

Questions Raised and Information Requested following the October 22 Public Hearing

1. How is the Optional DNS Process applied to this light rail overlay code amendment process?

The City is conducting environmental review required under the State Environmental Policy Act (SEPA) at the same time it is developing the Draft Light Rail Overlay amendment to the Land Use Code (LUC). This is referred to as an “integrated process” that is commonly used for legislative actions such as code amendments. SEPA requires that a threshold determination be made on all “actions” that are not specifically identified as exempt from environmental review. This means that the environmental coordinator must make a determination as to whether an action will have probable significant adverse environmental impacts that would require preparation of an EIS, or whether a determination of nonsignificance (DNS) is appropriate. In the context of a LUC amendment, the Council will be taking what is referred to as a “non-project action” which is a decision on a policy, plan or program. A generalized SEPA checklist is prepared for these types of actions, and the vast majority of code amendments and policy actions taken by the City Council do not require an EIS.

The “Optional DNS Process” for the issuing the threshold determination is being used on the Draft Light Rail Overlay amendment. The “Optional DNS Process” is one way to comply with the obligation under SEPA to make a threshold determination. This process is used in circumstances where the environmental coordinator has predicted that a DNS will be issued (meaning an EIS is not necessary). This prediction is based on an evaluation of the documents in the project file including the SEPA checklist and the draft land use code amendment, and information included on the East Link Land Use Code Amendment website (<http://www.bellevuewa.gov/light-rail-overlay.htm>). The information provided in the project file allows the Environmental Coordinator to determine that it is appropriate to use the Optional DNS Process for the proposed code amendment. The draft light rail land use code amendment before the Council “consolidates” otherwise applicable land use code and policy guidance into a single code section to ensure that a comprehensive and consolidated set of provisions will apply to a light rail use where ever it is proposed or constructed. A code amendment action of this type has virtually always received a DNS.

The optional DSN process requires that the City inform the public early in the process that a DNS is anticipated. This process is used to provide the additional transparency that the public has requested. From the start of the code amendment project, staff described to the public how the process is anticipated to unfold. The intention of this disclosure is to encourage stakeholders to participate in development of the amendment. Staff is seeking to avoid a circumstance where people refrain from participating early in the process because they mistakenly assume that an EIS will be prepared later when it is not likely to be necessary. The optional DNS process still provides an opportunity for the public to comment on both the draft code amendment and the associated environmental review. Any appeal of the SEPA determination on the legislative action would go to the Growth Management Hearings Board together with an appeal of the amendment itself. For legislative actions on code amendments there is no administrative SEPA appeal opportunity provided to the Hearing Examiner under the Bellevue Environmental Procedures Code (irrespective of whether the optional DNS process is used or not). Use of the optional DNS process on the land use code amendment (legislative non-project

action) does not change how SEPA will apply to later applications for East Link permits (project specific actions).

2. How are the Comprehensive Plan Policies and Light Rail Best Practices incorporated into the draft Land Use Code Amendment and applied through the permitting process?

See discussion of the “consistency with Comprehensive Plan decision criterion” for establishing a light rail use and for design and mitigation permits included in the Draft Light Rail Overlay amendment; pages 6 and 7 of Attachment A to the November 13 agenda memo.

3. Why is the South Bellevue Park and Ride located outside of Shoreline Jurisdiction and wetland coverage under the Critical Areas Overlay?

Council discussion at a future meeting (either November 26 or December 3, depending on time required) will focus on substantive requirements applicable to light rail through the Draft Light Rail Overlay amendment, including critical areas mitigation requirements. Additional information about the South Bellevue Park and Ride and the proposed parking structure will be discussed at those subsequent meetings.

4. How will Noise Control code be applied through the permitting process?

In the absence of any change to the Bellevue City Code, technical codes such as the City’s Noise Control Code that are currently applicable to Sound Transit will continue to apply following amendments to the Land Use Code (LUC). The particular circumstances that trigger application of a Bellevue City Code (BCC) provision vary between technical codes. Some codes are triggered by a “permit application” – these include the Construction Codes from Title 23 BCC that address issues such as Building, Mechanical, and Plumbing. Some codes are triggered by an “activity” – these include many of the Health and Safety codes from Title 9 BCC that address issues such as Nuisances and Noise Control. Other codes are triggered by both permit applications and activities unrelated to a permit – these include the Utilities Codes from Title 24 BCC that address issues such as Water Utilities and Storm and Surface Water Utilities.

