

Recreation and Conservation Funding Board Briefing Memo

APPROVED BY RCO DIRECTOR KALEEN COTTINGHAM

Meeting Date: April 9, 2015

Title: Conversion Request: City of Bellevue, Mercer Slough Phase 1 (RCO Project 73-026A) and Mercer Slough (RCO Project 78-513A)

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Summary

The City of Bellevue and State Parks are asking the board to approve a conversion of 1.06 acres at Mercer Slough Nature Park. The conversion is due to the Sound Transit East Link light rail project, which will impact a portion of the western edge of the park.

The board was briefed on the proposed conversion in April 2014. The board was asked to approve the conversion request in October 2014. The board tabled the decision at that time pending additional information.

Board Action Requested

This item will be a:

- Request for Decision
- Request for Direction
- Briefing

Resolution: 2015-04

Purpose of Resolution: Approve or deny the conversion.

Summary of the October Meeting

The Recreation and Conservation Funding Board (board) tabled the conversion decision, Resolution 2014-32, at the October 2014 meeting. They requested additional information specifically regarding:

- the board's authority on a conversion and its ability to require reversionary rights on the proposed conversion areas;
- the characteristics and use of the proposed conversion areas;
- the legal challenges to the East Link light rail project that is creating the conversion; and
- the impact of the light rail on park use, the park's hydrology, vegetation, wetlands, and wildlife.

The City of Bellevue and Sound Transit provided the requested information on the conversion areas, alternatives considered, legal challenges, and impacts of the East Link light rail project on the park. The information may be found in Attachment A: Supplemental Information for the Conversion Request for Mercer Slough Nature Park.

The Role of the Board in Conversions

Because needs and values often change over time, federal law and board policy allow conversions of grant-funded property under carefully scrutinized conditions. If a Land and Water Conservation Fund (LWCF) or state-funded project is converted, the project sponsor must replace the converted interests in real property, structures, or facilities. The replacement must have at least equal market value and have reasonably equivalent recreation utility and location.

Under current policy¹, the board's role is to consider:

- if practical alternatives to the proposed conversion, including avoidance, have been evaluated on a sound basis,
- if the proposed replacement property is of equivalent value and utility, and
- if the public has had an opportunity to comment on the proposed conversion and replacement.

The board either approves a conversion or denies the request if the conditions above are not met to the board's satisfaction. The board does not have the ability to accept other types of mitigation, levy additional penalties or conditions, or dictate the future use of the property being converted.

Because one of the projects involved here was partially funded by the federal LWCF, the role of the board is to decide whether to recommend approval of the conversion to the National Park Service (NPS). To do so, the board:

- evaluates the list of practical alternatives that were considered for the conversion and replacement, including avoidance, and
- considers if the replacement property has reasonably equivalent recreation utility and location.

The NPS has the legal responsibility to make the final decision of whether or not to approve the conversion related to the LWCF project.

At the October meeting, the board discussed placing reversionary rights on the conversion areas.

Question: Does the board have the authority to require reversionary rights on the converted property?

Answer: Under current policy, adding a reversionary right would be an additional condition of approving the conversion and is beyond the authority of the board.

When a conversion is approved for an acquisition project, the Recreation and Conservation Office (RCO) deed of right is released on the converted property and is added to the replacement property. The converted property is no longer subject to Recreation and Conservation Funding Board policy.

Mercer Slough Nature Park and the Proposed Conversion Areas

Mercer Slough Nature Park is the largest of Lake Washington's remaining freshwater wetlands and serves as a regional park for the greater Puget Sound. It is also one of the City of Bellevue's largest parks, with over 320 acres of wildlife habitat, agriculture, and freshwater wetland ecosystems. The park offers about seven miles of trails, including a canoe trail and opportunities for environmental education and wildlife viewing. The public may access the park from five points on the eastern side of the park and from nine points on the western side of the park. The western access points include two watercraft launches.

¹ Manual 7, Long-Term Obligations

The East Link light rail system will impact board-funded sites in two separate locations: 1) on the western edge of the park adjacent to Bellevue Way SE, and 2) on the park's Periphery Trail, a wide sidewalk located within the street right-of-way. This will create a conversion of a total of 1.06 acres (Attachment B).

The North Conversion Area, funded with LWCF, is adjacent to the park's Periphery Trail, a wide sidewalk that separates the park from Bellevue Way SE. The north conversion area is approximately 35 feet in width and approximately 530 feet in length located in the northwest section of the park. The area is sloped and consists of cottonwoods, wetlands, blackberry vines, and an outfall from Wye Creek. The conversion area is visible from the sidewalk and from a kayak or canoe at the water level from the northwest corner of Mercer Slough.

The South Conversion Area, funded with state bonds, is also adjacent to the park's Periphery Trail. The south conversion area is approximately 35 feet in width and located approximately 170 feet south of the Winters House. The area provides pedestrian access into the park and a driveway that provides vehicular access to the blueberry farm. A portion of the Heritage Loop Trail, a compacted natural trail to the Winters House, and an A-frame residence are located within the conversion area. The undeveloped area consists of dense vegetation.

The conversion areas include both permanent acquisition and temporary construction easements. The temporary easements extend beyond the 180-day allowable timeframe,² thereby creating a conversion.

Each temporary construction easement area will be revegetated and landscaped when light rail construction is completed.

In addition to providing six acres of replacement property, the City of Bellevue's mitigation includes constructing a trail on the replacement property to link with the Mercer Slough Environmental Education Center and an interior park trail; construction of a boardwalk trail to replace a natural surfaced trail; and widening the Periphery Loop Trail and installing landscaped strips.

Additional maps, visuals of the conversions areas, and impacts of the light rail system on the conversion areas may be found in Attachment A, pages 3-15 through 3-27.

Responses to the Board's Questions

Responses to the board's questions regarding the alternatives considered and the impacts of Segment B of the East Link light rail on Mercer Slough Nature Park were provided by the City of Bellevue and Sound Transit (see Attachment A).

References to respective page numbers for additional information on each topic are provided as follows.

Question: Were practical alternatives, including alternatives B7 and B7R, a tunnel, and avoidance, evaluated and rejected for sound reasons?

Answer: The City of Bellevue participated in the alternatives analysis for the East Link Extension light rail project which was conducted by Sound Transit in compliance with the National Environmental Policy Act (NEPA) and the State Environmental Policy Act (SEPA).

² LWCF and RCFB policy limits temporary non-conforming uses of funded sites to 180 days; exceeding 180 days creates a conversion (Manual 7: Long-term Obligations).

Sound Transit evaluated 8 alternatives for Segment B during the scoping phase, 5 alternatives during the Draft Environmental Impact Statement (EIS) process, and 6 alternatives during the Final EIS process.

Avoidance alternatives considered included:

- Locating the light rail within I-90,
- Locating the light rail west of the park through the Enatai residential neighborhood, and
- Locating the light rail on Bellevue Way SE.

The City of Bellevue concurred with the analysis conducted under Section 4(f) of the National Transportation Act on the use of publicly-owned parks, recreation areas, or wildlife and waterfowl refuges for federal transportation projects. (Attachment E).

A timeline of the alternatives considered in the environmental impact statement process may be found in Attachment A, page 2-4. Details and reasons for rejecting the alternatives B7 and B7R and a tunnel may be found on page 3-1 and for the avoidance alternatives on page 3-4. Information on the selected alternative, B2M, may be found on page 1-6.

Question: What were the legal challenges and outcomes?

Answer: The Final Environmental Impact Statement (EIS) was challenged under the State Environmental Policy Act and was upheld in King County Superior Court. The Final EIS was challenged under the National Environmental Policy Act and was upheld in the Western District of Washington, United States District Court. The Shoreline Substantial Development permit issued by the City of Bellevue and the Shoreline Variance permit issued by the Washington State Department of Ecology have been appealed to the Washington State Shorelines Hearing Board.

A timeline of the East Link light rail project scoping and environmental review, including the legal challenges to the project, may be found in Attachment A, page 2-3. Information on the legal challenges may be found in Attachment A, pages 3-5 to 3-6.

Question: What are the interim and long-term changes in use of the park?

Answer: Information on the pre-construction, construction, and post-construction closures and changes to access to the park and park facilities may be found in Attachment A, pages 3-7.

Question: What are the impacts of the light rail project to public access to the park and its facilities?

Answer: There are currently 14 access points to the park. Twelve access points are for pedestrian, bicycle, or vehicle parking and 2 access points are for watercraft access only.

A description and map of park access currently, during construction, and following construction may be found in Attachment A, pages 3-8 through 3-10.

Question: What are the hydrologic impacts of the light rail project?

Answer: An explanation of the trench design, and groundwater and stormwater flow into the slough may be found in Attachment A, page 3-11.

Question: What are the vegetation and wetlands impacts of the light rail project?

Answer: There are 148 trees that will be removed in the conversion areas and 543 trees will be removed in other areas of the park. Forty-three trees will be planted in the conversion areas and 2,830 trees will be planted in other areas of the park.

Details on the trees that will be removed and added may be found in Attachment A, pages 3-11 through 3-12.

The total amount of wetlands and wetland buffers in the conversion areas that are impacted is 0.91 acres. A total of 4.29 acres of wetlands and wetland buffers will be impacted in other areas of the park.

Details on the impacts to wetlands, wetland buffers, and streams and mitigation may be found on pages 3-12 through 3-13

Question: What are the impacts to wildlife of the light rail project?

Answer: Information on the impacts to wildlife may be found in Attachment A, pages 3-13 through 3-14.

Question: What are the visual impacts of the light rail project?

Answer: Visual impacts to the conversion areas may be found in Attachment A, pages 3-19, 3-20, and 3-25 through 3-27. Visual impacts to other parts of the park may be found on pages 3-28 through 3-30.

Additional photos of the interior of the park may be found on pages 3-32 through 3-33.

Background on Funded Projects

The projects in question are Mercer Slough Phase 1 (RCO Project 73-026A) and Mercer Slough (RCO Project 78-513A).

Project Name:	Mercer Slough Phase 1	Project #:	73-026A
Grant Program:	Referendum 28 (bond funds) Land and Water Conservation Fund	Board funded date:	May 23, 1971
LWCF Amount	\$ 410,874.66	Original Purpose: This project acquired about 60 acres to preserve a natural peat bog ecosystem.	
Referendum 28 Amount	\$ 205,437.33		
Project Sponsor Match	\$205,437.33		
Total Amount:	\$ 821,749.32		

The City of Bellevue used the Mercer Slough Phase 1 grant in 1975 to acquire approximately 60 acres for a nature park. This park is now called Mercer Slough Nature Park.

Project Name:	Mercer Slough	Project #	78-513A
Grant Program:	Referendum 28 (bond funds)	Board funded date:	May 23, 1971
Referendum 28 Amount	\$ 206,000	Original Purpose: This project acquired about 24 acres.	
Project Sponsor Match	\$206,000		
Total Amount:	\$ 412,000		

State Parks used the Mercer Slough grant in 1981 to acquire approximately 24 acres to expand the Mercer Slough Nature Park.

The City of Bellevue and State Parks formed a partnership in the 1970's to maintain an ecological resource in an urban area. Mercer Slough Nature Park was created and the agencies established an inter-local agreement for the operation and maintenance of the park.

The City of Bellevue is the lead agency for the conversion approval process for these two projects. At the city's request, the Washington State Parks and Recreation Commission has approved the transfer of all of State Parks' interests in Mercer Slough to the City of Bellevue. Final property transfer negotiations are underway.

Since the original grants to acquire property, RCO has made the following investment at the park:

- Mercer Slough Habitat, #91-225D, WWRP-UW, which constructed a trail bridge and trail and enhanced habitat by creating a pond and adding landscaping.

The Conversion

The conversion at Mercer Slough Nature Park is caused by the expansion of Sound Transit Light Rail system from downtown Seattle to Redmond. A segment of the 18-mile East Link project will impact two areas on the western boundary of the park, creating a conversion (Attachment B).

The light rail system will enter the park at its southwestern edge, near I-90, on an elevated structure to a station located at the existing South Bellevue Park and Ride. From the station, the rail proceeds north along western edge of the park, descending from elevated piers to a retained cut profile below the grade of Bellevue Way SE. The retained cut includes a lidded trench section in front of the Winters House. The Winters House is listed in the National Register of Historic Places for its Spanish Eclectic style and its link with early agricultural activities in the area.

The light rail system will impact the board-funded sites in two separate locations on Bellevue Way SE, creating a conversion of 1.06 acres (Attachment B). The conversion areas include both permanent acquisition and temporary construction easements. The temporary easements extend beyond the 180-day allowable timeframe,³ thereby creating a conversion.

The remainder of the light rail system within the park area, approximately 2,410 linear feet, lies outside of RCO project boundaries.

Light rail construction is expected to begin in 2015 and be completed in 2019. The East Link light rail is anticipated to open in 2023.

³ LWCF and RCFB policy limits temporary non-conforming uses of funded sites to 180 days; exceeding 180 days creates a conversion. (Manual #7: Long-term Obligations)

Details of Proposed Replacement Property

Location

The proposed replacement property includes 6 acres located at 1865 118th Avenue SE, Bellevue. It is bordered by the city street to the east and Mercer Slough Nature Park to the north, south, and west.

The property consists of two parcels totaling 6.16 acres, however, the city is reserving 0.16 acres on the property's eastern edge adjacent to the city street as future right-of-way. (Attachments C).

Property Characteristics

The proposed replacement property is rectangular-shaped and contains significant wetlands on the westernmost parcel that borders Mercer Slough. It is unimproved and covered with vegetation. The city will preserve it as open space and wetland habitat that will provide a connection between previously separated parts of the park.

Planned Development

The city plans to construct a trail on the proposed replacement property that will link to the Mercer Slough Environmental Education Center Trail and to the Bellefields Loop Trail (Attachment D). The trail will provide opportunities for hiking, wildlife watching, and environmental education activities. Trail construction is expected to begin sometime this year. In addition, the city plans to construct a boardwalk trail to replace a natural surfaced trail and to widen the Periphery Loop Trail and install landscaped strips where sidewalk width allows.

Analysis

As described previously, when reviewing conversion requests, the board considers the following factors, in addition to the scope of the original grant and the proposed substitution of land or facilities.⁴

- All practical alternatives to the conversion have been evaluated and rejected on a sound basis.
- The fair market value of the converted property has been established and the proposed replacement property is of at least equal fair market value.
- Justification exists to show that the replacement property has at least reasonably equivalent utility and location.
- The public has opportunities for participation in the process.

Evaluation of Practical Alternatives

Sound Transit began formal planning for the East Link project in 2006 to expand light rail service from Seattle to Bellevue and Redmond. The East Link Extension was evaluated through the National Environmental Policy Act (NEPA) and the Washington State Environmental Policy Act (SEPA) review process. The City of Bellevue and Sound Transit executed a Memorandum of Understanding in 2011 which helped facilitate a formal collaborative design process.

As stated earlier, Sound Transit evaluated 8 alternatives for Segment B during the scoping phase, 5 alternatives during the Draft Environmental Impact Statement (EIS) process, and 6 alternatives during the

⁴ Manual #7: *Long-term Obligations*

Final EIS process. Three alternatives that would avoid Mercer Slough Nature Park were considered and rejected in the analysis.

The proposed replacement property was selected by the City of Bellevue based on the following factors:

- The property is an inholding within the overall park boundaries and provides a connection to two parts of the park that have been bisected.
- It provides for additional access to the park from its eastern edge.
- The replacement property is consistent with state and local plans.

Evaluation of Fair Market Value

The conversion areas and replacement property have been appraised for fee title interests with market value dates that meet board policy.

	Conversion Property	Replacement Property	Difference
Market Value	\$495,000	\$633,120	+\$138,120
Acres	1.06 Acres	6 Acres	+4.94 Acres

Evaluation of Reasonably Equivalent Location

The replacement property is located within the overall park boundary in the northeastern part of Mercer Slough Nature Park.

Evaluation of Reasonably Equivalent Utility

The replacement property has similar characteristics as much of the slough, the nature park, and of the conversion areas. It is undeveloped open space consisting of wetlands, wetland buffers, and natural vegetation. The replacement parcel will provide similar utility with wetland habitat that attracts migratory birds and other wildlife and opportunities for hiking, wildlife watching and environmental education with the planned trail development. The city plans to construct a trail on the replacement property in 2015.

LWCF policy allows for wetland areas to be considered as reasonably equivalent utility if wetlands are identified in the Statewide Comprehensive Outdoor Recreation Plan (SCORP). The state’s adopted plan identifies wetlands as important for wildlife and recreation.

Evaluation of Public Participation

Sound Transit is the lead agency for public participation in the East Link project National Environmental Policy Act (NEPA) environmental review process. The transit agency held numerous open houses, hearings, and workshops to gather public comment. The City of Bellevue also participated in the public outreach efforts.

The City of Bellevue published public notice on the conversion and proposed replacement property as required by board policy. A notice was published in the Bellevue Reporter newspaper. In addition, the city sent a notice via email to subscribers to the Bellevue Parks and Community Services Board on August 20, 2014, and posted the notice on the city’s webpage for the Parks and Community Services Board. A notice was placed at the park’s trailhead kiosks and at the Mercer Slough Environmental Education Center Visitor’s Center. The Parks and Community Services Board held a public meeting on September 9, 2014.

Other Basic Requirements Met

➤ Same Project Sponsor

The replacement property will be administered by the same project sponsor (City of Bellevue).

➤ Satisfy Needs in Adopted Plan

The replacement property satisfies the needs as described in the City of Bellevue Parks and Recreation Comprehensive Plan by acquiring available land adjacent to existing community parks, specifically citing Mercer Slough Nature Park, and helping to expand those parks' capacity for passive recreation, wetland stewardship, preservation of wildlife habitat, and education.

