

May 23, 2011

MEMO

To: Maggie Glowacki, DPD

Fr: Ellie Ziegler, Sound Transit

Re: Sound Transit comments on Seattle's Proposed Draft SMP

Thank you for the opportunity to comment on the proposed SMP. Sound Transit has reviewed the draft Ordinance made available to the public in February 2011 and offers the following comments.

The existing SMP reflects the prior collaboration between the City and Sound Transit

In 2005, as Sound Transit was planning the extension of its Link Light Rail system to the University District, it approached DPD about making changes to the City's SMP to accommodate light rail, which must pass through the shoreline district at the Montlake Cut in order to reach the University District, and through the shoreline district at Lake Washington in order to reach Bellevue.

Sound Transit met with DPD and the City Law Department over a period of many months in 2005 and 2006 and reached agreement on amendments to the SMP that met the City's regulatory needs while also recognizing Sound Transit's status as a regional essential public facility. These amendments to the SMP were approved by the City Council on August 14, 2006, when it passed Ordinance 122198. The Department of Ecology approved all of the amendments except one, and on July 30, 2007, the Council passed Ordinance 122448 modifying the amendment to SMC 23.60.022.

The proposed new SMP has been prepared without consultation with Sound Transit, and it deletes or modifies the provisions that were agreed-upon in 2006. In particular, Sound Transit is very concerned that the proposed SMP will make its facilities subject to special use approval or a shoreline conditional use, contrary to the City's duty to appropriately accommodate regional essential public facilities under the Growth Management Act.

DPD Response

Special use and conditional use approvals have been removed for Sound Transit Facilities.

Proposed deletion of SMC 23.60.090.J

The most fundamental change in the proposed SMP affecting Sound Transit is the change to the status of light rail uses, which will no longer be permitted outright when they are proposed in tunnels or on bridges. In the Conservation Navigation (CN) and Conservation Recreation (CR)

environments, both of which will apply to Sound Transit’s proposed East Link facility on the I-90 bridge, a “special use” approval will be required. Also, in the Conservation Preservation (CP) environment, a bridge or tunnel containing light rail transit facilities will require a shoreline conditional use permit. The Evergreen Point floating bridge, for example, passes through the CP environment, so if rail transit facilities are proposed for that bridge, a shoreline conditional use permit will be required under the proposed SMP.

The existing SMP includes SMC 23.60.090.J, which states:

J. Light rail transit facilities approved pursuant to subsection 23.80.004.C are permitted uses in all shoreline environments, and light rail bridges and tunnels are water-dependent uses when they must cross a body of water regulated by Chapter 23.60. A temporary structure or use that supports the construction of a light rail transit facility and that is approved pursuant to Section 23.42.040.F is permitted as a temporary structure or use in all shoreline environments.

This language in existing subsection J was carefully negotiated between DPD and Sound Transit, and was approved by the Department of Ecology. It reflects Sound Transits unique status as a regional essential public facility that must pass through the City’s shoreline district, and Sound Transit is opposed to the deletion of this subsection in the proposed new SMP.

DPD Response

Code revised to address concerns.

Proposed SMC 23.60.090 states (emphasis added):

A. In all shoreline environments *all uses are prohibited over water* as a principal or accessory use *unless* the use is allowed or allowed as a special use, a shoreline conditional use or a Council conditional use in the shoreline environment where the use is proposed *and* the use is: . . .

* * *

2. Railroad, rail transit, street and pedestrian bridges and tunnels that reasonably need to cross water that is regulated in this Chapter; or
3. Allowed, allowed as a special use, a shoreline conditional use or a Council conditional use overwater in the specific regulations for the type of use.

A regional light rail transit system must cross through multiple shoreline environments, in specific locations as selected by the Sound Transit Board. Under this proposed language, light rail transit facilities will no longer be allowed outright in Seattle when the bridges or tunnels needed to support its facilities are required to cross regulated water bodies (and light rail bridges and tunnels will no longer be water-dependent uses). Sound Transit will be required to obtain either “special use approval” or a conditional use permit, which are highly discretionary approvals that could allow other agencies to second guess the siting decisions of the Sound

Transit Board. This result is inconsistent with the GMA. The proposed SMP should recognize that a regional light rail facility is a permitted use in the shoreline district, and should simply allow for appropriate mitigation of the impacts of that use.

The proposed SMP, moreover, is inconsistent with **SMC 23.80.004**, which regulates essential public facilities, where subsections C.1 states:

1. Light rail transit facilities necessary to support the operation and maintenance of a light rail transit system are permitted in all zones and shoreline environments within the City of Seattle.

Thus the proposed SMP will be inconsistent with the way the City has regulated Sound Transit as an essential public facility for the past several years, both inside and outside the shoreline district, since SMC 23.80.004.C.1 was adopted by the City Council in 2000 in Ordinance 119974. No rational or justification has been suggested for this significant policy change which is contrary to the GMA.

