR standard given the complexities of the site (namely critical areas and the railroad). SCC Chapter 30.34A Urban Centers was developed to cover a broad range of sites and was not customized for the benefit of BSRE and the Point Wells site. If BSRE cannot satisfy the minimum FAR with a project that complies with other applicable regulations, then there is a direct, substantial conflict for which the only resolution is amendment of the regulation; a function of the county council.

Like its inability to satisfy the need for high capacity transit, BSRE's inability to meet the minimum FAR is a substantial conflict for which the only resolve is in the hands of the County Council. Which, of course, any amendment to the SCC to

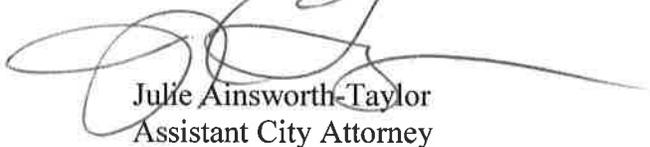
modify the FAR would destroy BSRE's vested rights for an Urban Center project, leaving it subject to current Urban Village regulations.

Conclusion

In conclusion, despite the hours of hearing and the plethora of documentation submitted to the Hearing Examiner, the Point Wells Project remains in direct, substantial conflict with the Urban Center plans and regulations of Snohomish County. As detailed above, these conflicts cannot be resolved by subsequent modifications of the permit application materials. BSRE has had seven years to provide Snohomish County with information demonstrating that the Point Wells Project complies with Snohomish County plans and regulations. It has not done so and to allow BSRE to continue forward on a project that even if environmental review was completed, could not be approved because of its substantial conflict with the high capacity transit requirement for an Urban Center.

Sincerely,

CITY OF SHORELINE



Julie Ainsworth-Taylor
Assistant City Attorney

Attachments

ATTACHMENT A

**SOUND TRANSIT
STAFF REPORT**

**RESOLUTION Nos. R2003-22, R2003-23, R2003-24, R2003-25 and
MOTION Nos. M2003-130, M2003-131, M2003-135, M2003-136**

Agreements with BNSF for Sounder Commuter Rail Service

Meeting:	Date:	Type of Action:	Staff Contact:	Phone:
Board Meeting	12/17/03	Action	Martin Minkoff, Sounder Commuter Rail Director Jordan Wagner, Legal Counsel	(206) 398-5111 (206) 398-5224

Contract/Agreement Type:		Requested Action:	
Competitive Procurement	✓	Execute New Contract/Agreement	✓
Sole Source		Amend Existing Contract/Agreement	✓
Interlocal Agreement		Contingency Funds Required	
Purchase/Sale Agreement	✓	Budget Amendment Required	

3Applicable to proposed transaction.

OBJECTIVE OF ACTIONS

To authorize the execution of eight agreements covering the purchase and sale of right-of-way and right-of-way interests, joint use conditions and services between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company (BNSF) for Sounder in the Everett to Seattle and Lakewood to Tacoma corridors.

ACTIONS

Authorize the Chief Executive Officer to execute the following agreements with the Burlington Northern Santa Fe Railway Company, as generally agreed to in the May 2003 Term Sheet, Memorandum of Understanding, for the Everett to Seattle corridor and the Lakeview subdivision line (Tacoma to Nisqually):

- Resolution No. R2003-22 Purchase and Sale Agreement (Everett to Seattle)
- Motion No. M2003-130 Joint Use Agreement for Everett to Seattle
- Motion No. M2003-131 Service Agreement for Everett to Seattle
- Resolution No. R2003-23 Purchase and Sale Agreement (Station parcels)
- Resolution No. R2003-24 Purchase and Sale Agreement (Lakewood to Tacoma)
- Resolution No. R2003-25 Purchase and Sale Agreement (Nisqually to Lakewood)
- Motion No. M2003-135 Joint Use Agreement for Tacoma to Nisqually
- Motion No. M2003-136 Amendment to Service Agreement for Seattle to Tacoma

KEY FEATURES

- Purchases four perpetual property easements from Seattle to Everett from BNSF for Sounder services.
- Purchases property from BNSF in the Tacoma to Nisqually corridor for service and station improvements.

SOUND TRANSIT

MOTION NO. M2003-130

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the Chief Executive Officer to execute a Joint Use Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for Everett to Seattle Commuter Rail Easements.

Background:

The Joint Use Agreement contains the long-term provisions and compensation for operation of commuter service on the Burlington Northern Santa Fe Railway Company (BNSF) line, including requirements for a commuter operator on behalf of Sound Transit if it is ever other than BNSF. The term of the Joint Use Agreement is perpetual, linked in conjunction with the four easements.