➤ Eligible in the Funding Program

The replacement property meets eligibility requirements and was acquired under a state and federal waiver of retroactivity for the purpose of satisfying the conversion.

Next Steps

If the board chooses to recommend approval of the conversion, RCO staff will prepare the required federal documentation and transmit that recommendation to the National Park Service. Pending NPS approval, staff will execute all necessary amendments to the project agreement, as directed.

In addition, if the board chooses to approve the state-funded conversion, staff will execute all necessary amendments to the project agreement, as directed.

Attachments

- A. Supplemental Information for the Conversion Request for Mercer Slough Nature Park
- B. Sound Transit East Link Route Map along West Edge of Mercer Slough Nature Park; Detail Map of Conversion Areas
- C. Map of Proposed Replacement Property
- D. Visual of Planned Trail on Proposed Replacement Property
- E. City of Bellevue Concurrence with Sound Transit 4(f) Evaluation (23 CFR 774.111, Section 4(f))
- F. Resolution 2015-04

Supplemental Information

Conversion Request

Mercer Slough Nature Park

Sound Transit's East Link
Extension Project

Prepared by City of Bellevue and Sound Transit

February 2015

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SECTION 1

Introduction

At the April and October 2014 Recreation and Conservation Funding Board (RCFB) meetings, staff from the Recreation and Conservation Office (RCO) presented proposals for partial conversions of a State Bond parcel and a Land and Water Conservation Fund (LWCF) parcel comprising 1.06 acres in the Mercer Slough Nature Park in the City of Bellevue. The conversion is related to the Sound Transit East Link Extension light rail project, which will be located on the western edge of the park.

This supplemental information has been prepared to provide additional information to the RCFB regarding Sound Transit's evaluation of alternatives, the public involvement process, impacts and mitigation associated with parkland conversion, and to address questions regarding the proposed conversion.

This supplemental information is organized as follows:

Section 1, Introduction, describes Sound Transit's East Link Extension and describes Mercer Slough Nature Park.

Section 2, Alternative Considered, presents the alternatives development, analysis and public involvement processes that occurred during environmental review under the National Environmental Policy Act (NEPA) and the State Environmental Policy Act (SEPA). It also discusses the key milestones of the East Link Extension.

Section 3, Questions and Answers, provides responses to questions raised at the prior RCFB briefings and discusses the 1.06 acres of South (State Bond) and North (LWCF) Conversion properties proposed for conversion to the light rail project.

Section 4, Additional Background Material, provides additional information on Sound Transit, light rail, the East Link Extension project and detailed drawings of the project along Mercer Slough Nature Park.

1.1 East Link Extension Project Description

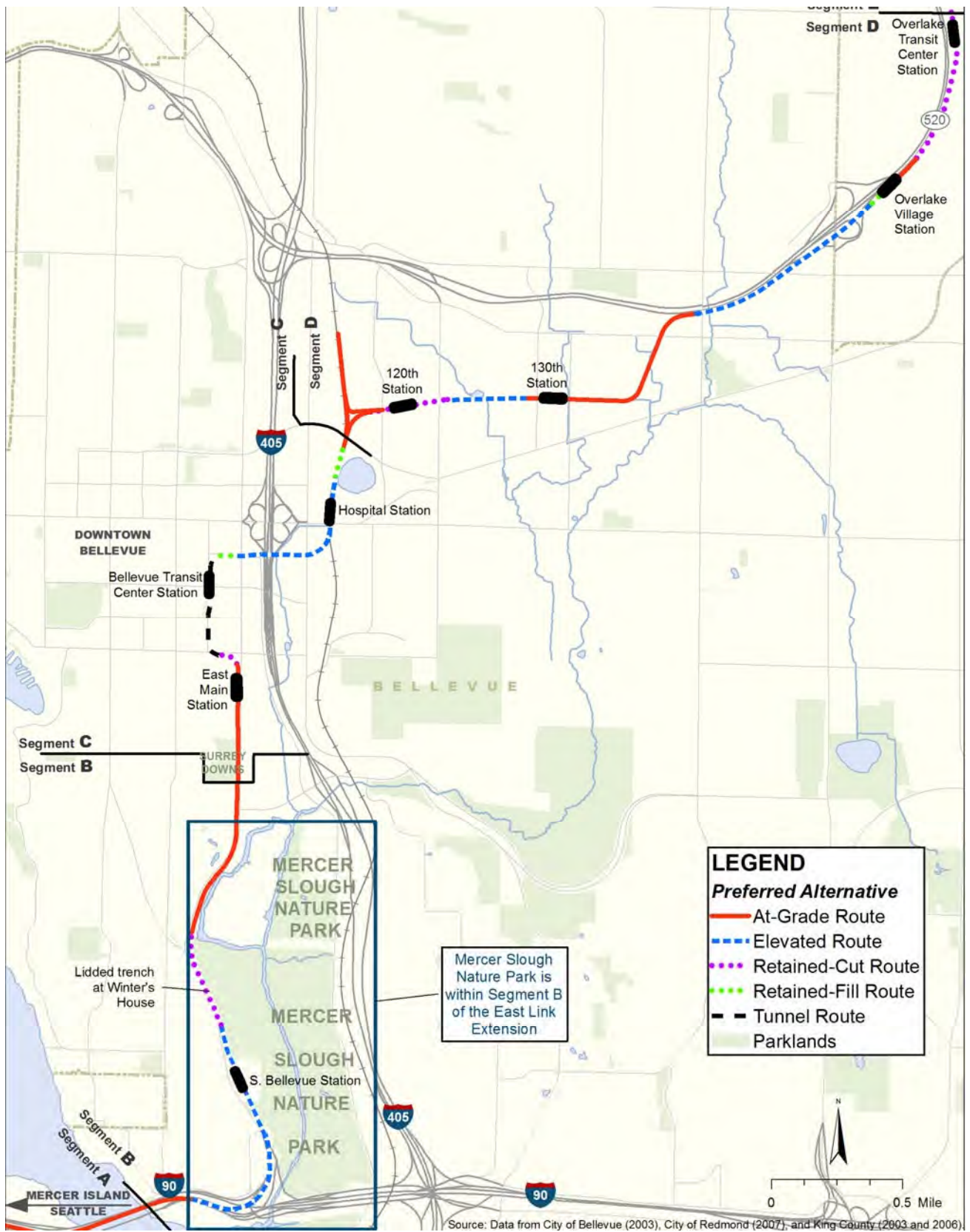
The purpose of the East Link Extension project is to expand the Sound Transit LINK light rail system from Seattle to Mercer Island, Bellevue, and Redmond via Interstate 90 (I-90) and to provide a reliable and efficient alternative for moving people throughout the region. This extension will be 14 miles long and provide service 20 hours per day in the Seattle-Bellevue-Redmond corridor. The selected alternative has a daily projected ridership in the corridor of about 50,000 boardings by 2030.



East Link Extension Corridor Map



East Link Extension Project Schedule



Source: Data from City of Bellevue (2003), City of Redmond (2007), and King County (2003 and 2006)

East Link Extension Selected Project at Mercer Slough Nature Park

1.2 Description of Mercer Slough Nature Park

Mercer Slough Nature Park is a 320-acre park primarily consisting of peat bog wetlands connected to Lake Washington. The City of Bellevue and Washington State Parks formed a partnership in the 1970s to preserve the ecological resource that is Mercer Slough. The park objectives are stated in the *Mercer Slough Open Space Master Plan Environmental Impact Statement* (City of Bellevue, 1990) as follows:

- Maintain and enhance the extensive wetland wildlife habitat, thereby increasing species numbers and diversity.
- Provide environmental education and awareness through natural system interpretation.
- Maintain and diversify Bellevue’s agricultural heritage.
- Participate in regional and national efforts to understand wetland ecosystems through research in restoration enhancement techniques.
- Provide passive recreational opportunities in harmony with natural system preservation.
- Maintain and protect important views and open space values.

Consistent with these objectives, the park provides wetland habitat, environmental education and awareness, heritage agriculture, nature observation, open space with pedestrian trails, a water trail for non-motorized boats, benches, and interpretive signs.

The park’s facilities and recreational features include:

- Mercer Slough Blueberry Farm, including retail fruit and vegetable produce sales
- Sweylocken boat launch
- Trails and trailhead facilities
 - Periphery Loop Trail—park circumference trail primarily using sidewalks of adjacent roads
 - Heritage Loop Trail—internal trail on western side of the park
 - Bellefields Loop Trail—internal trail on eastern side of the park
 - I-90 Mountains to Sound Greenway Trail -- regional trail crosses the park on the north side of I-90
 - Mercer Slough Water Trail—water channel accessible by non-motorized boats
- Historic F.W. Winters House, available for event rentals and programmed by the Eastside Heritage Center
- Mercer Slough Environmental Education Center
- Parking for the facilities above

The park is bordered on the west by Bellevue Way SE, a 4-lane arterial that provides access to and from I-90. To the west of Bellevue Way SE, is a steep wooded hillside bordering the single-family, Enatai neighborhood. The South Bellevue Park-and-Ride, owned by WSDOT and operated by King County Metro, has 519 parking spaces and is also located in the southwest corner of the park. Interstate 90 crosses the south part of the park. On the east, the park is bordered by 118th Avenue SE with residential apartments and Interstate 405 east of 118th Ave. To the north the park is bordered by SE 8th Street, Bellefield Office Park and other commercial land uses.



Mercer Slough Nature Park and Surrounding Area

1.3 Selected Project (Alternative B2M)

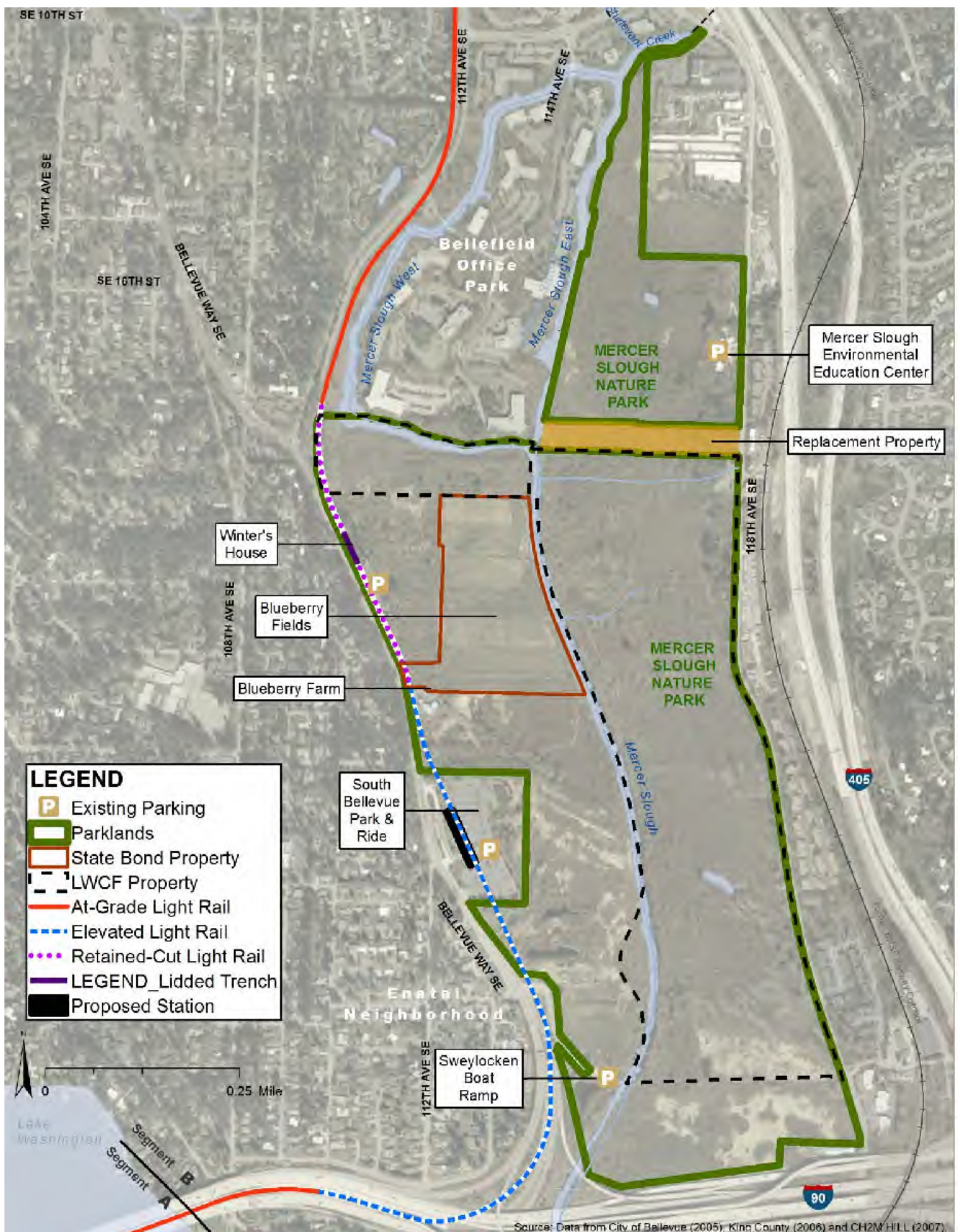
Alternative B2M is the light rail alignment that was selected by the Sound Transit Board in 2011 for the area adjacent to Mercer Slough Nature Park (see figure of B2M in relation to Mercer Slough Nature Park on next page). This decision was unanimously approved by the Bellevue City Council in 2011 and confirmed again in 2013.

Sound Transit's alignment decision was made after consideration of the project goals to meet public transportation needs while also being a responsible steward of the environment and being considerate of affected agencies and communities when planning a fiscally responsible project. These goals are described in more detail in Section 2. This was informed by years of public and agency comment and environmental review including pre-scoping, scoping, Draft Environmental Impact Statement (EIS), Supplemental Draft EIS, Final EIS, and SEPA Addendum, as well as a separate alternatives analysis under Section 4(f) of the Department of Transportation Act. As discussed in detail in Section 2, these review processes required Sound Transit to evaluate all reasonable, prudent and feasible alternatives to the selected alignment under SEPA, NEPA, as well as avoidance alternatives under Section 4(f). The Bellevue City Council's decision to approve the alignment also was informed by Sound Transit's years of environmental review and public comment as well as the City's own extensive public outreach and engagement.

This alternative includes the following features:

- The alignment exits the I-90 center roadway, crosses over westbound I-90, and continues elevated on the east side of Bellevue Way SE to the South Bellevue Station, which is located at the current 519-stall South Bellevue Park & Ride.
- The proposed South Bellevue Station includes a five-level parking structure built on the site of the existing South Bellevue Park & Ride; however, only two stories would be visible above Bellevue Way SE. The parking garage will have approximately 1,500 spaces.
- After leaving the station, the alignment transitions to a retained cut/trench on the east side of Bellevue Way SE within Mercer Slough Nature Park to the intersection of Bellevue Way SE and 112th Avenue SE. In front of the Winters House, the route is in a lidded trench approximately 170 feet long.
- Several existing features of Mercer Slough Nature Park located along Bellevue Way SE north of the park and ride will be modified or relocated as part of the light rail project. These include consolidating the blueberry farm and Winters House access, parking and activities in one area. At this location, a new building will include retail space for the blueberry farm and public restrooms.

Detailed design drawings are provided at the end of Section 4.



Selected Project—Alternative B2M

Reasons supporting the selected alignment compared to other alternatives includes the following:

- Provides a direct route from I-90 to downtown Bellevue.
- High ridership, connects to the existing South Bellevue Transit Center park-and-ride which has convenient bus connections from I-90 and within Bellevue.
- Minimizes impacts to the natural environment, low impacts to wetlands, low impact to wildlife habitat.
- Minimizes construction and operational impacts to Bellevue Way SE, a high volume, four-lane arterial and major access point to I-90.
- Minimizes impacts to the residential community to the west, including lower noise and visual impacts, property acquisition and displacements.
- The trench profile reduces visibility of the light rail from within the park, from Bellevue Way SE and the residences to the west.
- The lidded trench in front of the Winters House preserves the historic visual setting of the house.
- The Periphery Loop Trail along Bellevue Way SE will be widened and improved with streetscape planting beds and street trees consistent with City of Bellevue's Pedestrian and Bicycle Master Plan.
- The East Link EIS analysis concluded that the selected alignment was one of the alternatives having the least overall impact on parklands and Section 4(f) resources (including but not limited to Mercer Slough Nature Park). The U.S. Department of the Interior concurred with this conclusion (letter August 19, 2011).
- This alternative is affordable within the project budget.

Alternatives Considered

The alternatives analysis process for the East Link Extension project took place over almost eight years, from 2006 through 2013. The chronology for this process is presented on the next page, followed by a review of the alternatives considered in Segment B, where Mercer Slough Nature Park is affected.

All alternatives were evaluated to determine whether they satisfied the following Sound Transit project planning goals described in the Environmental Impact Statement (EIS):

- **Transportation Goal:** Improve transit mobility in the East Link Extension corridor.
- **Environmental Goal:** Preserve environmental quality.
- **Land Use Goal:** Support regional and local land use goals and objectives.
- **Implementation Goal:** Minimize risk.
- **Financial Goal:** Provide a financially feasible solution.

The first step in the alternatives development process involved exploring all previously suggested transit routes within the East Link Extension corridor from 24 previous studies completed between 1970 and 2006. This occurred during the pre-scoping phase. From these studies, 7 conceptual route alternatives or variations of the alternatives adjacent to Mercer Slough Nature Park (Segment B) were studied, and several of these were removed from further consideration during the pre-scoping process.