All permit applicants, and individuals engaged in regulated activities, are required to comply with code provisions that apply to that specific permit or activity. Applicable code provisions are either enforced through technical code review prior to issuance of a permit or through an enforcement action when a code violation has occurred. No technical code requires cross-referencing in the LUC to apply or to be effective. Each technical code operates independently of the LUC based on the triggers and requirements contained in that specific technical code. That is why the permit decision criteria for “land use” permits (e.g., Conditional Use Permits, Administrative Conditional Use Permits, Design Reviews, etc.) only require consistency to be demonstrated with the LUC. Consistency with the Bellevue City Code is not required before a “land use” permit can be issued. However, each “land use” permit does include a standard condition requiring adherence to all applicable Bellevue City Code provisions. This

condition is included to ensure that all interested parties are placed on notice that additional codes will apply as the project moves forward to construction and operation.

The Draft Light Rail Overlay follows the current approach used for all “land use” permit approvals, and requires a regional transit authority to demonstrate that they have complied with applicable policies of the Comprehensive Plan and provisions of the LUC. Consistency with other city codes, such as the Noise Control Code, will need to be demonstrated when the above-described triggers come into play.

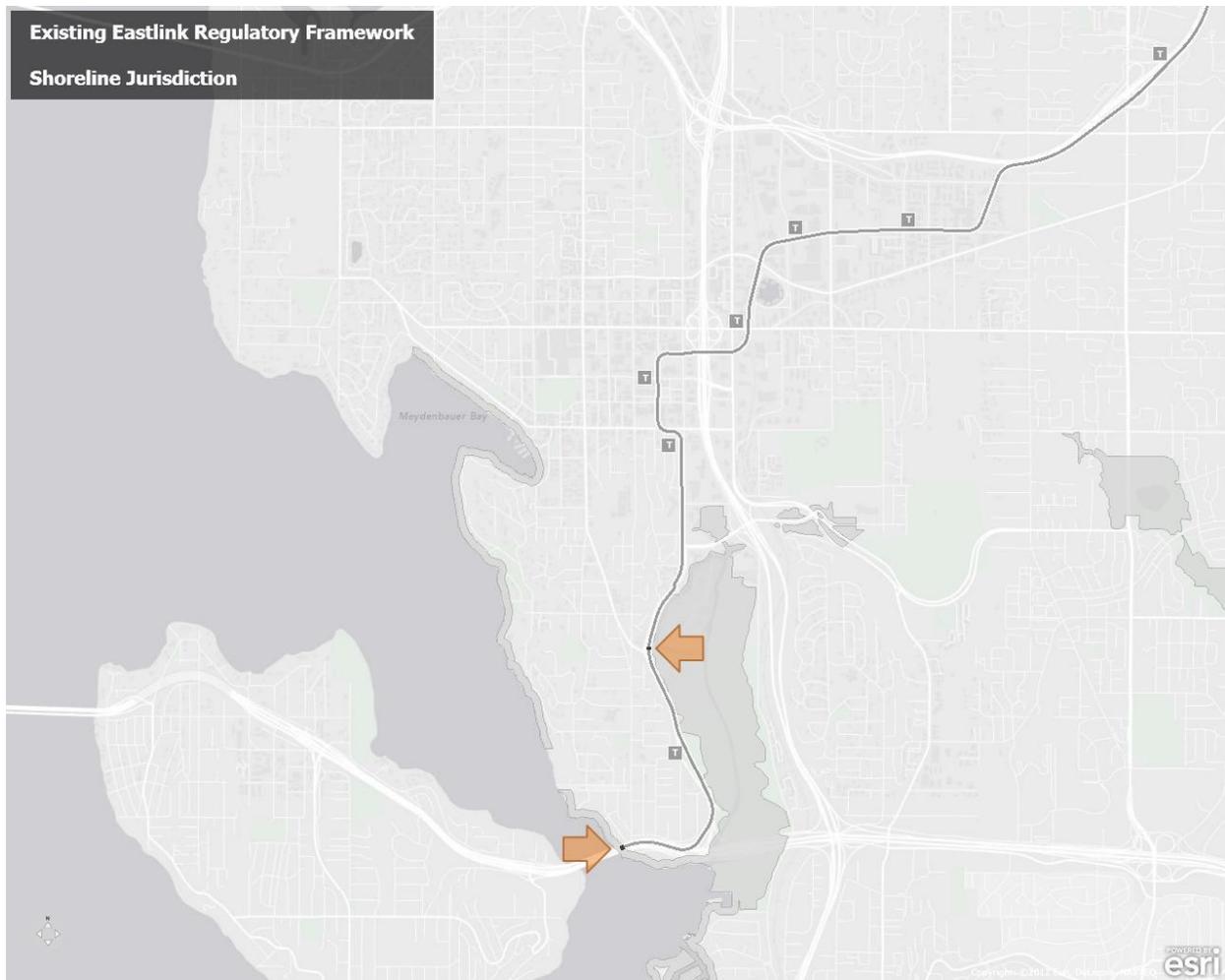
5. How are the Shoreline Master Program and Critical Areas Overlay provisions incorporated into the draft Land Use Code Amendment and applied through the permitting process?