Motion:

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that the Chief Executive Officer is authorized to execute a Joint Use Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for Everett to Seattle Commuter Rail Easements.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a special meeting thereof held on December 17, 2003.



Ron Sims
Board Chair

ATTEST:



Marcia Walker
Board Administrator

- Provides for the conditions of joint use in each corridor; Sound Transit's commuter services use in the Everett to Seattle corridor and BNSF continued freight use in the Nisqually to Tacoma corridor.
- Purchases operations services from the BNSF to operate service in both corridors.

OVERVIEW OF PRINCIPAL AGREEMENTS

The principal agreements described below provide the basis to proceed with Commuter Rail Service between Everett and Seattle and between Lakewood and Tacoma. The agreements are the product of several years of discussion with BNSF and, more recently, 12 months of intensive negotiations to define mutually agreeable terms upon which Sound Transit would obtain from BNSF the necessary access to BNSF tracks and rights-of-way. The agreements below are based upon the principles embodied in the non-binding Term Sheet, Memorandum of Understanding between Sound Transit and BNSF dated May 28, 2003.

The Everett to Seattle and Lakewood to Tacoma transactions would be enabled by the following actions for the Board's consideration.

Everett to Seattle Corridor Transactions

Resolution No. R2003-22 - Authorizing the Chief Executive Officer to execute a Purchase and Sale Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for the purchase of real property interests required for Everett to Seattle Commuter Rail Service.

Through the **Purchase and Sale Agreement**, Sound Transit would purchase under threat of condemnation four perpetual easements with which to operate four round-trip, peak-direction-only Commuter Trains (one for each easement) between Everett and Seattle:

- Closing of First Easement
 - On December 17, 2003
 - \$79 million payment
- Closing of Second Easement
 - In December 2004
 - \$79 million payment
 - Conditions of the Closing of the Second Easement are:
 - ♦ BNSF providing to Sound Transit on or before March 31, 2004, plans, specifications and design documents completed to 30% level of completion for the Second Easement Improvements (i.e., projects within Seattle), and Third Easement Improvements (i.e., projects between Seattle and Everett—not inclusive), in accordance with the Environmental Impact Statement (EIS) and Record of Decision (ROD).
 - ♦ BNSF providing to Sound Transit on or before January 9, 2004 a preliminary estimate of the wetland impacts resulting from the Second Easement Improvements, Third Easement Improvements, and Fourth Easement Improvements (i.e., projects in Everett: Lowell Siding, Delta Yard, and other project elements in the Everett Loop).
 - ♦ BNSF providing to Sound Transit on or before February 29, 2004 a more precise estimate of the maximum area of wetland impacts resulting from the Second Easement Improvements, Third Easement Improvements and Fourth Easement Improvements in accordance with the EIS and ROD.
 - ♦ BNSF providing to Sound Transit on or before August 31, 2004, plans, specifications and design documents completed to 30% level of completion for the Fourth Easement Improvements in accordance with the EIS and ROD.

- If the permits for Lowell Siding are denied or deemed unobtainable prior to the closing of the Second Easement, then BNSF will have the option to not close (with no second \$79 million payment by Sound Transit and no trains beyond Train #1).
- Closing of Third Easement
 - In December 2006
 - \$50 million payment
 - Conditions of the Closing of the Third Easement are:
 - If the permits for the Third Easement Improvements are denied or deemed unobtainable prior to the closing of the Third Easement, then Sound Transit will have the option to not close (with no third \$50 million payment by Sound Transit and no trains beyond Train #1 and Train #2).
- Closing of Fourth Easement
 - December 2007
 - \$50 million payment
 - Conditions of the Closing of the Fourth Easement are:
 - If the permits for the Fourth Easement Improvements are denied or deemed unobtainable prior to the closing of the Fourth Easement, then Sound Transit will have the option to not close (with no fourth \$50 million payment by Sound Transit and no trains beyond Train #1, Train #2, and Train #3).
- Post Closing Options
 - Resale of Second Easement to BNSF - Following the December 2004 closing and \$79 million payment to BNSF, if the permits for projects within the City of Seattle do not appear to be likely to be obtained, Sound Transit would have the option of "selling back" the easement to BNSF for \$27.5 million without interest. Such a determination would be made no sooner than November 2006 and no later than November 2010.
 - Resale of Third and Fourth Easements to BNSF - If the respective closings for the third and fourth easements do occur, and the \$50 million payments for each respective easement is made to BNSF, and Sound Transit is subsequently unable to obtain said permits (or deemed unlikely to be obtained), then Sound Transit would have the option of "selling back" such easements to BNSF for \$50 million each (without interest). The option for the third easement must be exercised no sooner than December 2008 and no later than December 2012 and for the fourth easement no sooner than December 2009 and no later than December 2013.