The EIS scoping process (2007) presented 8 specific alternatives for consideration in Segment B, which consisted of traveling up Bellevue Way SE, 118th Avenue SE or BNSF corridors with different profiles (elevated, at-grade and retained cut) and alignments in respect to the roadway. During the scoping process, a tunnel alternative was suggested but, after a preliminary evaluation of that alternative, it was not carried forward. The Draft EIS (2008) studied five alternatives in the project area including four alternatives along Bellevue Way SE and one along the BNSF corridor east of Mercer Slough Nature Park (Alternative B7). Alternative B7 included an elevated structure across Mercer Slough Nature Park, before turning north as part of the BNSF corridor. Based on extensive public comment regarding Segment B alternatives and coordination with the City of Bellevue, the Supplemental Draft EIS (2010) identified a new alternative along Bellevue Way SE (Alternative B2M) and modified Alternative B7.

The Final EIS (2011) studied 6 alternatives (2 with design options) for Segment B, including the five alternatives from the Draft EIS and Alternative B2M from the Supplemental Draft EIS. Alternative B7R, proposed and studied by the City of Bellevue, was also addressed and compared to Alternative B7 in the Final EIS. After selection of the project by the Sound Transit Board, and approval by the City of Bellevue in 2011, an additional alternative was studied in an EIS SEPA Addendum and the final alignment decision was made in 2013. While the SEPA Addendum considered other alignments and modifications along Bellevue Way SE, the approved project by Sound Transit and City of Bellevue remained the B2M Alternative along Mercer Slough Nature Park. At each step along the way, the impacts of the various project alternatives on North Conversion (LWCF) and South Conversion (State Bonds) properties were evaluated and described in each environmental document.

Through years of study, Sound Transit has conducted an extensive evaluation of reasonable and practicable alternatives under NEPA, SEPA, as well studied avoidance alternatives to meet requirements of Section 4(f) of the Department of Transportation Act. Sound Transit's alternatives analysis was reviewed and approved by multiple federal, state, and local agencies with expertise in transportation, park and other environmental issues. In two separate legal proceedings, the adequacy of Sound Transit's EIS was challenged and upheld by a Hearing Examiner, a King County Superior Court judge, and a federal district court judge.

The public has had extensive opportunities for participation in the 8-year long process. Sound Transit's alternatives analysis and EIS provided numerous opportunities for public comment and other forms of participation.



2006 Pre-Scoping

Reviewed 24 previous studies to develop conceptual routes.



2007 Scoping

Project Scoping provided a 30-day comment period for the public to comment on the scope of the EIS and alternatives.

- 4 open house meetings
- Agency meetings

Conceptual Development of Alternatives in 6 community workshops



2008-2009 Draft EIS

Draft EIS published in 2008 provided information on the environmental impacts of the alternatives, with a 75-day comment period.

- 5 open house meetings
- 765 comments received
- **March 16, 2009 – DOI (NPS) DEIS and Section 4(f)/6(f) comment letter provided feedback on potential Section 4(f) 'use' of parklands**



2009-2010 Supplemental Draft EIS

Supplemental Draft EIS published in 2010 provided information on new and modified alternatives in Segments B and C, with a 60-day comment period.

- 1 public meeting
- 822 comments received, including:
 - **February 19, 2010 – Letters from NPS/RCO discouraging cross Mercer Slough alignment concept**
 - **April 12, 2010 – Consultation with RCO and NPS on impacts to Mercer Slough Nature Park**



2010-2011 Final EIS

Final EIS published in November 2011 provided responses to all Draft and Supplemental Draft public, agency, and tribe comments.

- **August 19, 2011 – DOI (NPS) FEIS and Section 4(f)/6(f) comment and concurrence letter**



2011 Project Approval

Project Selection

- July 2011 – Sound Transit Board selected B2M
- November 2011 – City of Bellevue adopted resolution approving B2M and signed MOU with Sound Transit
- November 2011 – FTA and FHWA issued Record of Decision



2011-2012 SEPA Appeals NEPA Appeals

Appeals

- Final EIS challenged under SEPA. Hearing Examiner upheld the adequacy of the Final EIS. The Superior Court dismissed the appeal.
- Final EIS challenged under NEPA to Federal District Court. The court upheld the adequacy of the Final EIS and found that:
 - A tunnel alternative in Segment B was not reasonable
 - The B7-R alternative was adequately addressed in the Final EIS
 - No project alignment alternative provided a prudent and feasible alternative that avoids all Section 4(f) resources, including Mercer Slough Nature Park
- Final EIS identified all reasonable measures to cause the least overall harm to park resources



2011-2013 SEPA Addendum & Final Project Approval

Collaborative Design Process between Sound Transit and City of Bellevue to manage project costs and impacts in 2011.

- Several public meetings in April 2013
- April 2013 – Sound Transit Board and Bellevue City Council approved project revisions (no changes to B2M along Mercer Slough Nature Park)
- **November 4, 2013 – Consultation and site visit with RCO, NPS, and Washington State Parks at Winters House**



2011-2016 Final Design

Final Design on stations and alignment includes community involvement.

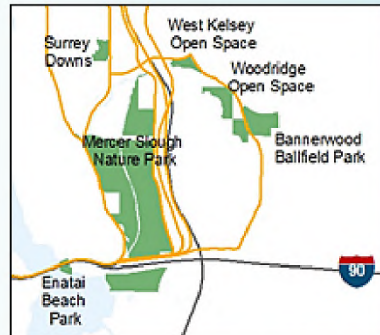
- Several design workshops
- **2 conversion briefings and requests to RCFB:

 - April 16, 2014
 - October 30, 2014**
- **May 28, 2014 – Washington State Parks Commission approved transfer of Mercer Slough property interests to Bellevue Parks**

NOTE: Green text indicates coordination with park agencies (DOI, NPS, and RCO).

East Link Extension Alternatives Development, Key Milestones, and Schedule

2006 Pre-Scoping



Segment B Alternatives Developed (1970 – 2006)

- 7 conceptual routes in Segment B
- 37 conceptual routes project-wide

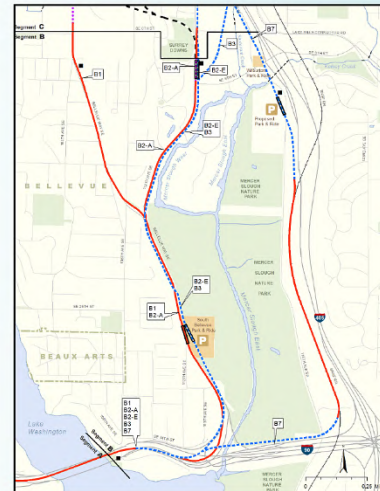
2007 Scoping



Segment B Alternatives for Public Scoping

- 8 alternatives in Segment B
- 24 alternatives project-wide
- Tunnel screened from consideration

2008-2009 Draft EIS



Segment B Alternatives Evaluated in Draft EIS

- 5 alternatives in Segment B
- 19 alternatives project-wide

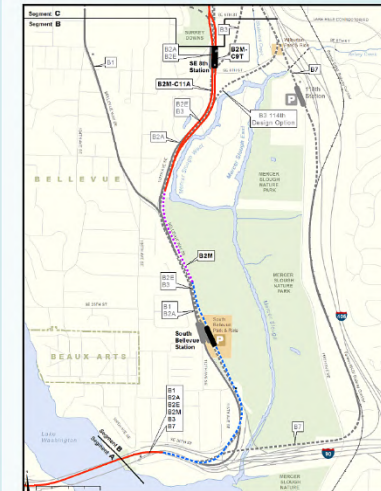
2009-2010 Supplemental Draft EIS



New Alternative B2M Evaluated in SDEIS

- 1 new (with 2 design options) and 2 modified alternatives in Segment B
- 5 new and 4 modified alternatives project-wide

2010-2011 Final EIS



Final EIS Alternatives

- 6 alternatives in Segment B (2 with design options)
- 24 alternatives project-wide
- Considered Mercer Slough Park avoidance alternatives

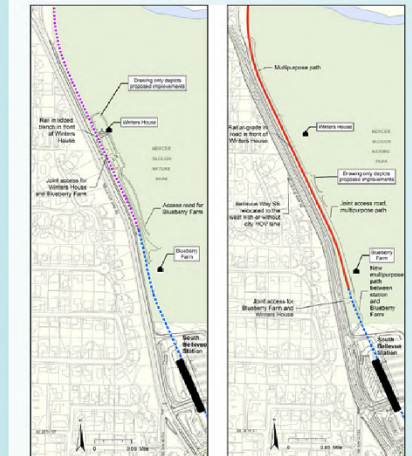
2011 Project Approval



Selected Alternative B2M

- Sound Transit Board and Bellevue City Council approve B2M along Mercer Slough Nature Park

2011-2013 SEPA Addendum & Final Project Approval



Selected Alternative and Shift Bellevue Way West

- Evaluated changes to Segment B:
 - Light rail on east side of road and shift Bellevue Way west
 - 112th Road over Rail
- Resulted in minor changes to B2M by Mercer Slough Nature Park



- Considered Alternative B7-R (City of Bellevue)

NOTE: Red text indicates responses to RCO Board inquiries.

East Link Extension Alternatives Development for Segment B

Question and Answers

1. Q: Why were Alternatives B7 and B7R Rejected?

A: Both Alternative B7 and B7R were analyzed in the East Link Extension Final EIS. The following will provide a brief overview of these alternatives and reasons why they were not selected. Alternative B7 is discussed first, followed by B7R which was reviewed in comparison to Alternative B7.

Alternative B7

Alternative B7 would be elevated as it crosses over the westbound lanes of I-90 and continues parallel on the north side of I-90 and the I-90 Mountains to Sound Trail through Mercer Slough Nature Park. The light rail is elevated until it turns north within the BNSF corridor. It follows the rail corridor at-grade until transitioning back to an elevated profile over 118th Avenue SE to a new 118th Station and 1,030 stall park and ride north of the park.

Reasons why B7 was not selected compared to other alternatives include:

- Low ridership because it does not connect to the South Bellevue Park-and-Ride and the new station is less convenient for bus connections.
- Longer and less direct route to downtown Bellevue from I-90 than those routes along Bellevue Way SE.
- Crosses over the Mercer Slough waterway and would have impacts on Sturtevant Creek north of the park.
- Higher wetland impacts than other Segment B alternatives.
- Higher wildlife habitat impacts than other Segment B alternatives.
- Highly visible to park users from the I-90 Mountains to Sound Trail (see visual simulation to the right).
- High risk soils: Soils along Mercer Slough consist of very soft peats and clays to a depth of 60 to 100 feet. Support for an elevated structure at the center of the slough crossing would have to be developed at depths of greater than 120 feet because of the thickness of soft soils. Results of a geotechnical WSDOT monitoring program for I-90 show that soils move toward the center of the slough during annual changes in water levels within Lake Washington. The extent of movement has resulted in large soil loading to existing I-90 bridges, forcing WSDOT to implement special bridge repairs to maintain operation and safety of the bridges.



B7: BNSF Alternative



Simulation of B7 Crossing Mercer Slough next to I-90 and the I-90 Mountains to Sound Trail

- Highest residential noise impacts.
- It was the highest cost alternative and was above the project budget.
- The East Link EIS analysis concluded that Alternative B7 was not one of those having the least overall impact on parklands and Section 4f resources (including but not limited to Mercer Slough Nature Park). The U.S. Department of the Interior concurred with this conclusion (letter August 19, 2011).

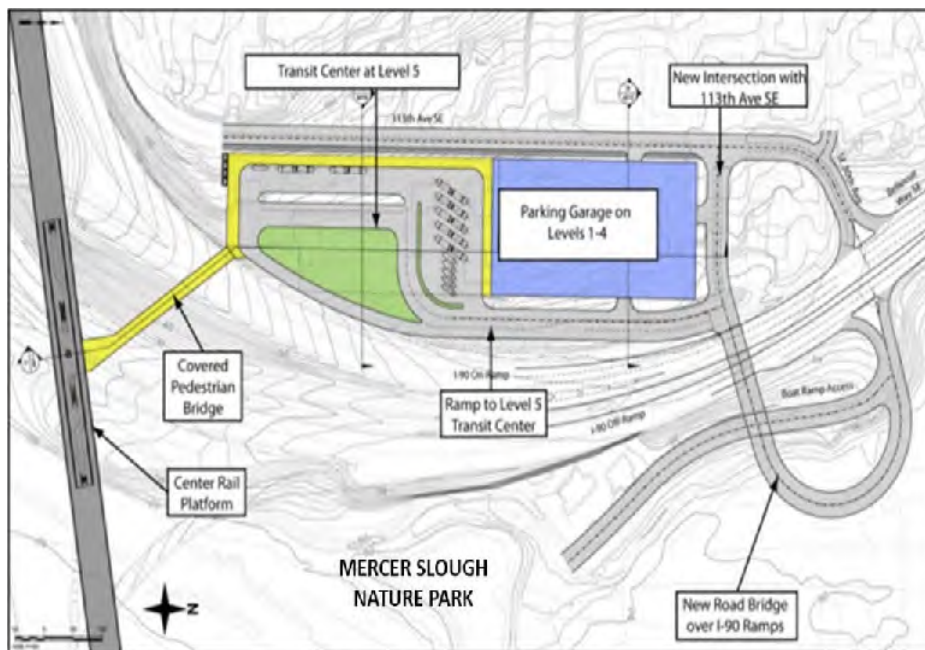
Alternative B7R

Alternative B7R was proposed by the City of Bellevue during development of the Final EIS and was included in the Final EIS for comparison purposes. The purpose of this alternative was to follow the same alignment as Alternative B7 across Mercer Slough and along the BNSF corridor, but with a station closer to the South Bellevue Park-and-Ride, which would increase ridership similar to the selected project. Although this design did increase the ridership compared to Alternative B7, it has the same disadvantages as Alternative B7 described above. In addition, the following impacts were found to be greater based on information in the City's B7R Analysis Report:

- Greater cost than B7.
- Greater park impacts than B7 from the proposed park-and-ride garage access (See figure on next page).
- Higher noise impacts to residences than B7.
- More residential displacements than B7.
- Greater wetland and wetland buffer impacts than B7 from the proposed park-and-ride garage access and potentially impact an existing wetland mitigation site.
- Visual and community impacts would be greater because the Alternative B7R garage and transit center for the station would be located within the Enatai neighborhood. This alternative would substantially change the character of the neighborhood because it would add intense activity, change views, and alter traffic patterns. Also, the removal of mature landscaping and placement of the parking garage on the upper bluff of Enatai would be visible from within the park and the upper story of the garage would be visible from the neighborhood. Furthermore, it would change the overall visual character of the neighborhood and surroundings.



B7R Proposal by City of Bellevue



Alternative B7R Parking and Station Access

2. Q: Why was a Tunnel Alternative Determined Not to Be Reasonable?

A: A Tunnel Alternative in South Bellevue was included in Sound Transit's alternatives analysis, but was not selected for detailed study in the EIS. A Tunnel Alternative was rejected from consideration during the EIS scoping process as not being a reasonable alternative for the following reasons:

- It did not meet Sound Transit's established tunnel criteria, which limit the use of tunnels to locations with steep slopes, physical barriers, inadequate rights-of-way, high building density, or high train frequencies. These factors are not present in South Bellevue because existing corridors are available (Bellevue Way SE /112th/BNSF right-of-way), slopes are largely flat, physical barriers can generally be avoided or crossed with an elevated alignment, and the density of adjacent development is low.
- A tunnel in Segment B would have high cost and high construction risk, which is inconsistent with several of the project goals, including to minimize risk and provide a financially feasible solution.
- The NEPA appeal contesting the EIS adequacy contended that a tunnel should have been considered in Segment B. The court agreed with Sound Transit's reasons for not evaluating a tunnel alternative in the EIS, finding that a tunnel was not a reasonable alternative in Segment B and did not warrant further study (see Question 6 below).

3. Q: Why were Parkland Avoidance Alternatives Determined Not to Be Reasonable or Prudent?

A: Under Section 4(f) of the Department of Transportation Act, a U.S. Department of Transportation Agency *may not approve the use of publicly-owned land within a public park* unless no other prudent and feasible alternatives are available. The Federal Transit Administration (FTA) is the lead federal agency for the East Link Extension and is under the Department of Transportation. The FTA's alternatives analysis under Section 4(f) was included as Appendix D to the EIS.

All of the alternatives selected for detailed study in the EIS would have some effect on Mercer Slough Nature Park. A number of avoidance alternatives that would not have affected the park were considered in the Section 4(f) analysis as included in the Final EIS and were determined not prudent or feasible, for numerous reasons that can be summarized as follows:

1. One avoidance alternative would be to keep the light rail alignment within the I-90 right-of-way through the park and connect to the B7 alignment east of the park. This alternative was not advanced because:
 - There is nowhere to locate the light rail within the highway without taking I-90 travel lanes and there are no lanes available in this section of I-90, whereas the I-90 crossing of Lake Washington to the west was specifically designed to accommodate light rail in the future.
 - The right-of-way to the north and south of the I-90 travel lanes is too narrow for a light rail guideway to parallel the highway without impacting the park. In addition, locating the light rail on the south side of the park (as opposed to the north side for B7) would require the guideway to cross the highway twice, substantially increasing project costs and construction impacts to the highway.
2. A second avoidance alternative would be to locate the light rail to the west of the park through the Enatai single family neighborhood. This alternative was not advanced because:
 - There would be substantial impacts to the community and residents, including roughly 70-100 residential displacements, visual, and noise impacts.
 - Such a route would bifurcate and cause severe disruption to the single-family residential neighborhood
3. The third avoidance approach evaluated in the EIS would follow Bellevue Way SE without locating the project within the park. There were two basic options to this approach. The first would be to widen Bellevue Way SE to the west away from the park and the second would completely elevate the guideway over Bellevue Way SE. These options would have the following impacts:
 - The widen Bellevue Way SE option displaces 13 residences.
 - Both options would have substantial visual impacts along Bellevue Way SE because of a more visually imposing and higher station, numerous support columns over the road for the elevated option and the need to remove much of the wooded greenbelt and add tall retaining walls on the west side of the road for the widen Bellevue Way SE option.
 - Greater construction impacts to Bellevue Way SE.