DPD Response

This proposal is inconsistent with the SMP WACs; they require a review of locational decisions (and were adopted after the City and Sound Transit developed the City's regulations):

WAC 173-26-221(2)(c)(iii)(C) sets out specific criteria that must be met when bridges and other human structures intrude over or into critical saltwater habitat, including that it is not feasible to use an alternative alignment of location.

WAC173-26-241(3)(k) Transportation says that master programs shall allow circulation systems through or over shorelines where necessary and consistent with the guidelines. Transportation systems must be located where they will have the least possible adverse effect on unique or fragile shoreline features

As noted above the WAC was written after the City adopted these code provisions.

And the code has been revised to eliminate special use and conditional use review of Sound Transit Facilities.

Proposed Use Tables

Sound Transit's concerns similarly apply to the proposed use tables.

Sound Transit's East Link light rail alignment will pass through three shoreline environments within Seattle's shoreline jurisdiction, as those environments are identified in the proposed SMP: Urban Residential (UR), Conservancy Recreation (CR), and Conservancy Navigation (CN). In the area of the I-90 bridge, the UR environment appears to be entirely upland; the CR environment is mostly overwater but may include small areas of upland along the shore, and the CN environment is entirely overwater. It is important to also note that a portion of the Evergreen

Point floating bridge appears to pass through the Conservation Preservation (CP) environment, so if rail transit facilities are proposed for that bridge in the future, a shoreline conditional use permit will be required under the proposed SMP.

Sound Transit requests that its light rail transit facilities be allowed as an outright use in all shoreline environments, including UR, CR, CN and CP. Sound Transit is opposed to provisions that would require a “special use” approval or shoreline conditional use permit for its facilities located in a tunnel or on a bridge within the shoreline district.

Proposed SMC 23.60.540 – Uses in the UR Environment

Only in the upland UR environment are “rail transit facilities” allowed outright, per M.6 of the use table, but even in that environment, bridges and tunnels on waterfront lots require a special use permit per M.1.

Proposed SMC 23.60.282 – Uses in the CR Environment

For the CR environment, the use table at N.6 indicates that “rail transit facilities” are allowed, but for “bridges and tunnels” at N.1 the table refers to SMC 23.60.282.H which states “Bridges or tunnels containing rail transit facilities, railroads or streets are allowed as a special use if no reasonable alternative location exists.” This language, together with proposed SMC 23.60.090, means that Sound Transit’s facilities cannot be located on the existing I-90 bridge without special use approval, despite the fact that the use table purports to allow rail transit facilities outright.

Proposed SMC 23.60.240 – Uses in the CN Environment

For the CN environment, the use table at N.6 for “Rail transit facilities” refers to 23.60.240.E which states “Bridges containing rail transit facilities, railroads or streets are allowed as a special use.” Thus special use approval is needed before any light rail facilities can be placed on the I-90 bridge waterward of the shoreline.

Proposed SMC 23.60.252 – Uses in the CP Environment

For the CP environment, the use table at N.6 indicates that “rail transit facilities” are allowed, but for “bridges and tunnels” at N.1, it refers to SMC 23.60.252.E which states “Bridges containing rail transit facilities are allowed as a shoreline conditional use.”

Proposed SMC 23.60.032 – Provisions for Special Use Approvals

The standards for special use approval are in SMC 23.60.032, which is proposed to read:

23.60.032 Criteria for special use approvals

Uses that are identified as requiring special use approval in a particular environment may be approved, approved with conditions, or denied by the

Director. The Director may approve or conditionally approve a special use if the Director finds the applicant has demonstrated:

- A. The proposed use will not interfere with normal public use of public shorelines;
- B. The proposed use of the site and design of the project is compatible with other allowed uses within the area;
- C. The proposed use can mitigate all adverse effects to ecological functions; and
- D. The public interest suffers no substantial detrimental effect.

If the I-90 bridge did not already exist, it might well be impossible to meet these standards.

In addition, neither the existing SMP nor the proposed SMP is clear about what a “special use approval” is. It appears to be best characterized as an “approval” or “decision,” not as a permit, but whatever its proper characterization, it will add a discretionary component to the shoreline permitting process that is not appropriate for a regional essential public facility that must pass through shoreline environments.