Motion No. M2003-130 - Authorizing the Chief Executive Officer to execute a Joint Use Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for Everett to Seattle Commuter Rail Easements.

The **Joint Use Agreement** contains the long-term provisions and compensation for operation of commuter service on the BNSF line, including requirements for a commuter operator on behalf of Sound Transit if it is ever other than BNSF. The term of the Joint Use Agreement is perpetual, linked in conjunction with the four easements. Some key elements include:

- In conjunction with the Joint Use Agreement, the Easements define the time "windows" during which up to four commuter trains (one for each easement) in each direction can operate. The windows state the overall time period during which the trains can operate in the morning and evening peak hours, together with parameters for the specific operation of the four trains in relation to each other. All four trains must arrive at King Street Station within the hours of 6:00 a.m. and 9:00 a.m., and depart within the hours of 3:30 p.m. and 6:30 p.m. As each new easement/train becomes operational, there are maximum "windows" within which trains must be scheduled. That is, when there are two trains, they cannot arrive/depart King Street Station (KSS) more than 40 minutes apart. When three trains are

operational, the departure and arrival of the first and last train must be spaced no more than 70 minutes apart. When four trains are operational, the departure and arrival of the first and last train must be spaced no more than 105 minutes apart.

- The Joint Use Agreement also defines Sound Transit's responsibility for the permitting process that links to the time periods for operation of trains described below. Sound Transit will "certify" to BNSF that all required permits have been obtained for a given stage, and time periods during which construction activity is precluded by governmental action thereafter will toll the time periods for construction activity before which BNSF is required to operate commuter trains. Permit restrictions would not be acceptable that impose conditions on the operation of the railroad (e.g., train speed restrictions after construction). The schedule for commencing train operations is as follows:

- Trainset Pursuant to First Easement** ----- December 22, 2003
- Trainset Pursuant to Second Easement** ----- Six months after ST certifies permits necessary for improvements within City of Seattle
- Trainset Pursuant to Third Easement** ----- Twenty-four months after ST certifies permits necessary for improvements between Seattle and Everett (not inclusive) (including the "marine" permits)
- Trainset Pursuant to Fourth Easement** ----- Twenty months after ST certifies permits for Everett area improvements (including Lowell Siding)

Motion No. M2003-131 - Authorizing the Chief Executive Officer to execute a Commuter Rail Service Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for Everett to Seattle Commuter Rail Services

The **Commuter Rail Service Agreement** describes the terms for the actual operation of commuter trains by BNSF (including liability and risk provisions similar to the Seattle to Tacoma agreement), and the compensation paid to BNSF for train crews, maintenance-of-way, and other expenses incurred in the operation of Sounder Service North. The compensation structure is simplified to include flat rates for maintenance and crews with inflation adjusters plus performance incentives after the initial pre-construction time period.

The key elements of the compensation paid to BNSF to operate the four round-trips include:

- For the operation of Train #1: \$30.00 per train mile (to be adjusted annually by agreed upon indexes starting in January 2005). This interim rate would remain in effect until three trains are operational. At that time the "Standard Rate" will apply: \$25.00 per train mile base for up to four car trains and increase with train length (\$25.33 for five car trains, 25.66 for six car trains, and 26.00 for seven car trains, \$26.25 for eight, \$26.50 for nine, and \$26.75 for 10 car trains), plus an on-time performance incentive formula. Base and incentives would be adjusted annually by mutually agreed upon indexes.
- For the operation of Train #2: \$60.00 per train mile. The interim rate would also remain in effect until three trains are operational. At that time the "Standard Rate" (plus on-time performance incentives) would apply as described above. Base and incentives would be adjusted annually by mutually agreed upon indexes.
- For the operation of Trains #3 and #4: "Standard Rate" with incentives as defined above.
- Special Event Service as provided under the agreement would be billed at \$45 per train mile during the interim period and \$35 per train mile once three weekday trains are operational. (Note: A special event "Seahawks" train would operate on Sunday, December 21, 2003.)

The term of the Commuter Service Agreement would be for 12 Years, with an option of 5 additional years (that must be agreed to by both parties), for a maximum term of 17 years. It is important to note that following the term of the service agreement; Sound Transit still has the perpetual right to operate trains with another service provider under the Joint Use Agreement summarized above. Sound Transit would then pay BNSF only for the on-going costs of maintenance-of-way, dispatch, and applicable incentives, in proportion to commuter use on the line.

Nisqually to Tacoma Corridor Transactions

Resolution No. R2003-23 - Authorizing the Chief Executive Officer to execute a Purchase and Sale Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for the purchase of real property interests required for Sounder Commuter Rail Lakewood and South Tacoma station parcels.