- Restricts widening Bellevue Way SE in the future.
- Higher costs than the Segment B alternatives evaluated in the EIS.
- Potential for high public controversy for impacts to Bellevue Way SE and the Enatai neighborhood to the west.

As federal lead agency, the FTA determined that all practical alternatives to avoid Mercer Slough Nature Park were evaluated and none were prudent and feasible. The U.S. Department of the Interior (National Park Service) concurred with this determination (letter dated, August 19, 2011) as did City of Bellevue (letter, November 15, 2011). The FTA also determined that the EIS identified all reasonable measures to cause the least overall harm to Section 4(f) protected parkland and historic resources.

4. Q: Isn't Alternative B7 also an alignment for an envisioned extension to Issaquah?

A: It is unlikely that light rail will extend across the Mercer Slough. An extension to Issaquah is included in the 2014 Sound Transit Long-Range Plan, however this project is not funded or programmed. In addition, the specific alignment for such an extension is not determined and the most recent corridor study of this extension removed crossing the Mercer Slough as a viable option. The 2014 Long-Range Plan Kirkland-Bellevue-Issaquah Corridor Study Report identified other routes for getting to Issaquah via light rail and did not include a light rail crossing of Mercer Slough. This question was also raised in the NEPA legal challenge to the Final EIS and the court found that the Issaquah extension is far too speculative and uncertain to merit consideration in the Final EIS (see Question 6 below).

5. Q: What did public comments say about Segment B alternatives?

A: All the alternatives studied in Segment B had public controversy. However, comments for alternatives in Segment B concentrated on the support or opposition for Bellevue Way SE alternatives versus Alternative B7. During comments on the Draft EIS, many letters supported use of the BNSF corridor because it would be a better use of money and that crossing Mercer Slough now as part of East Link would ultimately save money, rather than crossing it in the future to expand the light rail system to Issaquah; and, it would avoid impacts on Bellevue SE and 112th Avenue SE that would constrain the future widening of Bellevue Way SE. However, many other letters were opposed to the B7 alternative due to impacts to adjacent residential properties, poor access to the station location, low ridership, impacts on wetlands and cost of the B7 Alternative. During the Supplemental Draft EIS, opposition to B7 grew, but more comments still supported that alternative than opposed it. However, a greater number of comments supported Alternatives B2M. Several commenters mentioned the City of Bellevue Study for a modified B7 (later referred to as the B7R), which included the station at Bellevue Way SE in the Enatai neighborhood, which was included in the Final EIS in comparison to the B7 (which was summarized earlier in Question 1).

6. Q: What were the legal challenges to the environmental process and the outcomes?

A: Sound Transit issued the East Link Final EIS on July 15, 2011, which identified Alternative B2M as the 'Preferred Alternative' in Segment B. An appeal was filed under the State Environmental Policy Act (SEPA) with Sound Transit (the SEPA lead agency) challenging the adequacy of the Final EIS relative to transportation issues. After a multi-day hearing, Sound Transit's Hearing Examiner upheld the adequacy of

the Final EIS. The Hearing Examiner's decision was then appealed to King County Superior Court, which later dismissed the appeal.

The adequacy of the Final EIS was also appealed under the National Environmental Policy Act (NEPA) to Federal District Court by many of the same parties that made public comments in October 2014 to the RCFB. The court upheld the adequacy of the Final EIS on summary judgment, with the following findings:

- *A tunnel alternative in Segment B was not reasonable and did not need to be selected for detailed study in the EIS.*
- *The B7R alternative was adequately addressed in the Final EIS, it was better than the B7 alternative in some respects and worse in others and was not a clear winner over the B7 alternative.*
- *The Issaquah extension—and where it might connect to the East Link light rail system— is far too speculative and uncertain to merit consideration in the Final EIS.*
- *Wetland mitigation was adequately addressed in the Final EIS*

The Federal District Court also upheld the determination by Sound Transit and the Federal Transit Administration under the Department of Transportation Act Section 4(f) analysis of impacts to parks and historic properties that no project alignment alternative provided a prudent and feasible alternative that avoids all Section 4(f) resources and that the Final EIS identified all reasonable measures to cause the least overall harm to those resources. The court decision noted that the City of Bellevue and the U.S. Department of the Interior (National Park Service) reviewed the analysis and concurred with its conclusions.

A Shoreline Substantial Development Permit was issued for the project by the City of Bellevue and a Shoreline Variance was issued by the Department of Ecology in fall 2014. These permits have been appealed by many of the same parties that spoke at the October 2014 RCFB meeting. This appeal is in process.

7. Q: What is the timeline for construction in/adjacent to Mercer Slough Nature Park and what are the long-term changes to the recreational uses in the park?

A: The following provides an estimated timeline for key milestone in the construction process. It may or may not change as a contractor is brought on board and the project is implemented. ***Please note that the timeline for construction below is tentative and based on current design and construction sequencing plans.***

2014-2016: Pre-construction activities

- Acquisition of proposed replacement property, connecting previously separated north and south sections of the park.
- Utility relocation on Bellevue Way SE with periodic weekend closures.
- Start installation of wetland restoration project in Mercer Slough as mitigation for the project.
- Installation of new trail to connect the Mercer Slough Environmental Education Center with the southern portions of the park across the new 6 acre addition to Mercer Slough Nature Park.

2016 to 2020: Activities during construction

- Winters House closed and Eastside Heritage Center activities temporarily relocated.
- Farm fresh produce retail stand relocated.

- Blueberry Farm u-pick program suspended.
- Northbound curb lane of Bellevue Way SE closed north of the South Bellevue park-and-ride for construction. Three lanes open with center lane running reversible, providing two lanes in peak direction.
- Access to the park from the east on 118th Avenue SE remains open and uninterrupted.
- Sidewalk on Bellevue Way SE is closed.
- Interior park trail systems and the water trail remain open and operational.
- Periodic closures expected for canoe/kayak water trail users, launching from Sweylocken Boat Launch. Launching will be available at nearby Enatai Beach Park.
- Temporary parking area provided for park users (27 spaces) on Bellevue Way SE. Other Bellevue Way SE parking areas closed. All parking areas on 118th Avenue open and uninterrupted.

2021 to 2022: Post-construction activities

- Northbound Bellevue Way SE lane re-opens
- Reconstructed sidewalk and Periphery Loop Trail with new planter strips and street trees on east side of Bellevue Way SE is reopened.
- Eastside Heritage Center moves back to Winters House and programming resumes.
- Relocated Blueberry Farm retail building and new Heritage Loop Trail segment opened for public use.
- Consolidated access to Winters House and Blueberry Farm open with parking, restroom and trailhead access restored and open.
- Resume Blueberry Farm U-pick program.
- Temporary parking area on Bellevue Way SE decommissioned and landscaping restored.

2023: Light Rail Service Begins

- South Bellevue Station opens with direct access for station users to enter the park.
- Expanded parking garage at the station will be available for park users.

8. Q: How will access to the Park be affected by the project?

A: Public access to the park, as a whole, will remain throughout construction with certain short-term and long-term temporary closures of certain facilities along Bellevue Way SE. The figures below depict how access will change during construction and at completion of the project.

As part of mitigation, public facilities and activities will be primarily relocated from the current farm location (where light rail will be visible) north to the area near the Winters House where light rail is obscured by the lidded trench. The following maps depict current park access, access during construction, and future access (after construction).

Current Access

The public can access Mercer Slough Nature Park via twelve pedestrian, bicycle or vehicle parking access points in addition to the two locations with boat access.

Public Access Points

Current

- ★ (1) Boat Launch
- ◆ (1) Parking
Pedestrian and Bike
- ◆ (5) Parking
Pedestrian and Bike
- ◆ (6) Pedestrian and Bike
- ★ (2) Watercraft



Access during Construction

During construction, all access points on the east and south sides of the park will remain uninterrupted. Along Bellevue Way SE, Sweylocken Boat Launch will be periodically closed on a short-term basis. When closed, park users launching watercraft will be redirected to nearby Enatai Beach Park to access the Mercer Slough Water Trail. Pedestrian and vehicular access to the Blueberry Farm and Winters House will be closed north of the park and ride. And, while one section of the Heritage Loop Trail on the west side of the park is within the construction area, there is a long-term detour available (as shown on Construction Access map) that will keep the loop trail open and intact during construction. A temporary public parking area will be constructed by Sound Transit south of the park and ride with direct pedestrian connection to the trail systems to the north and south.

Public Access Points During Construction

-  Boat Launch
-  (1) Parking
Pedestrian and Bike
(periodic closure)
-  (3) Parking
Pedestrian and Bike
-  (4) Pedestrian and Bike
-  (1) Watercraft
(periodic closure)
-  (1) Watercraft



Access after Construction

After the major civic construction for the light rail project is completed, facilities closed during construction will be re-opened to the public. A new consolidated access point north of the South Bellevue Station (park-and-ride) will provide public access to Winters House, a newly constructed Blueberry Farm building and the trail system. Trail segments that were within the construction area will be replaced with newly constructed boardwalk trail farther east in the park with further separation from Bellevue Way SE. Another new trail segment will be constructed through the replacement property creating an internal connection between the Mercer Slough Environmental Education Center and the trail loops to the south. Finally, when light rail service begins, the park will be directly accessible from the station by light rail riders making Mercer Slough Nature Park one of a few, if not the only major park in the state with accessibility by car, boat, bicycle, foot and by light rail train.

Public Access Points

Future

- 
 (1) Boat Launch
 Pedestrian and Bike
- 
 (4) Parking
 Pedestrian and Bike
- 
 (6) Pedestrian and Bike
- 
 (2) Watercraft



9. Q: How will the hydrology of Mercer Slough be affected by the trench?

The hydrology of Mercer Slough is primarily driven by water entering from the north via Kelsey and Sturtevant Creeks and draining to the south into Lake Washington. Further, the water level of Lake Washington is actively controlled by the Army Corps of Engineers and is not subject to seasonal fluctuation. The East Link project does not impact these primary drivers.

The trench will be sealed with water stop in the wall and a continuous drainage mat will be installed around the outside of the wall perimeter to convey groundwater under the trench section. The mat will move water more rapidly away from the structure. This design will accommodate groundwater flow coming from the west into the slough. The drainage mat will begin along the west wall of the trench and wrap around the bottom slab, then come up on the east wall where it will connect to the underdrain system and discharge at an elevation above the wetland limits. A large detention/wet vault will also be constructed below the Winters House parking lot and will have a similar underdrain system that discharges into the wetland. This new vault will capture, treat and control release of stormwater runoff collected from Bellevue Way SE, providing water quality treatment which will be an improvement from today's existing condition. A total of four underdrain pipes will discharge into the wetland on the east side of the Winters House parking lot. The two underdrains that collect groundwater around the detention vault will discharge into flow dispersion trenches above the wetland, allowing the groundwater to spread out as it flows into the wetland.

The stormwater runoff within the guideway trench will run along the surface and against the east edge of the slab towards the low point. The runoff outlets the trench via scuppers along the wall face and into a drainage system that gravity flows out to the wetland and discharges at elevation 20.5 (above the FEMA floodplain elevation of 20.0). A scupper is an opening in the wall (or barrier) that allow the surface runoff to flow through across the surface and out to the opening. The new detention vault within the Winters House parking lot also discharges into the wetland near the track outfall at the same elevation. The five existing stormwater outfalls that cross Bellevue Way SE and discharge into the wetlands from the Enatai neighborhood will be maintained. These outfalls will continue to feed the wetland between the South Bellevue Station and the intersection with 112th Avenue SE. In addition, the two existing culverts that discharge into Wye Creek (located east of the intersection with Bellevue Way SE and 112th Avenue SE) will be maintained, and the guideway will bridge over the creek. Further north, along 112th Avenue SE, along the west banks of West Mercer Slough, the track underdrains will discharge into ditches that flow down into Mercer Slough and will provide water to sustain the wetland habitat. Ground water will not be interrupted by the ground improvements made under the track along 112th Avenue SE.

10. Q: How are significant trees, wetlands, streams, and buffers impacted?

The total number of significant trees removed within the South (State Bond) and North (LWCF) Conversion parcels, conversion parcels is 148, and 43 trees are proposed to be added to these parcels. The City of Bellevue defines a "significant" tree as a tree with an eight-inch or greater diameter. For areas within the Mercer Slough Nature Park that are impacted by the Project, the total number of significant trees removed is 691, and 2,873 are proposed to be added. More than four times the number of trees are added compared to what is removed in the park. Tree removal and replanting has been coordinated with the City of Bellevue as part of the Design and Mitigation permit process. As part of this process, a portion of the conversion areas were identified to be preserved and not impacted.

Significant Tree Summary¹

	Trees to be removed	Trees Added
South (State Bond) Conversion	32	1
North (LWCF) Conversion	116	42
Other areas of Park	543	2,830
Total for Mercer Slough Nature Park	691	2,873

¹ Information in this table is based on design efforts as of 1/23/2015

Wetlands are nature's sponges, water filters, wildlife habitats, and erosion controls. Wetland buffers reduce potential impacts of development on adjacent wetlands. Currently, the wetland buffer area in the Mercer Slough Nature Park includes invasive species such as ivy and Himalayan blackberry. The project is anticipated to impact a small sliver of wetland and wetland buffer in the South (State Bond) and North (LWCF) Conversion parcels. The majority of those impacts will be temporary and will be restored to the same or better condition after the project is complete.

About 0.10 acre of wetland and 0.81 acres of wetland buffer would be impacted. Included in these totals are permanent and temporary impacts. In addition, a portion of both conversion areas will be preserved and not affected. The table below compares how the Park is impacted as a whole and as compared to the conversion areas.

Permanent and Temporary Wetland and Buffer Impact Summary Table¹

	Wetland buffer impacts² (acres)	Wetland impacts³ (acres)
South (State Bond) Conversion	0.24	0.01
North (LWCF) Conversion	0.57	0.09
Subtotal conversion areas	0.81	0.10
Other areas of the Park	3.76	0.53
Mercer Slough Nature Park	4.57	0.63

¹ Information in this table is based on design efforts as of 1/23/2015

² Buffer impacts include both permanent and temporary impacts

³ Wetland impacts include temporary, permanent, and vegetation conversion impacts

Permanent impacts are areas that are converted for transportation use by the project. Permanent wetland impacts for both conversion areas are approximately 0.04 acre and will be mitigated at a 6:1 ratio through enhancement of wetlands within Mercer Slough Nature Park. Impacts to buffer areas will be mitigated through the enhancement of the remaining buffers by replacing existing invasive species³ with native vegetation or creation of new buffer along the project and in the Park. One wetland mitigation area totaling about 6.4 acres will be located in the Park to mitigate wetland impacts from the overall Project, including the impacts within the conversion areas and the Park in general. This mitigation site is located within the Mercer Slough Park by the Sweylocken boat launch, which will restore native ecology, plant, and wildlife habitat.

Temporary impacts produce short-term loss of wetland functions during construction and would not result in a permanent loss of wetland after the project is completed. Temporary impacts would be restored to existing or better conditions.

The Project is anticipated to impact stream and stream buffer in the LWCF parcel. Wye Creek, which flows through this parcel in a culvert, will be impacted during construction activities. Wye Creek will be restored in approximately the same location and a small section will be daylighted just west of the north conversion

parcel, which will serve as the mitigation for stream impacts. The mitigation for stream buffer impacts is combined with the mitigation for wetland buffer impacts, which is east of the South Bellevue Station area.

11. Q: How will wildlife in Mercer Slough Nature Park be affected by the East Link Extension?

A: Due to the large amount of existing similar available habitat in the Mercer Slough Nature Park, impacts on wildlife would not be substantial.

Operation

- The minor changes in noise levels from East Link Extension operations will not likely adversely affect wildlife because wildlife using habitats next to Bellevue Way SE and the active use areas of the park are accustomed to some level of existing human and vehicular activity. Noise from the light rail will be below background noise levels in most of the park.
- There would be a net increase in trees in the overall park after mitigation. However, removal of mature deciduous trees near the Bellevue Way SE and 112th Avenue SE intersection that may support breeding, foraging, and roosting might displace some wildlife species until replacement trees mature.
- Waterways are an essential aspect of high-value habitat. Wye Creek, which drains into the North Conversion (LWCF) property, will be daylighted from the existing culvert east of Bellevue Way SE/112th Avenue SE intersection by cutting back the culvert. The light rail will be on a bridge structure over the creek.
- Wetlands are considered a high-value habitat for migratory birds and water-dependent species. The project has minimal permanent impacts on wetlands in Mercer Slough.

Construction

- Construction activities could temporarily displace wildlife near the construction area.
- Washington Department of Fish and Wildlife (WDFW) priority species that may use Mercer Slough and forested stands for foraging include the bald eagle (*Haliaeetus leucocephalus*) (no nests found to date), pileated woodpecker (*Dryocopus pileatus*), green heron (*Butorides virescens*), and willow flycatcher (*Empidonax traillii*) (very rare and no sightings), which are all relatively sensitive to human disturbance and habitat alteration.