DPD Response to the above use comments

Special use is no longer required for Sound Transit projects

Proposed SMC 23.60.208 - Development Standards for Rail Transit Facilities

The proposed SMC 23.60.208, states as follows:

- A. In shoreline environments where railroads and rail transit are allowed, or allowed as a special use or a shoreline conditional use, they shall comply with the standards in the applicable shoreline environment, in this Section 23.60.208, and if located on a bridge or in a tunnel, in Section 23.60.196.
- A. New railroad tracks are allowed in the Shoreline District only if necessary to serve lots in the Shoreline District except as allowed in subsection 23.60.208.C.
- B. Existing railroad tracks may be expanded and new tracks added within existing rail corridors.
- C. Where possible, new rail transit facilities in the Shoreline District shall use existing highway or rail corridors.
- D. All new railroads and rail transit facilities are required to provide means for the public to overcome the physical barrier created by the facility and gain access to the shoreline.
- E. The Director may approve or condition applications for intermittent or temporary railroad or rail transit uses not approved pursuant to subsection 23.80.004.C if the use complies with the following standards:
 - 1. All impacted areas are revegetated with 100% native vegetation;
 - 2. There is no increase in impervious surface from the condition of the site prior to the intermittent or temporary use; and
 - 3. The rail transit use complies with the standards of subsection 23.42.040.F.

This section appears to state use standards as much as it states “development standards,” since it provides standards for where rail transit facilities may be located, and subsections C, D, and E create unnecessary issues for Sound Transit. Subsection C, regarding the use of existing “highway” or rail corridors, could be inconsistent with a future routing decision by the Sound Transit Board and contrary to the City’s duty to accommodate a regional essential public facility. Subsection D, regarding means to overcome physical barriers to the shoreline, could require a future linear transportation facility to construct a costly overpass or underpass.

Subsection E is the language that is proposed to replace the last sentence in SMC 23.60.090.J, which permits, in all shoreline environments, temporary structures or uses that support the construction of light rail transit facilities. The new language gives the Director discretion whether to permit such temporary structures or uses, and such discretion is not appropriate for a regional essential public facility that must cross through the shoreline district. In addition, subsection 2 would prohibit the staging area at UW station that is necessary for the construction of the tunnels under the Montlake Cut. At a minimum this language should be changed to require that “there be no increase in impervious surface *once the temporary use is concluded and the area restored.*”

DPD Response

It is only inconsistent with the City’s EPF duty if compliance precludes siting the EPF. Compliance with the SMP regarding location and mitigation can be required to the extent the EPF is not precluded.

The City may exercise discretion to the extent it does not preclude the facility.

Regarding 23.60.208.E has been changed to 23.60.208.G and subsection 2 has been revised as requested.

Proposed SMC 23.60.157 – Essential Public Facilities

This proposed section is ambiguous. The proposed language states:

23.60.157 Essential Public Facilities

- A. Essential public facilities defined in Section 23.84.A.010 and located in the Shoreline District are subject to the provisions of Chapter 23.80.
- B. Essential public facilities are required to comply with development standards in this chapter and to mitigate all adverse impacts to the ecological functions of shorelines and critical areas by applying mitigation sequencing starting at step C, except as provided in subsection 23.60.EPF.C.
- C. 1. If the applicant for an essential public facility demonstrates that a provision of this chapter, including mitigation of adverse impacts, precludes siting an essential public facility, the Director shall waive or modify that provision . This relief is in lieu of any shoreline conditional use, shoreline variance process,

environmentally critical areas variance, or environmentally critical area exception otherwise applicable.

2. a. The Director shall require the applicant to mitigate all adverse impacts to the ecological functions of shorelines and critical areas related to any relief granted, starting at step B for uses that are prohibited in the environment where the essential public facility is proposed and starting at step C for all other uses.
- b.. Mitigation sequencing does not apply to the scope of the project but does apply to the siting of specific project components of the project.
- c. The Director shall modify the mitigation if the applicant demonstrates it precludes siting the essential public facility.

Subsection B refers to the application of “mitigation sequencing starting at step C, except as provided in subsection 23.60.EPF.C” (sic) and as written raises the following questions:

1. Is this intended to be a reference to step C in the next section of the code, 23.60.158, “standards for mitigation sequencing?”
2. Are the references to “step B” and “step C” in subsection 2.a intended to be references to the mitigation-sequencing steps in 23.60.158?
3. Is the citation in subsection B to “23.60.EPF.C” supposed to be a citation to subsection C of the instant section, 23.60.157, which authorizes the Director to waive or modify a provision of the SMP that precludes siting an essential public facility?

DPD Response

Sections 23.60.157 and 23.60.158 have been revised to clarify the requirements.

The references to steps refer to the mitigation steps for mitigation sequencing in Section 23.60.158. However, because of the revisions to Section 23.60.158 most of the references to steps have been deleted because they are no longer relevant.

Thank you for your consideration of Sound Transit’s comments and concerns regarding the proposed draft SMP. We would welcome the opportunity to work with DPD, as we have done in the past, with regard to the sections of the proposed SMP that directly affect Sound Transit. If you have any questions or need additional information, please feel free to contact me at (206) 398-5135 or ellie.ziegler@soundtransit.org.