Resolution No. R2003-24 - Authorizing the Chief Executive Officer to execute a Purchase and Sale Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for the purchase of real property interests required for Sounder Commuter Rail service from Lakewood to Tacoma.

Resolution No. R2003-25 - Authorizing the Chief Executive Officer to execute a Purchase and Sale Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for the purchase of real property interests required for Sounder Commuter Rail service from Nisqually to Lakewood.

Through the three **Purchase and Sale Agreements**, Sound Transit would purchase Tacoma to Lakewood properties under threat of condemnation. The first sale (to close in 2003) is composed of defined parcels of land at the Lakewood and South Tacoma Station sites. The next two agreements provide for Sound Transit's purchase of the BNSF Lakeview Subdivision from Tacoma (at approximately M Street) to Nisqually, subject to Sound Transit's satisfactory completion of due diligence on the properties. These purchases are divided into two distinct property sales: a north sale for right-of-way between Lakewood and Tacoma (to close in 2004); and a south sale for right-of-way between Lakewood and Nisqually (to close in 2005). BNSF would retain the right-of-way property north of the D to M Street Connector. BNSF would retain its common carrier obligations and the perpetual right to continue to operate its freight service.

In the event Sound Transit is not satisfied with the results of due diligence investigations on the north and south line properties, the agency may decline to go forward with the purchases of those properties and terminate the applicable purchase agreements. In doing so, it would forfeit certain non-refundable earnest money payments described below. If Sound Transit proceeds with the purchases, consistent with the May 2003 Term Sheet, Memorandum of Understanding, Sound Transit would pay BNSF \$31,948,500 over a four-year period for the entire acquisition.

The payments would be made as follows: \$8 million in 2003 (\$1.4 million would be non-refundable earnest money for the north line and \$3 million would be non-refundable earnest money for the south line); \$6 million in 2004, together with a Promissory Note for \$6 million, due in 2006 (for the north line); \$6 million in 2005, together with a Promissory Note for \$6 million due in 2007 (for the south line).

Motion No. M2003-135 - Authorizing the Chief Executive Officer to execute a Joint Use Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for Tacoma to Nisqually Railroad right-of-way and properties.

A long-term **Joint Use Agreement** would define the terms for long-term use of the line for Sound Transit commuter rail and BNSF rail freight purposes. Under this agreement (and the purchase agreements), Sound Transit is responsible for construction of the Lakewood to Tacoma track and signal and related improvements needed to implement the Sounder extension from Freighthouse Square to Lakewood (including the D to M Street Connector).

Until Sound Transit construction and rehabilitation of the line commenced, BNSF would perform all maintenance-of-way activities and rehabilitation, including track, signals, and related structures (non-station), and general right-of-way maintenance on the Lakeview Subdivision at BNSF expense. At such time that Sound Transit began construction on the Lakewood commuter section, Sound Transit would thereafter be responsible for all such maintenance activities on the line, and BNSF would then reimburse Sound Transit for the cost of regular and capital maintenance attributable to its freight use of the line.

BNSF would retain liability for freight related activity on the entire Lakeview Subdivision (except for the Lakewood and South Tacoma Station Parcels) and all liability for that section that BNSF maintains. Sound Transit would be responsible for incidents and occurrences stemming from the operation of the Sounder commuter service, and apportioned liability for that joint-use section that Sound Transit maintains.

BNSF would indemnify Sound Transit for environmental/hazardous waste liability stemming from prior BNSF activity on the property (and on-site activity of prior BNSF tenants) and future freight related activity, with Sound Transit responsible for that which may be caused in the future by Sounder commuter operations.

Motion No. M2003-136 - Authorizing the Chief Executive Officer to execute a First Amendment to the Commuter Rail Service Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company

Under a First Amendment to the existing long-term Seattle to Tacoma **Commuter Rail Service Agreement**, BNSF would extend operation of commuter service from Tacoma to Lakewood, contingent upon closing of the pertinent purchase transactions, completion by Sound Transit of connecting trackage between Freighthouse Square and the Lakeview Subdivision, and rehabilitation of the line. BNSF would be compensated for the additional operating cost to extend commuter service to Lakewood, largely on the basis of the terms of the existing agreement (including reimbursement for actual costs of train crews and management plus performance incentives). Changes to the compensation provisions for the entire Tacoma to Seattle line (plus provision for extended service to Lakewood) reflecting indexed flat rates for maintenance of way, dispatch, administrative overhead and other mutually agreeable changes are being recommended.

BUDGET IMPACT SUMMARY

Action Outside of Adopted Budget:	Y/N	Y Requires Comment
This Line of Business	N	
This Project	N	
Budget amendment required	Y	While sufficient funds are available in the 2003 and the 2004 slice of the budget, additional budget will be required to replenish the lifetime budget.
Key Financial Indicators:	Y/N	Y Requires Comment
Contingency funds required	N	
Subarea impacts	N	
Other party funding required (other than what is assumed in financial plan)	N	

N = Action is assumed in current Board-adopted budget. Requires no budget action or adjustment to financial plan.