Mitigation

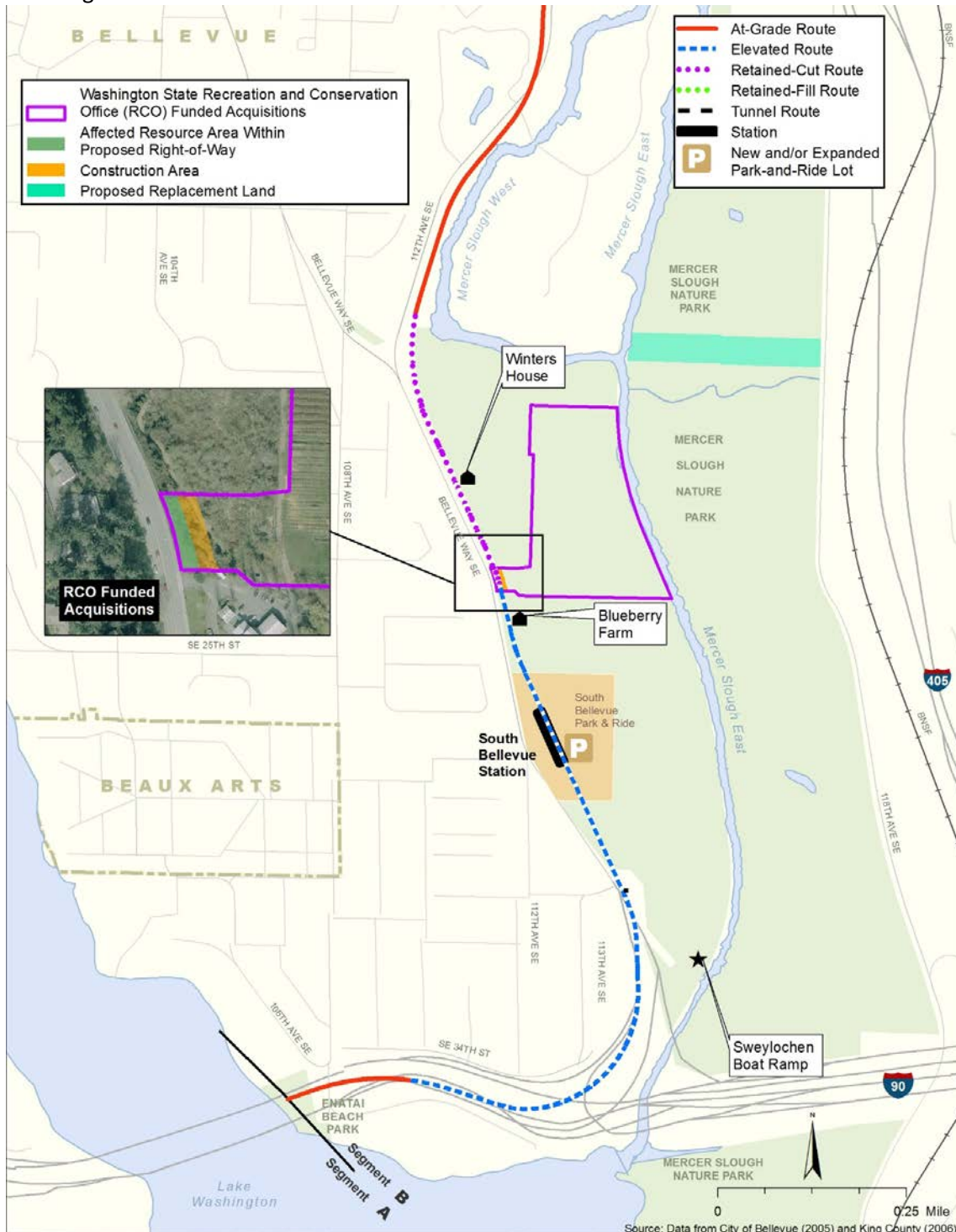
- Temporary impacts on wetlands will be restored to similar or better conditions after construction. Project-wide mitigation will occur within Mercer Slough with a total of about 6.4 acres of wetland mitigation. Construction of the wetland mitigation site would be completed early in the project and provide improved habitat and refuge opportunities for western toad and other wildlife.
- Areas disturbed in the construction staging areas would be revegetated with native vegetation within one year following construction.
- To comply with Migratory Bird Treaty Act regulations, schedule restrictions will be established for clearing activities. To the extent possible, contractors will schedule clearing activities outside the bird nesting period. In the event that this is not feasible, Sound Transit will work with qualified staff at the U.S. Department of Agriculture to conduct preconstruction surveys to determine the presence of nesting migratory birds in the construction corridor. If old nests are present, they will be removed to prevent future use of those nests. If an active nest is found during construction, buffer zones may be established until the birds fledge. If removing an active nest or other action is recommended, Sound Transit will

consult with the U.S. Fish and Wildlife Service (USFWS) to perform such activities in accordance with USFWS procedures and appropriate permit conditions. Sound Transit may use contracted staff, permitted by USFWS, to perform additional compliance or management activities.

12. Q: What are the effects to the South Conversion (State Bond) property?

Where is the affected South Conversion (State Bond) property within Mercer Slough Nature Park?

A small portion of the State Bond property is proposed to be converted (South Conversion) and is located along Bellevue Way SE. The conversion would be 0.28 acres of the total 24 acre State Bond property as seen in the figure below.



Location of South Conversion (State Bond) Property

What are the characteristics of the affected South Conversion (State Bond) property?

The affected South Conversion (State Bond) property contains a residential building and dense vegetation of both native and non-native plants. This area serves mostly as a wetland buffer but a small area of wetland is present at the north edge. This proposed conversion area includes part of the Heritage Loop Trail, a compacted earth trail that extends off the property towards the historic Winters House to the north, and extends south off the property to the I-90 Mountains to Sound Greenway Trail. Views of Bellevue Way SE can be seen from this trail depending on foliage. The South Conversion (State Bond) property is adjacent to Bellevue Way SE, including the Periphery Loop Trail that is a wide sidewalk within Bellevue Way SE right-of-way, and the Blueberry farm retail buildings and parking.

Existing features of the State Bond property are shown below.



Aerial of South Conversion (State Bond) Lands and Existing Features

What are the impacts on the South Conversion (State Bond) property from the project?

The following project-related impacts would occur in the South Conversion area:

- Removal of the residential building.
- Construction of the light rail guideway (transitioning from elevated to retained fill to trench).
- Construction of a park maintenance road between the blueberry farm parking lot and the Winters House parking lot.
- Removal of 32 trees.
- Disturbance of 0.24 acre of wetland buffer and 0.01 acre of wetlands.

Project-related effects to the State Bond property are shown on figure below.



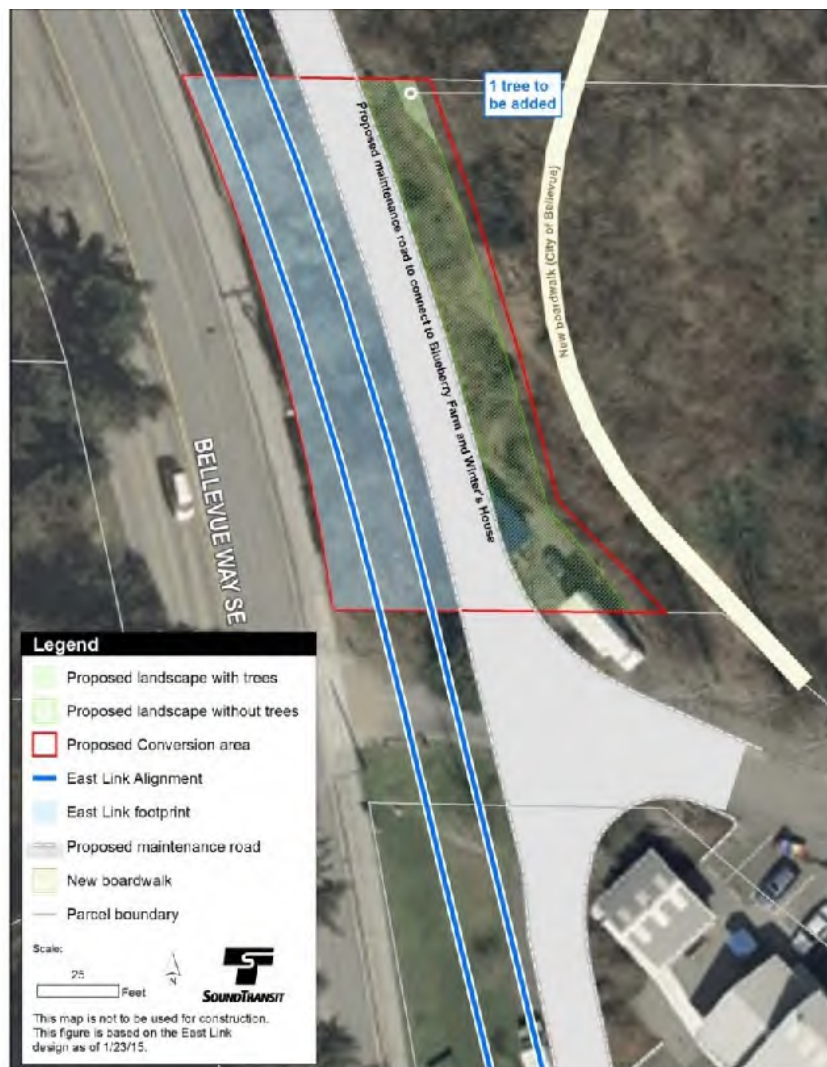
Project-related Effects to South Conversion (State Bond) Lands

What will be the condition of the South Conversion (State Bond) property after construction?

The following would occur in the South conversion (State Bond property) area:

- Light rail guideway on retained fill.
- New maintenance road to connect blueberry farm fields and maintenance facilities.
- Re-vegetation and landscaping of temporary construction area.
- Over half of the South Conversion area will be returned to park use.
- Planting of one tree in the conversion area, with a total of 2,873 new trees to be planted in Mercer Slough Park as a whole.
- Relocated Heritage Loop Trail to the east, physically separated from Bellevue Way SE and light rail guideway.

The post-construction condition of the South Conversion (State Bond) property is shown below. Visual simulations of the before and after condition of the South Conversion (State Bond) property are also shown on the subsequent pages.



Post-construction Condition of South Conversion (State Bond) Lands



Viewpoint 1 Existing Condition of South Conversion (State Bond) Property: Looking northeast on Bellevue Way SE toward blueberry farm entrance.



Viewpoint 1 with East Link Extension Simulation: Entrance to existing Blueberry farm is relocated northward; elevated light rail guideway descending to retained fill and then below grade with noise walls along guideway.

Please note: These pictures were taken during winter, when trees had shed their leaves and foliage was much reduced compared to other seasons.





Viewpoint 2 Existing Condition of South Conversion (State Bond) Property: Looking west from trail that leads north to blueberry farm field. Blueberry Farm retail building is on left, State Bond property, residential house, with blue roof and well house visible on the right.



Viewpoint 2 with East Link Extension Simulation: Looking west, light rail guideway transitioning to retained fill and then below grade into trench. The residential house would be removed, the trail going north would be redirected onto boardwalk (see foreground) and maintain connectivity to blueberry farm field. Maintenance road would parallel light rail guideway from Winters House to existing Blueberry Farm field and facilities.

Please note: These pictures were taken during winter, when trees had shed their leaves and foliage was much reduced compared to other seasons.



13. Q: What are the effects to the North Conversion (LWCF) property?

Where is the affected North Conversion (LWCF) property within Mercer Slough Nature Park?

The LWCF grant secured several parcels equaling 145 acres for the Mercer Slough Nature Park. The north and western edge of the LWCF property contains the Mercer Slough waterway that is used as a water trail for canoe and kayak users. Of the total 145 acres, the North Conversion (LWCF) would affect 0.77 acres of a deep, 60-acre parcel which extends from Bellevue Way SE to the center of the park, south and west of Mercer Slough Water Trail (see figure below). The remainder of the LWCF grant funded lands are on the east side of the Mercer Slough and extend south. The access for this water trail is from the south end of the Mercer Slough Nature Park at Sweylochen Boat Ramp. A map showing of the Location of North Conversion (LWCF) Property is shown below.



Location of North Conversion (LWCF) Property

What are the characteristics of the affected North Conversion (LWCF) property?

Most of the affected North Conversion (LWCF) property is a natural area with no trails or recreational access. It contains wetlands and bog-type soils with periods of standing water, a stand of cottonwoods, some blackberry vines, and culvert containing Wye Creek.

The property is separated from Bellevue Way SE and the Periphery Loop Trail (a wide sidewalk within the Bellevue Way SE right-of-way) by a steep slope and cottonwood trees. Mercer Slough and the water trail is to the northeast. The conversion area does not include any existing outdoor recreational facilities.

The North Conversion (LWCF) property and its features are shown below.



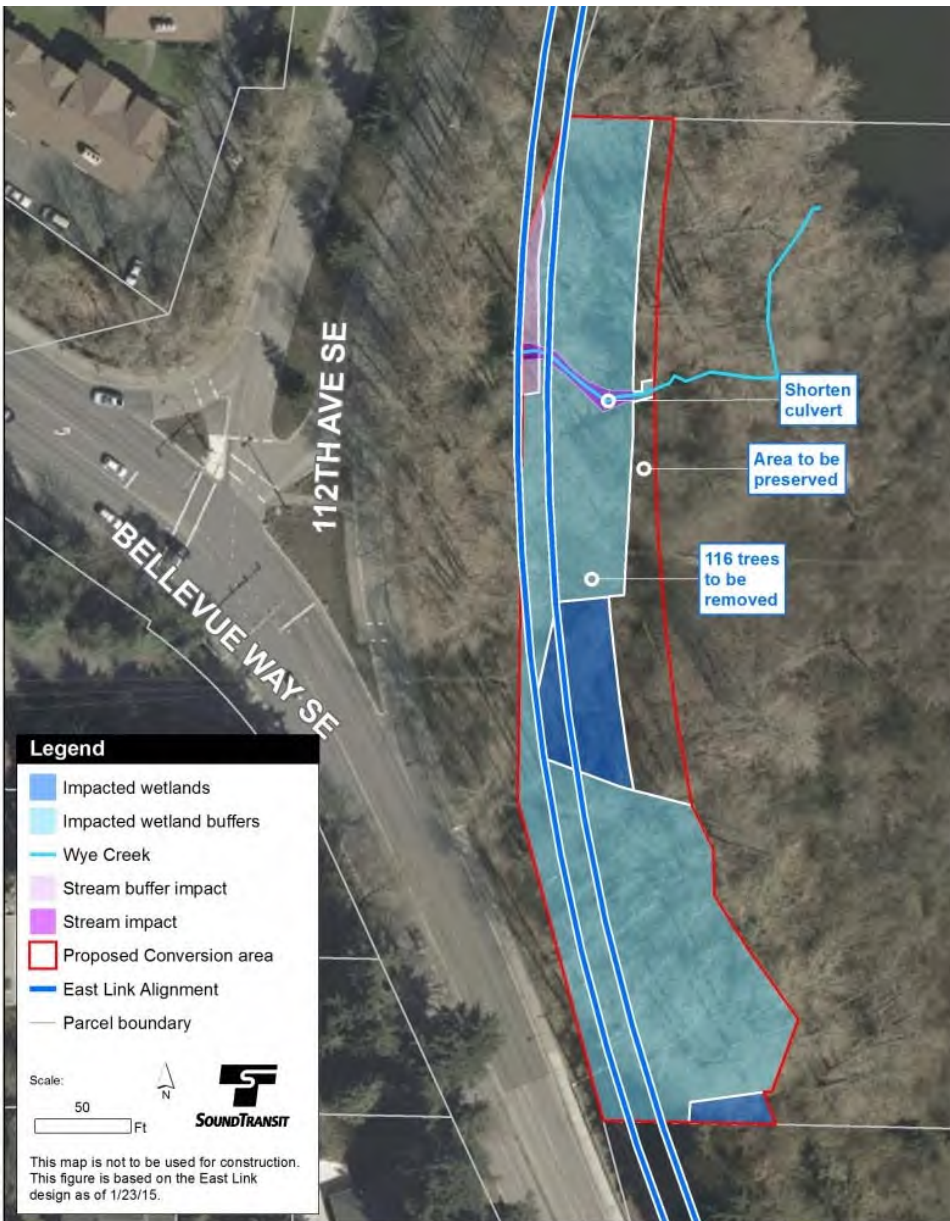
North Conversion (LWCF) Property and Related Features

What are the impacts on the North Conversion (LWCF) property from the project?

The following project-related impacts and mitigation would occur in the North Conversion (LWCF) area:

- Construction of the light rail guideway
- Disturbance of 0.57 acres of wetland buffer and 0.09 acre of wetlands
- Removal of 116 trees
- Daylighting of Wye Creek culvert and construction of a bridge over the creek for the light rail.

Project related effects to the North Conversion (LWCF) property are shown below.



Impacts to North Conversion (LWCF) Property

What will be the condition of the North Conversion (LWCF) property after construction?

The following project-related mitigation would occur in the LWCF conversion area:

- Re-vegetation and landscaping of temporary construction area resulting in over half of the conversion area being returned to park use.
- Planting of 42 trees in the conversion area, with a total of 2,873 new trees to be planted in Mercer Slough Park.
- The light rail guideway would bridge over the Wye creek

The post construction conditions of the North Conversion (LWCF) property is shown below. Visual simulations of the before and after condition of the North Conversion (LWCF) property are also shown on subsequent pages.



Post-construction Condition of North Conversion (LWCF) Property



Viewpoint 3 Existing Condition of North Conversion (LWCF) Property: Looking northeast on Bellevue Way SE at stand of trees with North Conversion (LWCF) property beyond.



Viewpoint 3 with East Link Extension Simulation: Removal of trees along Bellevue Way SE and within North Conversion (LWCF) property. Periphery Loop Trail enlarged and fence along top of light rail guideway, which is below roadway grade.

Please note: These pictures were taken during winter, when trees had shed their leaves and foliage was much reduced compared to other seasons.