The Shoreline Management Act (SMA) applies to those areas within 200 feet of shorelines of statewide significance and associated wetlands. Compliance with Shoreline Master Program provisions is required through the shoreline permit process, which requires a substantial development permit, for any portion of the alignment within shoreline jurisdiction. These permits will be processed according to the requirements of 20.25E of the Land Use Code. A copy of the Shoreline Jurisdiction Map for the East Link Alignment was presented to Council during the October 22 Public Hearing, and a copy has been included below for Council reference.

The Draft Light Rail Overlay incorporates by reference Part 20.25H (Critical Areas Overlay) and requires that any proposal comply with the provisions of that overlay. Through the permitting process, Sound Transit will be required to show the location and extent of any critical areas within the boundaries of its project. Any work within a critical area or buffer will require mitigation and restoration pursuant to Critical Area Overlay requirements that will be imposed during the Design and Mitigation Review described in section 20.25M.030.C of the Draft Light Rail Overlay amendment.

The Draft Light Rail Overlay includes one modification to part 20.25H. Under the existing Critical Areas Overlay, new public infrastructure (like roads and utilities) are allowed within critical areas if no other technically feasible alternative exists. The Draft Light Rail Overlay does not require this technical feasibility analysis if the alignment has already been approved by the City Council through some other action (i.e. adoption of the proposed alignment through the MOU).

A similar exception to the technical feasibility analysis is included in the Draft Shorelines Master Program update and related critical areas overlay amendments under consideration by the Planning Commission. As currently drafted, these changes would apply to City infrastructure projects or parks projects that have been the subject of a separate, Council-approved, planning process.



6. How will citizens be involved in Station Design and Station Area Planning?

Opportunities for citizen involvement in Station Area Planning are described in Response 15 to the October 8 Council Questions. The method of engagement may vary from one station area to another due to differences in station area characteristics and issues, but in all cases the planning will include a robust public engagement component. Staff will check in with Council with a public outreach plan for each effort to seek concurrence on the proposed approach.

With respect to public involvement in Station Design, staff fully expects Sound Transit to engage citizens in station design development. In other jurisdictions this has typically occurred starting in the early stages of design development (around 30% complete) which allows citizens to influence and gain a sense of ownership in the eventual station design. The proposed amendment could be modified to require Sound Transit, as part of an application for a Design and Mitigation Permit, to demonstrate that design engagement and collaboration with the community has occurred (similar to what the City requires of PSE for new or expanded electrical utility facilities located on sensitive sites identified in the Comprehensive Plan).

7. How is the Maintenance Facility regulated under the draft Land Use Code amendment?

This question was originally posed by Council during its October 8 Study Session. At that time, staff responded that the Draft Light Rail Overlay Code Amendment was developed to specifically address project elements identified in the Memorandum of Understanding (MOU) between the City of Bellevue and Sound Transit (November 2011). There was no heavy maintenance facility identified in the MOU, nor in the terms of the Collaborative Design Process. As a result, the draft code amendment did not specifically address this project component. Conversation regarding the need for a Heavy Maintenance Facility by Sound Transit began simultaneously with the release of the first draft and could not be incorporated prior to the October 22 Public Hearing Draft Light Rail Overlay.

The language defining a “Regional Light Rail Transit Facility” specifically includes project components identified in the MOU, but extends to other unidentified project components without limitation. Refer to Draft Land Use Code Amendment section 20.25M.020. As currently drafted, provisions contained in the Light Rail Overlay would apply to the Heavy Maintenance Facility if it were to be proposed as a component of the East Link project on a site located in Bellevue. The Heavy Maintenance Facility is also an Essential Public Facility, and the City must ensure that its policies and regulations do not preclude components of a light rail facility. The City Council could direct staff to include additional design guidelines and mitigation standards that would address the unique characteristics of such a facility.