BUDGET DISCUSSION

The budget associated with the expenditures in these agreements occur in two general areas: right-of-way costs included in track and facilities capital projects and on-going operations costs which are a part of the transit operations budget.

Based on a thorough review of costs to complete and the completion of the BNSF negotiations, the estimated total lifetime capital budget for the Everett to Seattle track and facilities segment has been identified as \$303,114,343, which includes the budget for the purchase of four easements. The total lifetime capital budget for the Lakewood to Tacoma track and facilities segment has been identified as \$150,335,116, which includes budget to purchase the Lakeview subdivision line and associated station properties.

The estimate at completion figures were discussed with the Finance Committee at the December 3, 2003 meeting as a part of the 2004 Sounder budget process. These figures are also reflected in the Adopted 2004 Budget (Resolution No. R2003-19), adopting the lifetime budget for the Sounder program. The May 2003 Term Sheet, Memorandum of Understanding outlined the basis of negotiating the agreement with BNSF. An additional \$9,948,500 was negotiated to appropriately account for elements of reduced risk to Sound Transit. Additionally, through the negotiations, Sound Transit achieved other gains in value (e.g. receiving a perpetual easement in the Seattle to Everett corridor instead of the initial 97-year term.

While there is sufficient budget authorization to fund the 2003-funding requirement, staff will return to the Board during the first quarter of 2004 to seek a budget amendment to replenish the lifetime project budgets. Staff has committed to complete the cashflow of the projects in the Everett to Seattle and the Lakewood to Tacoma segments, and will also present that information to the Board during the first quarter of 2004.

In addition, staff will seek Board action to increase the 2004 Sounder transit operations budget in the first quarter of 2004 to provide budget authority for expenses related to paying BNSF for purchased transportation services and other costs related to service in the Everett to Seattle segment. As was discussed with the Board during the review of the Proposed 2004 Budget, the amount of these costs were not included in the Proposed 2004 Budget, because they were subject to the service agreements and were not known at the time the proposed budget was developed. Based upon the service agreements those costs are expected to be approximately \$826,000.

The joint use and service agreement costs have been calculated into Sound Transit's financial plan for future transit operations expenditures. These changes are within the agency's current financial plan.

REVENUE, SUBAREA, AND FINANCIAL PLAN IMPACTS

The proposed action is affordable within the agency's current long-term financial plan, which was reviewed by the Board in November 2003, and is within subarea financial capacity. The action will have no new revenue impacts on Sound Transit beyond those identified above.

BUDGET TABLE

Not applicable for these actions.

M/W/DBE – SMALL BUSINESS PARTICIPATION

Not applicable for these actions.

PRIOR BOARD ACTIONS

Motion or Resolution	Summary of Action	Date of Action
R2003-17	Authorization to acquire, dispose, lease, and transfer certain real property interests by negotiated agreement, negotiated purchase, by condemnation (including settlement), condemnation litigation, or entering administrative settlements, and to pay eligible relocation and re-establishment benefits to affected owners and tenants as necessary for the acquisition of various properties owned by BNSF and required for the Everett-Seattle Segment, the Lakewood-Tacoma Segment, and its possible extension.	09/25 /03
R99-22	Authorization to execute two contracts with BNSF - a long-term contract that will provide for BNSF to operate Sounder commuter rail service between Seattle and Tacoma (Operating Agreement) and a contract that will specify agreed-upon capital improvements on and around BNSF's existing railroad right-of-way, and provide for BNSF to construct those improvements and for Sound Transit to contribute approximately \$200 million and other public authorities to contribute approximately \$70 million to the cost of such construction (Construction Agreement).	08/26/99

CONSEQUENCES OF DELAY

The above agreements are in keeping with the May 2003 Term Sheet, Memorandum of Understanding between Sound Transit and BNSF. That Term Sheet was made with the understanding that final agreements would be completed by year-end 2003.

PUBLIC INVOLVEMENT

Not applicable to these actions.

LEGAL REVIEW

JDW 12/15/03

**NEW ISSUE
BOOK-ENTRY ONLY**

**RATINGS: Moody's: Aa1
S & P: AAA
See "RATINGS"**

In the opinion of Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel, based upon an analysis of existing laws, regulations, rulings and court decisions and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the 2016 Parity Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986. In the further opinion of Special Tax Counsel, interest on the 2016 Parity Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Special Tax Counsel observes that such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. Special Tax Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the 2016 Parity Bonds. See "TAX MATTERS."



**THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY
\$400,000,000***

Sales Tax and Motor Vehicle Excise Tax Bonds, Series 2016S-1 (Green Bonds)

Dated: Date of initial delivery

Due: As shown on inside cover

The Central Puget Sound Regional Transit Authority ("Sound Transit"), a Washington regional transit authority, is issuing its Sales Tax and Motor Vehicle Excise Tax Bonds, Series 2016S-1 (the "2016 Parity Bonds"), in the aggregate principal amount of \$400,000,000.*

The 2016 Parity Bonds are being issued as fixed-rate bonds and will mature, subject to redemption prior to maturity, in the principal amounts on the dates and bear interest at the rates, all as set forth on the inside cover.

The 2016 Parity Bonds are being issued under a book-entry system, initially registered to Cede & Co., as nominee of The Depository Trust Company ("DTC"), New York, New York, which will act as initial securities depository for the 2016 Parity Bonds. Individual purchases of 2016 Parity Bonds are to be made in denominations of \$5,000 and any integral multiple thereof within a maturity, in book-entry form only, and purchasers will not receive certificates representing their interest in the 2016 Parity Bonds, except as described herein. Payments of principal of and interest on the 2016 Parity Bonds are to be made to DTC by the fiscal agent of the State of Washington, currently U.S. Bank National Association in Seattle, Washington (the "Bond Registrar"). Disbursements of payments to DTC participants is the responsibility of DTC, and disbursement of payments to beneficial owners of the 2016 Parity Bonds is the responsibility of DTC participants. The 2016 Parity Bonds are subject to redemption prior to maturity upon the terms and conditions and at the prices described herein.

Interest on the 2016 Parity Bonds is payable on each May 1 and November 1, commencing on May 1, 2017, until maturity or prior redemption.

The 2016 Parity Bonds are being issued (i) to pay or to reimburse Sound Transit for the payment of costs of constructing a portion of Sound Transit's System Plan and (ii) to pay costs of issuing the 2016 Parity Bonds.

The 2016 Parity Bonds are special limited obligations of Sound Transit payable from and secured solely by a pledge of the proceeds of certain sales and use taxes, motor vehicle excise taxes and rental car taxes imposed by Sound Transit, including taxes approved by the voters on November 8, 2016, and amounts, if any, in certain accounts held by Sound Transit. The pledge of such taxes and amounts in certain accounts to the payment of the 2016 Parity Bonds is subordinate to the pledge thereof to the payment of the Prior Bonds, as described herein. Sound Transit has reserved the right to issue additional Prior Bonds and Parity Bonds in the future. The 2016 Parity Bonds are not obligations of the State of Washington or any political subdivision thereof other than Sound Transit. The 2016 Parity Bonds are not secured by any lien, or charge upon any general fund or upon any money or other property of Sound Transit not specifically pledged thereto.

The 2016 Parity Bonds are offered when, as and if issued and received by the Underwriters, subject to the approval of legality by Foster Pepper PLLC, Seattle, Washington, Bond Counsel to Sound Transit, and to certain other conditions. Certain tax matters will be passed upon by Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to Sound Transit. Certain legal matters will be passed upon for Sound Transit by its General Counsel and by Orrick, Herrington & Sutcliffe LLP, Seattle, Washington, Disclosure Counsel. Certain legal matters will be passed upon for the Underwriters by their counsel, Pacifica Law Group LLP, Seattle, Washington. It is expected that the 2016 Parity Bonds will be available for delivery in New York, New York, through the facilities of DTC, or to the Bond Registrar on behalf of DTC by Fast Automated Securities Transfer, on or about December 19, 2016.

Citigroup

Goldman, Sachs & Co.

BofA Merrill Lynch

J.P. Morgan

RBC Capital Markets

Wells Fargo Securities

_____, 2016

* Preliminary, subject to change.

This Preliminary Official Statement and the information contained herein are subject to completion and amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these 2016 Parity Bonds in any jurisdiction in which such offer, solicitation or sale would be unlawful.

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

Notes to Financial Statements, continued

incentives. The agreement was amended to extend BNSF's operations beyond Tacoma to the City of Lakewood and to add up to 8 additional one-way trips were added by way of commuter rail easements purchased by Sound Transit. Currently the agency is operating 11 of 13 round-trips provided under these agreements. Upon expiration of the service agreement, Sound Transit's use of BNSF track will be bound by a dormant Joint Use Agreement for BNSF's Seattle-Tacoma corridor.

North Line— BNSF operates four daily commuter rail round trips for Sound Transit under a service agreement. The service agreement expires in December 2020. At that time Sound Transit's four round trips under commuter rail easements purchased by Sound Transit from BNSF on its Seattle to Everett corridor will be governed by a now dormant joint use agreement.