Viewpoint 4 Existing Condition of North Conversion (LWCF) Property: Looking southwest toward North Conversion (LWCF) property opposite shore of Mercer Slough (112th Avenue SE to right).



Viewpoint 4 with East Link Extension Simulation: Light rail guideway rising to be level with roadway grade along 112th Avenue SE, trees removed at Bellevue Way SE and 112th Avenue SE.

Please note: These pictures were taken during winter, when trees had shed their leaves and foliage was much reduced compared to other seasons.





Viewpoint 5 Existing Condition of North Conversion (LWCF) Property: Looking northeast toward North Conversion (LWCF) property behind foreground trees from Bellevue Way SE intersection with 112th Avenue SE.



Viewpoint 5 with East Link Extension Simulation: Removal of trees at Bellevue Way SE intersection with 112th Avenue SE.



14. Q: What will be the visual impacts from the project to the park during operation? During construction? How will these be mitigated?

Operation

The elevated guideway, station and parking structure in the south west side of the park would be visible in that area of the Mercer Slough Nature Park (*as would have been all Segment B Alternatives and more so for B7 and B7R alternatives that cross Mercer Slough in this area*). These features would be more visible, but visually consistent with, the existing transportation-oriented character of the existing Park & Ride lot and nearby I-90 structures and ramps. The parking garage will be relatively low with a portion of the garage below the grade of Bellevue Way SE.

The trench section of the guideway at the Winters House, overhead power system, and noise and retaining walls would not be visible from most parts of the Mercer Slough Nature Park because of the project's generally low profile and because most trails in the park are lower than Bellevue Way SE and surrounded by dense vegetation. Given the presence of trees and large shrubs throughout the park, removing vegetation along the construction footprint would not be noticed in most areas within the park. *The pages that follow provide photos from within the park as indicated by the key map.* The light rail will be visible until it descends into a trench north of the Blueberry Farm. It would not be visible where it passes through the lidded trench in front of the Winters House, preserving views of the house from within the park and along Bellevue Way SE (see artist renderings of the consolidated Blueberry Farm retail building and parking at the Winters House on the next page).

Changes in views from the southern end of the water trail would be consistent with surrounding freeway ramps and structures. The visual change associated with tree removal at the "Y" intersection of Bellevue Way SE and 112th Avenue SE would be most noticed from the portion of the water trail passing through Mercer Slough West adjacent to the Bellefield Office Park. However, the Bellefield Office Park buildings and parking lot and the adjacent transportation arterial currently affect the area's visual quality in this area. See attached photographs below depict views from within the park.

Construction

Activities related to building the project would have temporary impacts on the visual environment and would include storing construction equipment and materials, clearing vegetation and grading, lights associated with construction after dark, and making general visual changes to the viewed landscape during the project construction period.

Avoidance measures include:

- Minimizing clearing for construction and operation.
- Planting appropriate vegetation within and adjoining the project right-of-way to replace existing street trees and other visually important vegetation that are removed for the project and/or to provide screening for sensitive visual environments and/or sensitive viewers.



Artist rendering of the combined Winters House and Blueberry Farm retail facility and parking.



Artist rendering of the lidded trench in front of the combined Winters House and Blueberry Farm retail facility and parking.



Artist rendering of a bird's eye view of the combined Winters House and Blueberry Farm retail facility and parking.

What features of the project would be visible from within the Park?

A: The following provide a series of photos from within Mercer Slough Nature Park which depicts that persons walking in the park do not have many views beyond the pedestrian or water trails. The map below shows where within the park photos were taken and then photos follow.



Locations of Photos within Mercer Slough Nature Park

The following photos (Photos 1 -10) show the existing conditions in Mercer Slough Nature Park. The East Link Project alternatives that travel along Bellevue Way SE would not be visible from these vantage points.



Photo 1



Photo 2



Photo 3. At ground level at water trail.



Photo 4. Sitting on dock to simulate view from canoe trail.



Photo 5. Sitting on dock to simulate view from canoe trail.



Photo 6. Sitting on dock to simulate view from canoe trail.



Photo 7



Photo 8



Photo 9



Photo 10. Standing on bench looking toward Bellefield Office Park

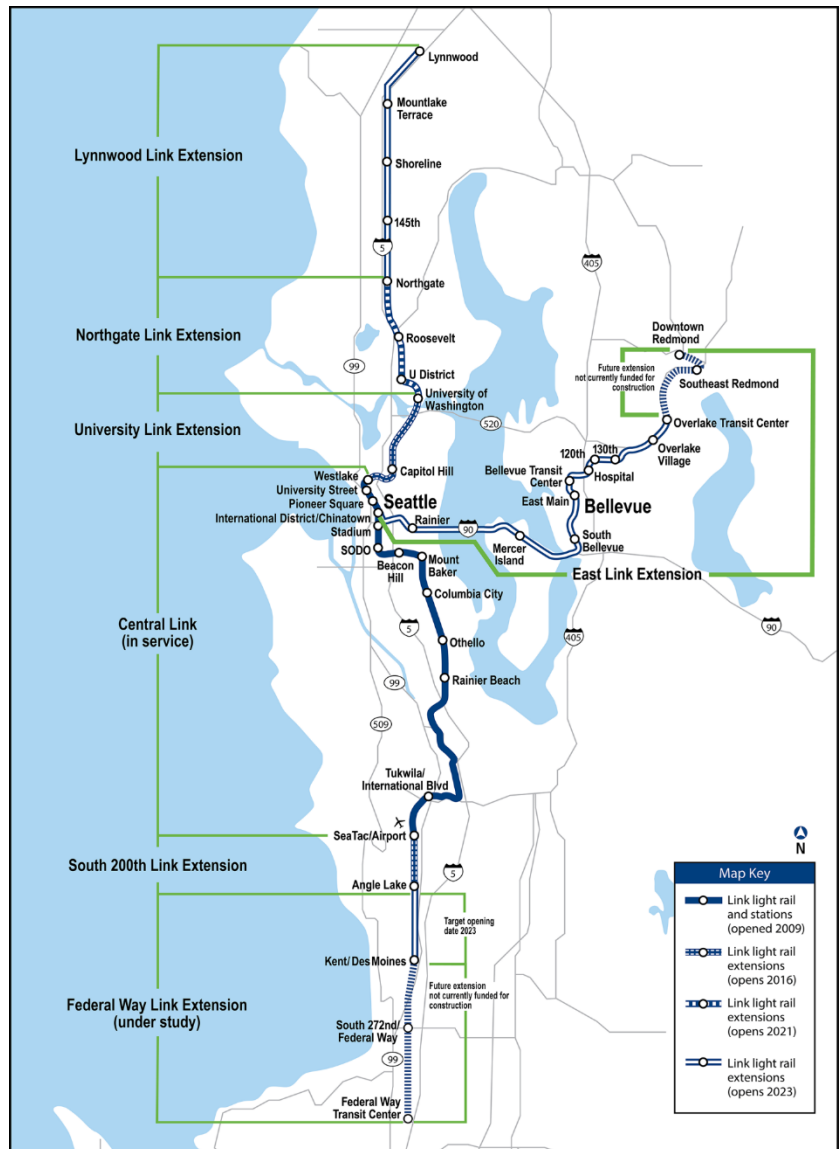
Additional Background Information

4.1 Who is Sound Transit and what is the East Link Extension?

Sound Transit, the Central Puget Sound Regional Transit Authority, is responsible for providing high-capacity transit services within Snohomish, King, and Pierce Counties. Sound Transit operates express bus, commuter rail, and light rail service in the region and constructs capital projects in support and expansion of those services.

Sound Transit is providing light rail service throughout the region with the goal of linking urban centers in Pierce, King, and Snohomish Counties. The map on the right illustrates the currently adopted program for the regional light rail system.

The emphasis in this briefing report focuses on the East Link Extension as highlighted. It will provide reliable connection between Seattle, Mercer Island, Bellevue and Redmond. Sound Transit is the regional transit authority and it is the Sound Transit Board's authority to choose the project alignment.

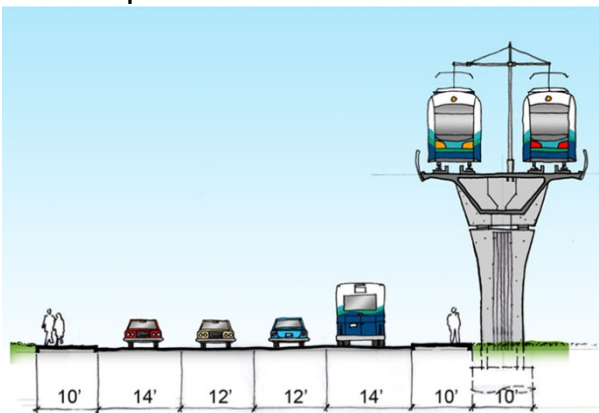


LINK System Map

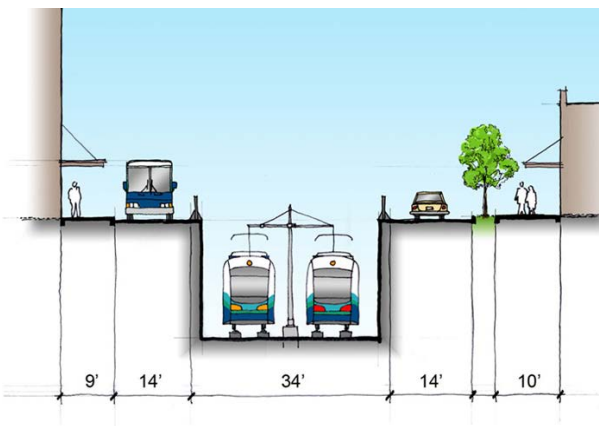
4.2 What is Light Rail?

Light rail is a conventional term for urban electric rail systems that have the flexibility to operate along an exclusive right-of-way at ground level, on elevated structures, in tunnels, or on streets. Sound Transit LINK light rail consists of electrically powered trains running on steel rails. The cross sections below show examples of different light rail profiles. The profile chosen in any given area depends on the terrain, the intensity of development, or particular environmental conditions. In order to provide reliable, on-time service, the Sound Transit light rail operates in an exclusive right-of-way. The alignment along Mercer Slough Park includes an elevated and retained cut profiles. In front of Winters House, the alignment is in a lidded trench.

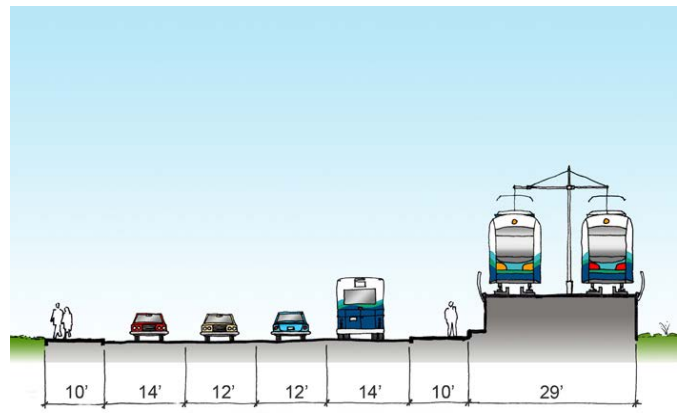
Profile Examples:



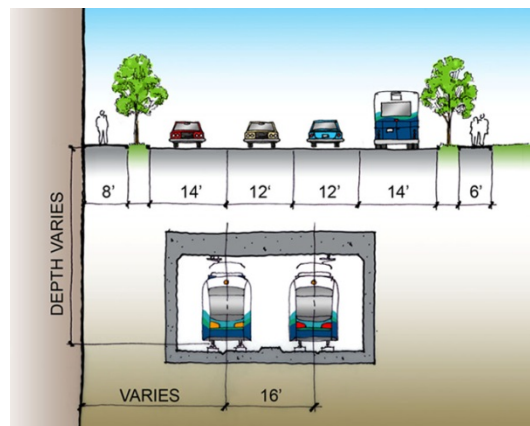
Elevated



Retained Cut



At-Grade



Tunnel

Images of the Sound Transit Light Rail System:



Typical At-grade Light Rail Station



Light Rail Catenary System



Tunnel for One Light Rail Track



Elevated Light Rail Station



Retained Fill Light Rail Guideway



Elevated Light Rail Guideway

4.3 East Link Extension Selected Project

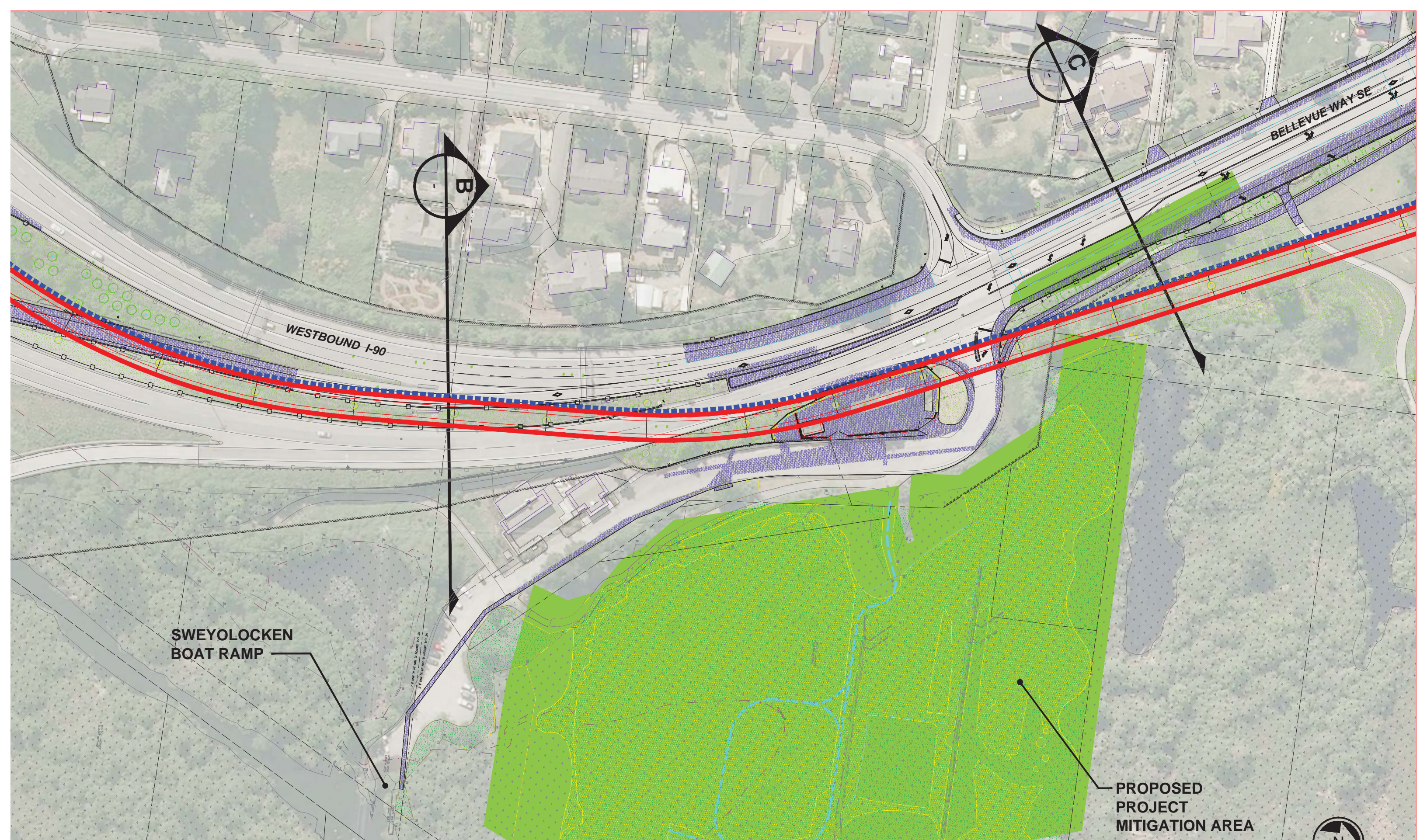
The following drawings and cross-sections illustrate the location and design of East Link project as it travels along the Mercer Slough Nature Park. The design reflects 90 percent design, as of November 2014.

In general, the selected alternative includes the following features:

- The alignment exits the I-90 center roadway, crosses over westbound I-90, and continues elevated on the east side of Bellevue Way SE to the South Bellevue Station, which is located at the current 512-stall South Bellevue Park & Ride.
- The proposed South Bellevue Station includes a five-level parking structure built on the site of the existing South Bellevue Park & Ride; however, only two stories would be visible above Bellevue Way SE. The parking garage will have approximately 1,500 spaces.
- After leaving the station, the alignment transitions to a retained cut/trench on the east side of Bellevue Way within Mercer Slough Nature Park to the intersection of Bellevue Way SE and 112th Avenue SE. In front of the Winters House, the route is in a lidded trench approximately 170 feet long.

Several existing features of Mercer Slough Nature Park will be modified or relocated as part of the light rail project. These key changes are noted on the drawings.

In addition to the drawings, cross-sections are included for the corridor next to the Park. Cross-sections B through H correspond to the call outs on the drawings. Specifically, cross-sections E and H show the relationship of the proposed conversion areas to the East Link Extension project.

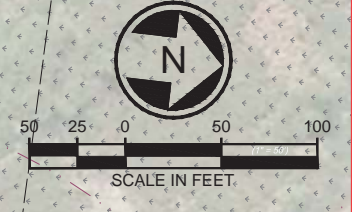


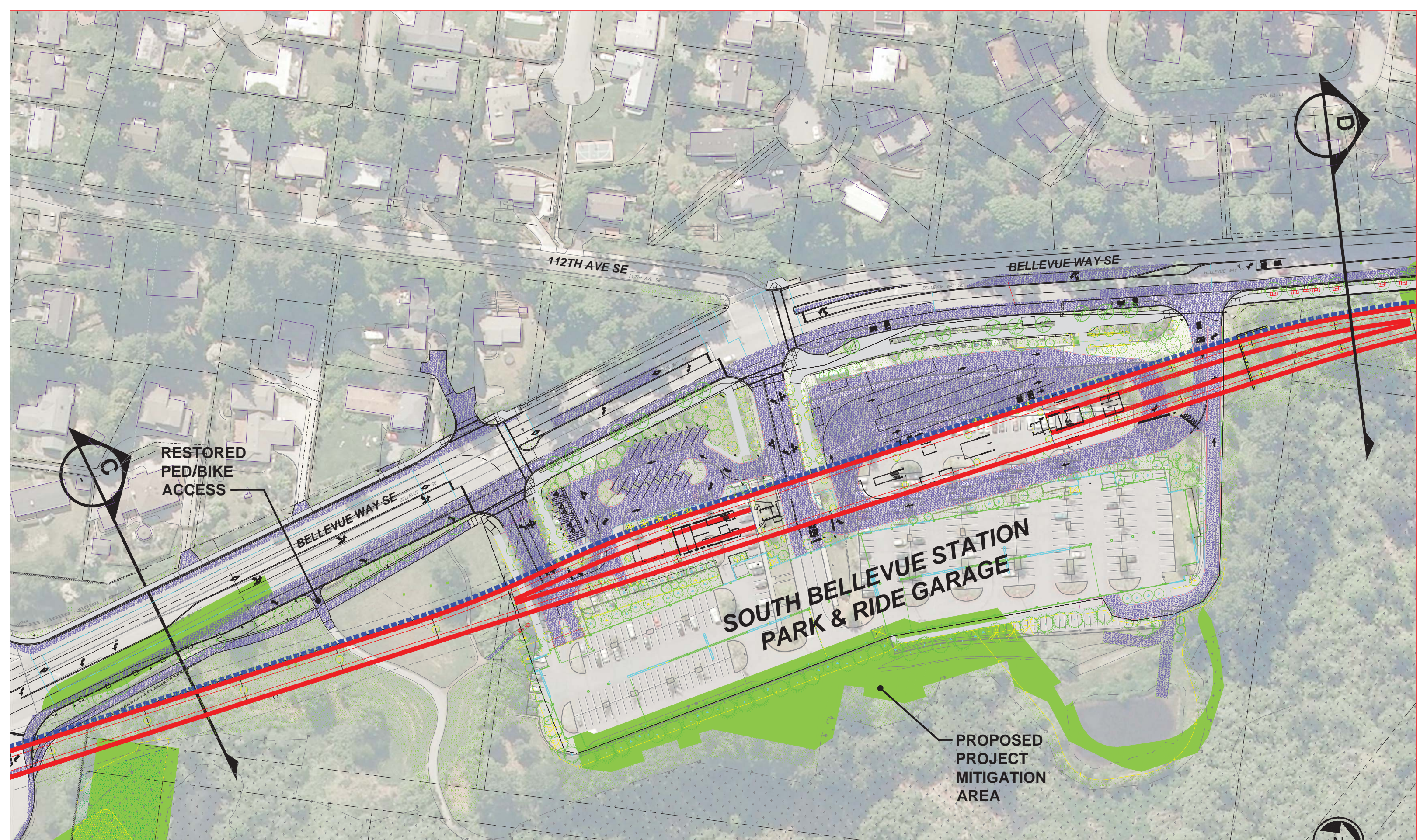
LEGEND

- RETAINED FILL
- TRENCH
- PROPOSED PLANTING
- PROPOSED CONVERSION AREAS
- ELEVATED
- SOUND WALL
- PROPOSED PAVED AREAS
- WETLAND AREA
- 

PROPOSED TREES

PROPOSED PROJECT MITIGATION AREA





RESTORED
PED/BIKE
ACCESS

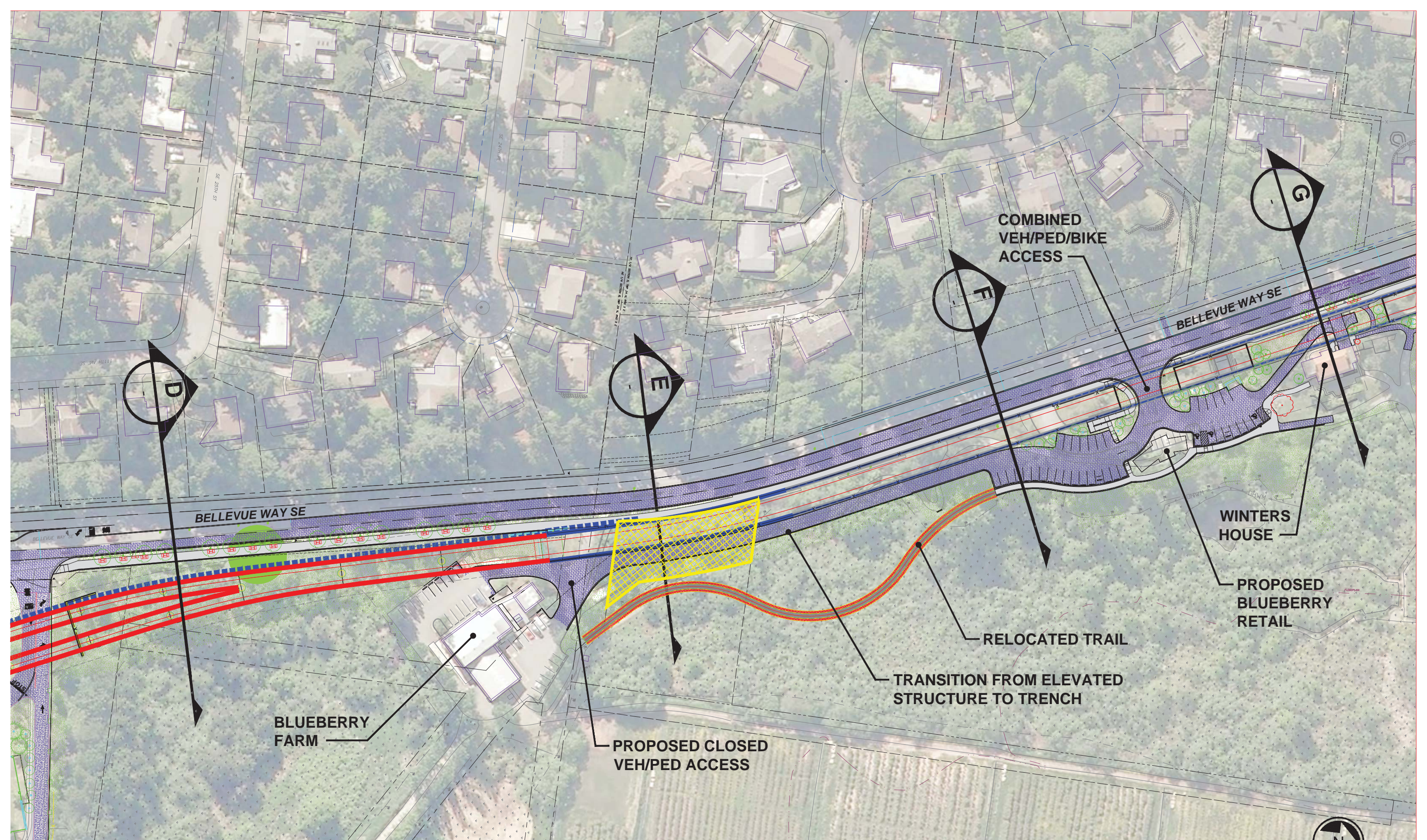
**SOUTH BELLEVUE STATION
PARK & RIDE GARAGE**

PROPOSED
PROJECT
MITIGATION
AREA

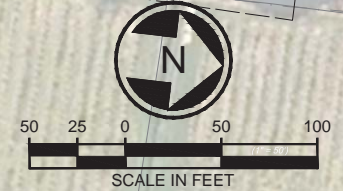
LEGEND

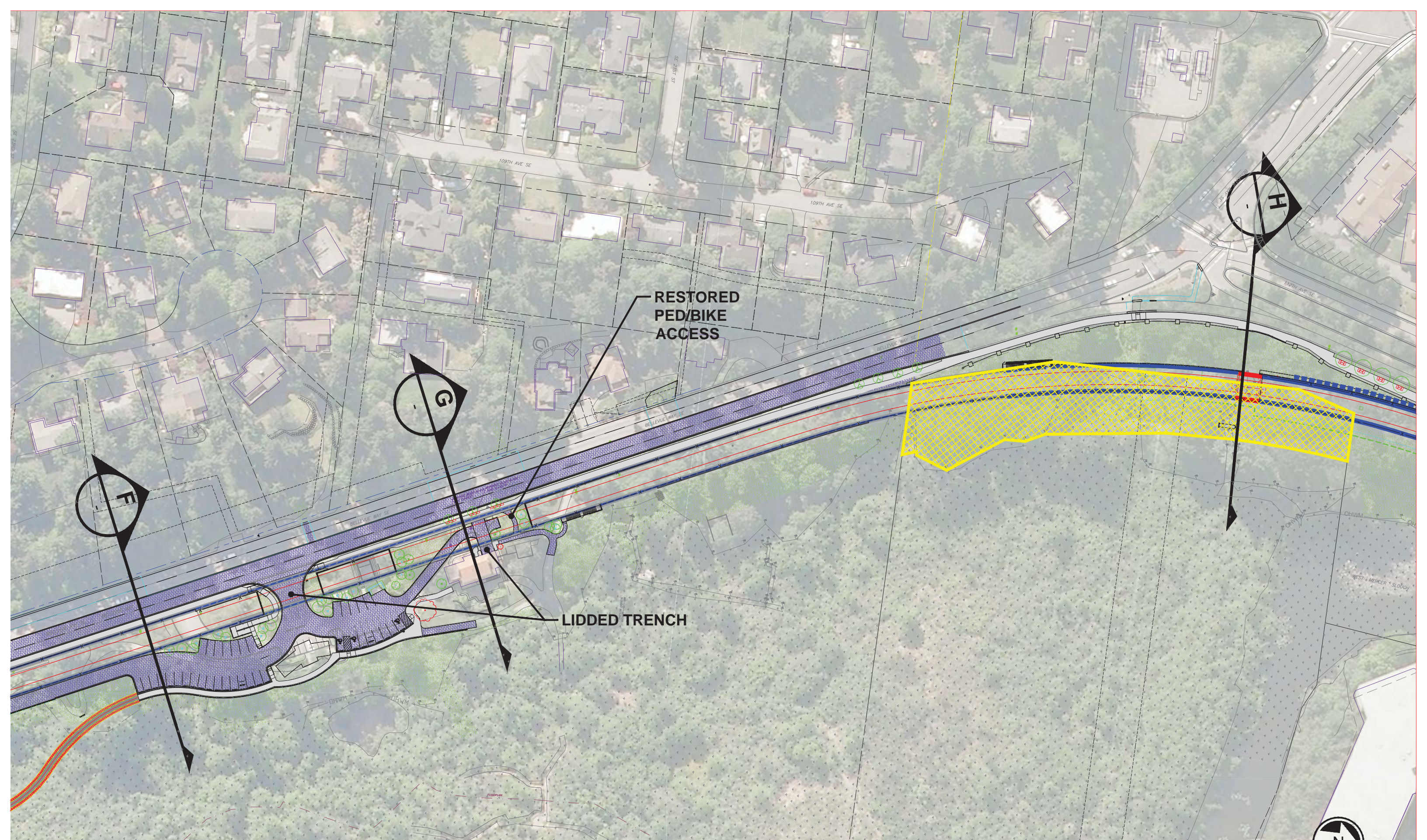
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| | RETAINED FILL | | TRENCH | | PROPOSED PLANTING | | PROPOSED CONVERSION AREAS | | PROPOSED TREES |
| | ELEVATED | | SOUND WALL | | PROPOSED PAVED AREAS | | WETLAND AREA | | |





LEGEND			
	RETAINED FILL		TRENCH
	ELEVATED		SOUND WALL
	PROPOSED PLANTING		PROPOSED CONVERSION AREAS
	PROPOSED PAVED AREAS		WETLAND AREA
	PROPOSED TREES		





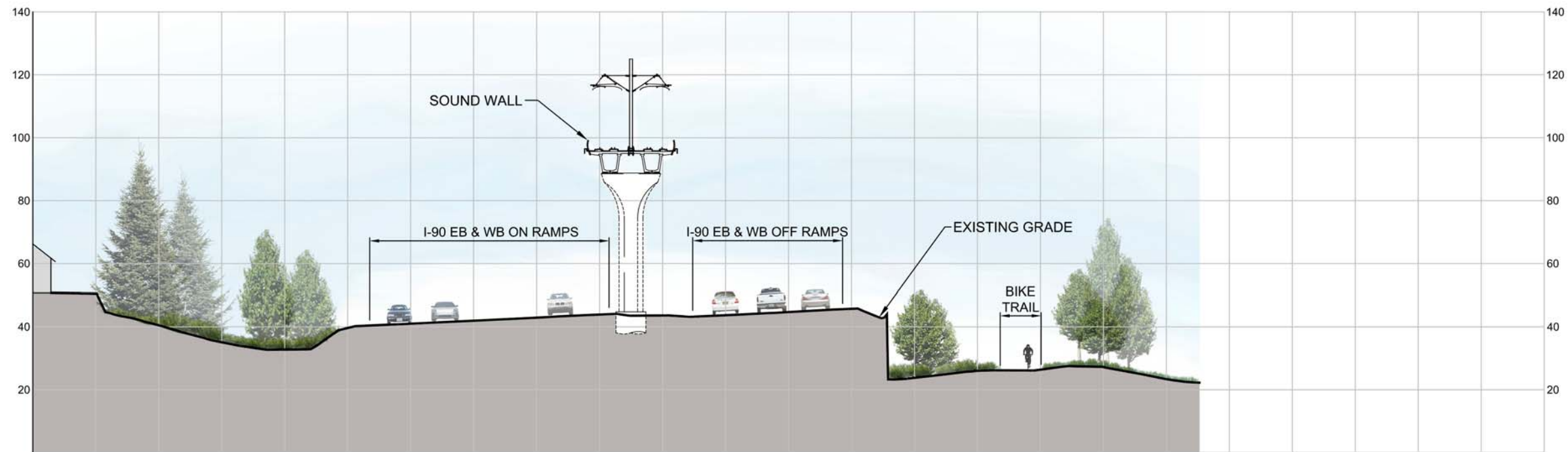
RESTORED
PED/BIKE
ACCESS

LIDDED TRENCH

LEGEND		PROPOSED PLANTING	PROPOSED CONVERSION AREAS	PROPOSED TREES
	RETAINED FILL			
	ELEVATED			
	TRENCH			
	SOUND WALL			



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SECTION B

BELLEVUE WAY @ SWEYOLOCKEN-BOAT LAUNCH

SCALE: H 1"=40' V 1"=40'

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FINAL DESIGN PARTNERS.

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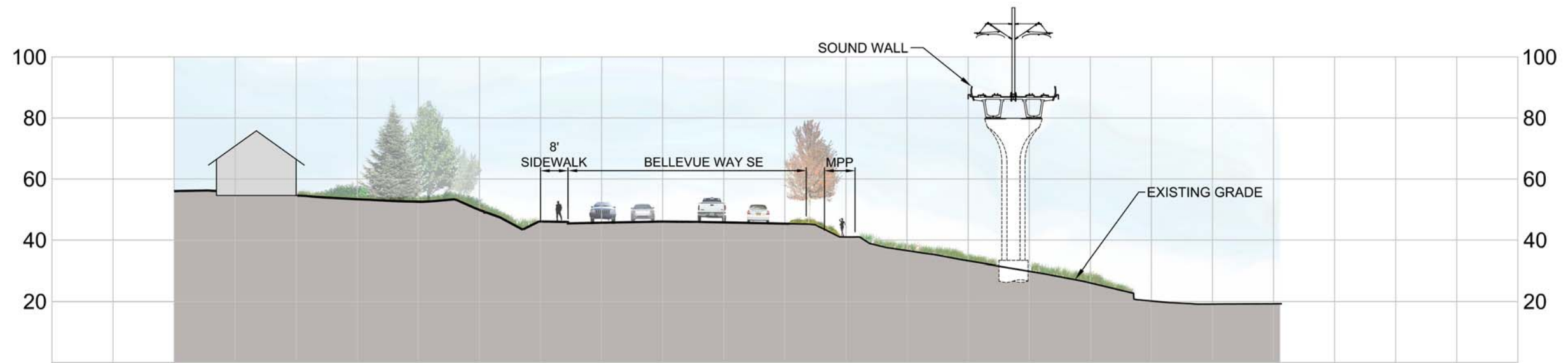
SOUNDTRANSIT

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EAST LINK EXTENSION	
CONTRACT E320	
SOUTH BELLEVUE	
CIVIL	

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SECTION C

ELEVATED GUIDEWAY SOUTH OF STATION

SCALE: H 1"=40' V 1"=40'