Rolling Stock— Lease of the initial portion of its fleet of locomotives, passenger coaches and cab cars (rolling stock) to the National Railroad Passenger Corporation (Amtrak) for \$1. Under the agreement, Amtrak is obligated to repair, maintain and service the rolling stock at Amtrak's maintenance facility in return for payment by Sound Transit. By separate agreement, Amtrak subleased this rolling stock to BNSF for operation of Sounder Service. Both lease agreements are for a 40-year term, expiring in 2040.

Maintenance Service Agreement— Under the agreement Sound Transit pays a flat monthly fixed price dependent upon the number of one-way trips and train sets in operation for a baseline set of operating assumptions. A negotiated rate is also established for additional service above the baseline operating plan. The agreement expires in 2016.

First Hill Streetcar— This agreement establishes the minimum scope of work for the project and funding obligations for Sound Transit. In October 2010, Sound Transit agreed to fully fund \$132.8 million of the costs necessary to design, construct and operate the First Hill Streetcar that was established in the November 2009 funding and cooperative agreement, of which \$5.0 million is payable annually through 2023 for annual operations and maintenance expenses. The City will own and operate the First Hill Streetcar facilities and vehicles.

Land Bank Agreement— Sound Transit entered into an agreement called the Land Bank Agreement with WSDOT in July 2000 and as restated in December 2003, the purpose of which is to establish a framework within which WSDOT can from time to time convey portions of WSDOT property to Sound Transit and to make other portions of other WSDOT property available for non-highway use by Sound Transit in consideration for Sound Transit's funding of highway purpose improvements. In August 2010, as part of the Umbrella Agreement with WSDOT to complete the R8A Project, WSDOT agreed to grant Sound Transit land bank credits for all of its funding on the R8A projects as well as to extend the land bank agreement to 2080. Sound Transit will continue to earn land bank credits for projects involving highway improvements and use credits on projects that are located within the public highway right of way.

Sound Transit has guideways located on WSDOT property governed under multiple twenty-year airspace leases issued under the land bank agreement. These airspace leases have options to renew for an additional 20 years, at no additional cost or use of Land Bank Agreement credits. Should Sound Transit and WSDOT not enter into a new agreement at the end of the leases, property ownership transfers to WSDOT. At December 31, 2015, the value of the unused land bank credits that have not been conveyed by WSDOT to Sound Transit was \$294.8 million. This value is not recorded in the financial statements. The following table provides information on additions to and uses of credits accruing to the benefit of Sound Transit in 2015 and 2014.

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

Notes to Financial Statements, continued

substantially comprised of a baseline cost rate for purchased transportation, as well as other costs provided for, but not included as part of the baseline. Baseline cost rates, including allocated costs, are established by no later than December 15th for the upcoming year and are reconciled to actual incurred by no later than March 31st of the year following. The current agreement was for 5 years and was extended to July 2017. The extension includes extended service to University and Capitol Hill Stations, commencing March 2016.

Sound Transit has also entered into the following agreements related to light rail or station operations:

Downtown Seattle Transit Tunnel (DSTT) Agreement— This agreement with King County and City of Seattle provides for the cost sharing with regard to the maintenance and operation in the Downtown Tunnel in exchange for the right to use the tunnel for light rail operations and to provide for the temporary continued joint-use for light rail and bus. Sound Transit's ongoing obligations include reimbursement of costs and payment of a prescribed share of King County DOT debt service owed for the original tunnel construction and to share costs for future capital repairs or replacements as they arise. Upon extension of light rail service to Northgate Station, Sound Transit shall become responsible for 100% of debt service. Compensation is calculated as reimbursement of certain King County DOT costs based on fixed percentages related to Sound Transit's share of usage of the DSTT. If Sound Transit does not use King County as its light rail operator, then Sound Transit may be required by the County to purchase the tunnel in order to continue light rail operations.

Light Rail Agreements— Sound Transit has entered into a variety of agreements to secure the right to operate light rail under, upon and over streets and property owned by the City of Seattle, Tukwila, SeaTac, the Port of Seattle and Bellevue granting permanent light rail access rights to operate its light rail service in the municipalities' right of way. The cost of public right of way improvements have been capitalized to rail access rights and include those costs necessary to operate light rail service, such as costs to acquire real property and relocate existing residents and businesses, as well as certain improvements to city right of way required under those agreements.

WSDOT Umbrella Agreement for R8A Project and East Link Light Rail— on August 26, 2010, Sound Transit was authorized to enter into an umbrella agreement with WSDOT to implement the remainder of the R8A project that consists of the I-90 Two-Way Transit and HOV Operations Project Stages 2 and 3 and the use of the I-90 center lanes for construction and operation of East Link. Sound Transit has agreed to fund Stages 2 and 3 of the I-90 Two Way Transit and HOV projects for \$153.2 million in exchange for a temporary construction airspace lease for the construction of light rail along the I-90 center lanes as well as a 40 year airspace lease with an option to renew for 35 years for the operation of light rail in the center lanes of I-90.

Souther— Agreements have been entered into with the BNSF Railway Company (BNSF) for the operation of its Souther commuter rail service and the National Railroad Passenger Corporation (Amtrak) for maintenance of the locomotives, cab and coach cars (rolling stock). Service between Everett and Seattle and Seattle and Tacoma is on rail right of way owned and operated by BNSF.

South Line— Service between Seattle and Lakewood are provided by BNSF under a 40-year service agreement for the operation of 18 one-way commuter rail trips that expires in 2040. The agreement establishes the compensation paid to BNSF for train crews, maintenance of way and other expensed incurred in the operation of the Souther Service and is based on actual cost of crew, dispatch and management, as well as cost for maintenance of way and performance

Agreements with BNSF for Sounder Commuter Rail Service in the Everett-to-Seattle and Lakewood-to-Tacoma Corridors—On December 18, 2003, Sound Transit entered into a number of agreements with BNSF for, among other things, the purchase of four perpetual easements for commuter rail service between Everett and Seattle, the purchase of railroad right-of-way between Nisqually and Tacoma for service and station improvements, terms for joint use of the railroad right of way and the purchase of operation services in each corridor.

The acquisition of the easements and property occur over a four-year payment period. The first easement in the Everett-to-Seattle corridor closed in December 2003 and the second easement closed in December 2004, each in exchange for a payment of \$79.0 million, and allowing the operation of one round trip commuter train service between Everett and Seattle. Also in December of 2003, Sound Transit paid BNSF \$3.6 million for the purchase of certain parcels of property that will become part of the Lakeview Station and South Tacoma Station and \$4.4 million as a non-refundable deposit for the purchase of railroad right of way on the BNSF's Lakeview Subdivision.

In September 2004, Sound Transit closed on the purchase of the section of the Lakeview Subdivision between Lakewood and Tacoma (the "North Line") and in October 2005 the section of the Lakeview Subdivision between Nisqually and Lakewood (the "South Line"). See Note 9 for a description of amounts paid at closing and promissory notes provided to BNSF.

The acquisition of the remaining easements in the Everett-to-Seattle corridor will close as follows:

	Closing Date	Due on Closing
3rd Easement	December, 2006	\$50 million
4th Easement	December, 2007	\$50 million

Each easement allows the addition by Sound Transit of one round trip commuter train service. Closing by Sound Transit on the third and fourth easements are conditioned upon the lack of a determination that certain permits for improvements that BNSF is designing to construct are highly unlikely to be

issued. If this condition is not met, Sound Transit has the option to not close with no additional payment due and no additional train service beyond that provided by prior accepted easements.

The easement acquisition agreements also contain post-closing options for Sound Transit for the resale of the second, third and fourth easements to BNSF should it appear that permitting will not be allowed. These options may be exercised as follows:

	Earliest Exercise Date	Latest Exercise Date	Exercise Price
2nd Easement	Nov. 2006	Nov. 2010	\$27.5 million
3rd Easement	Dec. 2008	Dec. 2012	\$50 million
4th Easement	Dec. 2009	Dec. 2013	\$50 million

Total payments in respect of the Nisqually-to-Tacoma corridor under the agreement to BNSF are \$32 million, including interest on the promissory notes.

The Joint-Use Agreement for the Everett-to-Seattle corridor provides the mechanisms for determining the cost to Sound Transit for the maintenance-of-way and rehabilitation activities on the corridor. The Joint-Use Agreement also provides the conditions necessary to be satisfied by Sound Transit (such as the acquisition of certain environmental permits) before it may use its commuter rail easements. The Joint-Use Agreement for the Lakewood-to-Tacoma corridor sets forth the cost to BNSF for the maintenance of way and rehabilitation activities on the corridor and Sound Transit's and BNSF's responsibilities during the interim period before Sound Transit starts operating on each portion of the corridor. Initially, BNSF will retain all maintenance activities associated with the line. However, as Sound Transit incrementally commences construction of the line, Sound Transit will be responsible for maintenance activities on those sections.

The Everett-to-Seattle Commuter Rail Service Agreement set forth the terms for the actual operation of the commuter trains by BNSF and the compensation paid to BNSF for train crews, maintenance-of-way and other expenses incurred in the operation of the Sounder service between Seattle and Everett. The compensation is structured to provide flat rates for maintenance and crews with inflation adjusters plus performance incentives