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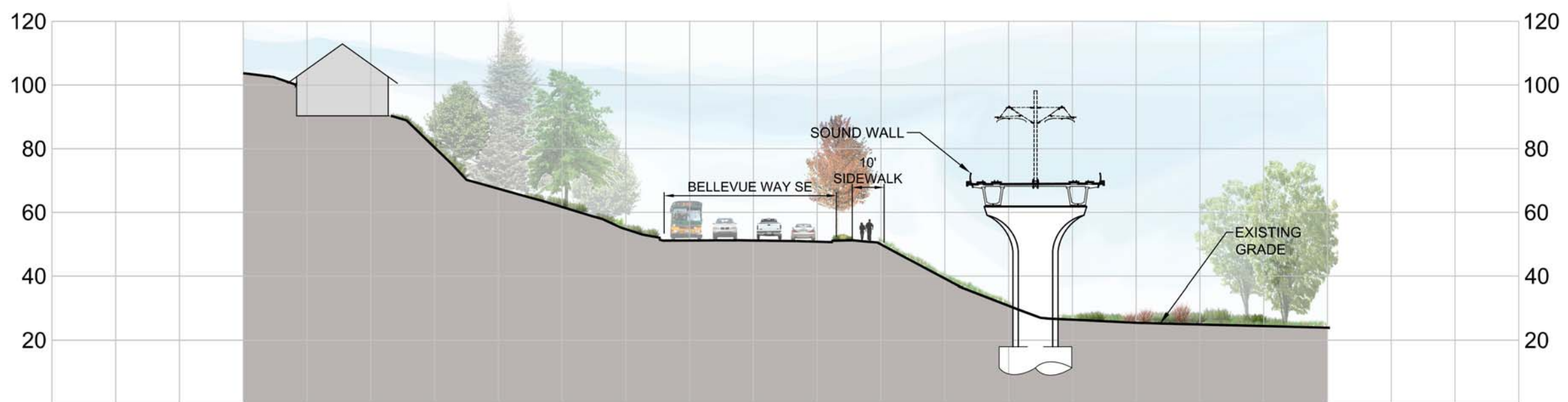


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EAST LINK EXTENSION	
CONTRACT E320	
SOUTH BELLEVUE	
CIVIL	

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SECTION D BELLEVUE WAY SE

SCALE: H 1"=40' V 1"=40'

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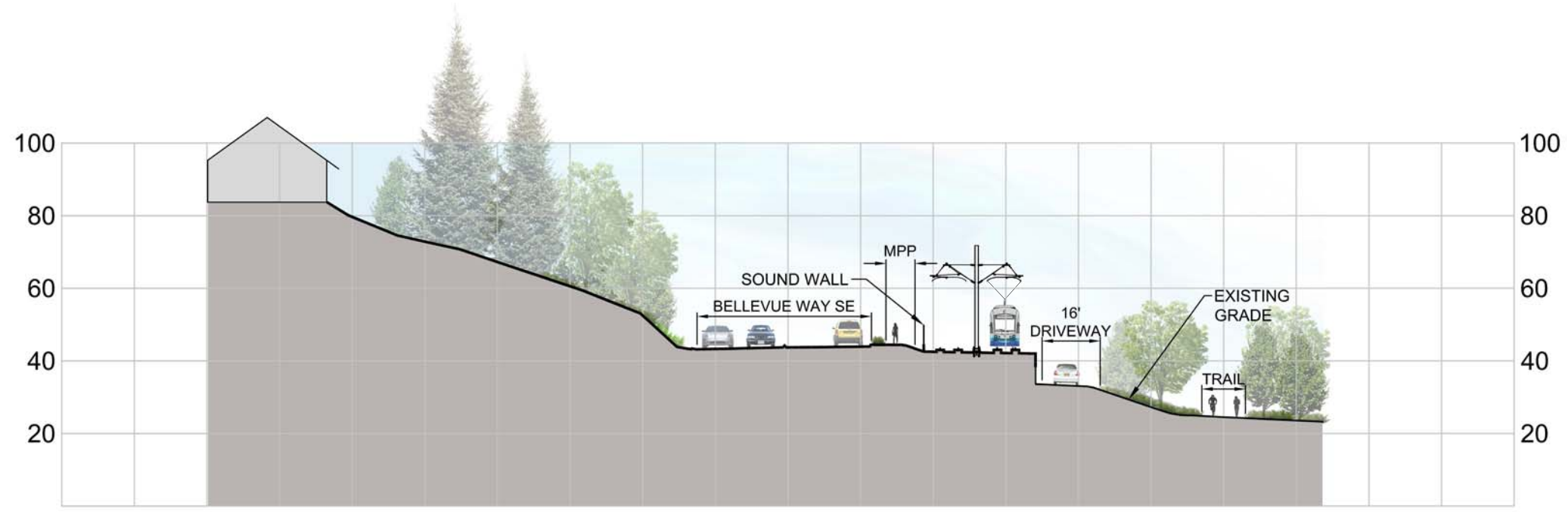
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SECTION E

BLUEBERRY FARM ACCESS

SCALE: H 1"=40' V 1"=40'

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FINAL DESIGN PARTNERS.

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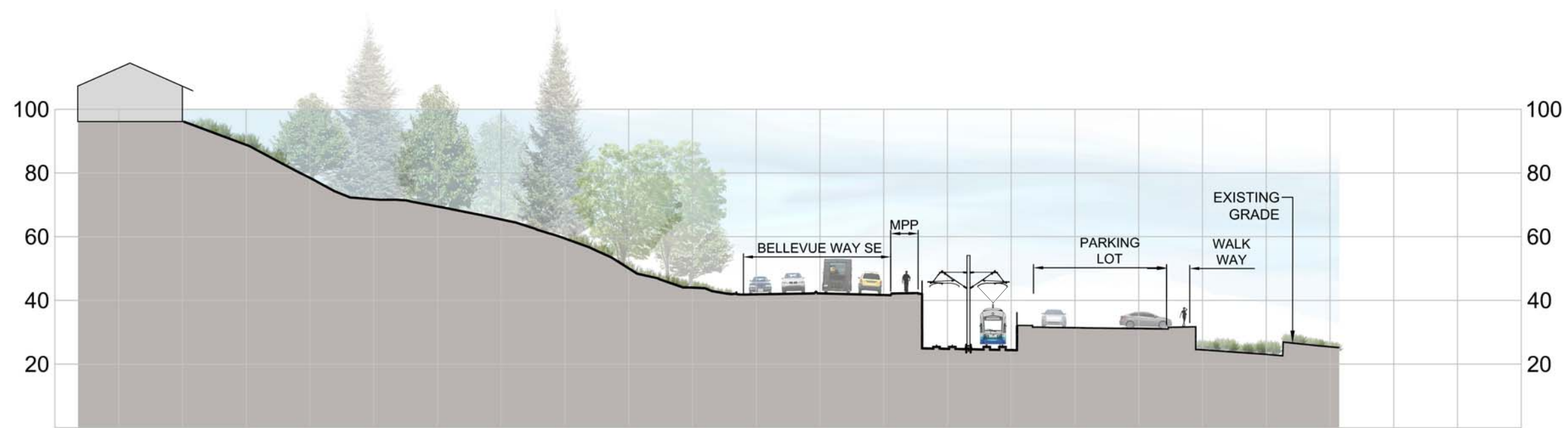


SOUNDTRANSIT

SCALE: 1" = 20'	CONTRACT No.:
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DATE:	10/04/2013

EAST LINK EXTENSION	
CONTRACT E320	
SOUTH BELLEVUE	
CIVIL	

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SECTION F

TRENCH SOUTH OF WINTERS HOUSE

SCALE: H 1"=40' V 1"=40'

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DATE:	



FINAL DESIGN PARTNERS.

LINE IS 1" AT FULL SCALE



SOUNDTRANSIT

SCALE:	1" = 20'
FILENAME:	
CONTRACT No.:	RTA/LR XXXX-XX
DATE:	10/04/2013

EAST LINK EXTENSION	
CONTRACT E320	
SOUTH BELLEVUE	
CIVIL	

DRAWING No.:	
LOCATION ID:	
SHEET No.:	REV:

01/24/14 | 11:06 AM | MWALTON
 P:\2012 PROJECTS\2012\27 EAST LINK - SOUTH BELLEVUE TO OVERLAKE TRANSIT CENTER FINAL DESIGN PROJECT\GRAPHICS\AUTOCAD\EXHIBITS\E320 SECTION\SECTION G PUBLIC OUTREACH SECTIONS - NEW.DWG



SECTION G

LIDDED STRUCTURE @ WINTERS HOUSE

SCALE: H 1"=40' V 1"=40'

No.	DATE	DSN	CHK	APP	REVISION

DESIGNED BY:	
DRAWN BY:	
CHECKED BY:	
APPROVED BY:	

SUBMITTED BY:	
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REVIEWED BY:	
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FINAL DESIGN PARTNERS.

LINE IS 1" AT FULL SCALE



SCALE:	1" = 20'
FILENAME:	
CONTRACT No.:	RTA/LR XXXX-XX
DATE:	10/04/2013

EAST LINK EXTENSION CONTRACT E320 SOUTH BELLEVUE CIVIL	
DRAWING No.:	
LOCATION ID:	
SHEET No.:	REV:

DRAWING No.:	
LOCATION ID:	
SHEET No.:	REV:



SECTION H

BELLEVUE WAY SE AND 112TH AVE SE WYE

SCALE: H 1"=40' V 1"=40'

11/03/14 | 11:51 AM | IRELANDK2
E:\ST\LINK\E320\PUBLIC OUTREACH\90% E320 PUBLIC OUTREACH SECTIONS.DWG

No.	DATE	DSN	CHK	APP	REVISION

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FINAL DESIGN PARTNERS.



SOUNDTRANSIT

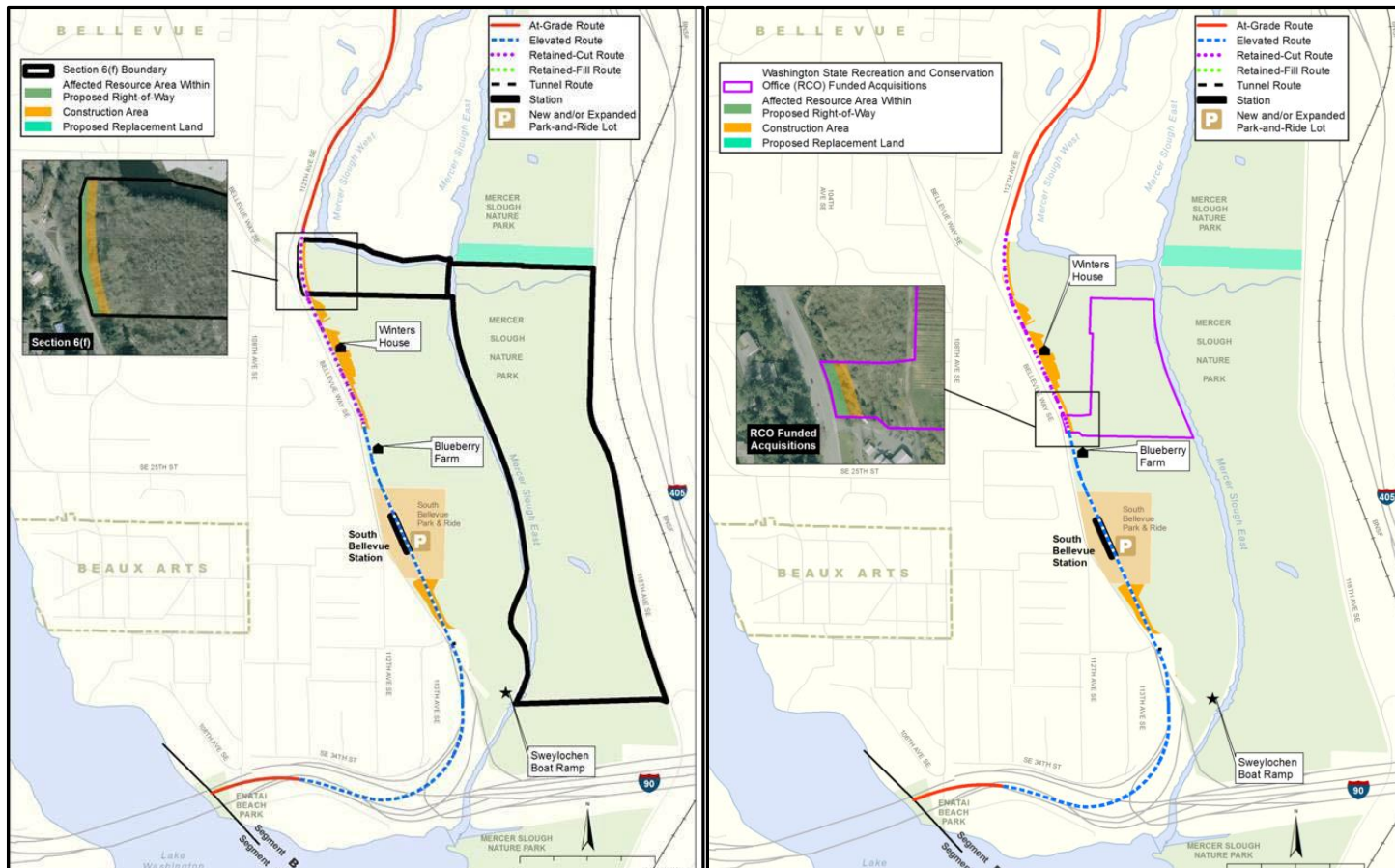
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CONTRACT No.:	RTA/LR XXXX-XX
DATE:	11/06/2014

EAST LINK EXTENSION CONTRACT E320 SOUTH BELLEVUE CIVIL	
DRAWING No.:	
LOCATION ID:	
SHEET No.:	REV:

Sound Transit East Link Route Map along West Edge of Mercer Slough Nature Park;
Detail Location Map of Conversion Areas

North Conversion Area

South Conversion Area



Map of Proposed Replacement Property



Proposed Replacement Property

Visual of Planned Trail on Proposed Replacement Property





Via Facsimile and Regular Mail

November 15, 2011

Mr. Richard F. Krochalis, Regional Administrator
Federal Transit Administration
Jackson Federal Building
915 Second Avenue, Ste 3142
Seattle, WA 98174

Dear Mr. Krochalis:

The City of Bellevue appreciates the opportunity to clarify and update comments that the City has previously submitted regarding the Section 4(f) analysis included in the Draft EIS and Final EIS for the East Link Project. Since sending our letter of August 29, 2011 on this subject, the City has taken the opportunity to continue coordination with Sound Transit on these issues. This letter is intended to address the City's past comments submitted to FTA on 4(f) and historic resource impacts, and not other comment letters submitted by the City.

With incorporation of design modifications and park and historic resource impact mitigation commitments as described below, Sound Transit has shown that it is conducting "all possible planning... to minimize harm and mitigate for adverse impacts and effects" within the meaning of Section 4(f) [23 CFR 774.17]. The City now believes that the requirements of Section 4(f) have been met by the East Link Project with respect to the Mercer Slough Nature Park, Surrey Downs Park and the Winters' House. Further, these parks mitigation measures reduce the remaining harm to the recreational and other parks uses of the protected resources making the preferred alternative (B2M-C9T) a viable least-harm alternative compared to all other project alternatives.

Mercer Slough Nature Park

The City and Sound Transit have cooperatively identified context-sensitive modifications to the existing B2M project within Mercer Slough Park between the South Bellevue Park and Ride and Winters House. The concept that the parties will continue to refine as project design proceeds is attached to this letter. The City also understands that the current roadway design south of the park and ride preserves a left-hand turn from Bellevue Way to the Sweylocken Boat Launch. When combined with other parks 4(f) mitigation measures published in the FEIS for permanent and temporary impacts to the parks resources, incorporation of these design modifications resolves prior comments the City has submitted regarding vehicular access to the park as well as visual, noise, and proximity impacts to the 4(f) protected activities, features and attributes of Mercer Slough Nature Park.

Surrey Downs Park

Further coordination with Sound Transit has resulted in a commitment to provide compensation and/or replacement land for the property shown in the FEIS as removed from the park on a temporary and permanent basis as a result of the Preferred Alternative that meets the basic standard proposed by Section 4(f) regulation of land of "comparable value and function" [23 CFR 774.17]. This, combined with the other parks 4(f) mitigation measures published in the FEIS for permanent and temporary impacts to the parks resources, resolves prior comments the City has submitted in respect to this protected resource. Should alignments be modified in the future in a way that significantly changes the impact to the activities, features and attributes of this park, the City will fully participate in any addition review and comment opportunities necessary to meet Section 4(f) requirements.

These steps, conducted under 4(f)'s *all possible planning* requirement allow the City to change its opinion of the Least Overall Harm Analysis included in the FEIS. They show that East Link design does "put a 'thumb on the scale' in favor of protecting Section 4(f) properties." Specifically the inclusion of these design modifications and mitigation measures displays that:


- the adverse parks-related impacts caused by the Preferred Alternative can be mitigated and do not result in remaining harm to the protected resource (Least Harm Factors I and II);
- the relative significance of the protected resources is respected by the design (Factor III);
- the views expressed by the City of Bellevue, as an Official with Jurisdiction have been recognized and addressed (Factor IV)

Further, through additional discussions with Sound Transit and further consideration of when the 4(f) process occurs with respect to environmental review and project design, the City better understands the methodology that led Sound Transit and FTA to identify multiple "least harm" alternatives. The unique nature of this linear facility with a variety of segment options impacting different 4(f) resources was a challenge. The approach used by FTA allows for a reasonable comparison of alternatives to ensure that the intent of 4(f) is satisfied.

Finally, we have reviewed the final draft of the Memorandum of Agreement prepared under the Section 106 requirements for the historic Winters House. The City recognizes that the State Historic Preservation Officer is the designated Official with Jurisdiction to evaluate the historic impact protections under Section 4(f). However, within our role as the Official with Jurisdiction over possible recreational impacts under Section 4(f), the city finds that the MOA contains mitigation sufficient to meet concerns previously addressed by the City, and we look forward to continued work with Sound Transit and the State Historic Preservation Officer during and following construction to ensure that historic and recreational features and attributes of this resource are restored.

As stated in the August 29th letter, the City is appreciative of the commitment shown to date by Sound Transit toward resolving the City's concerns about the 4(f) analysis. The City supports Sound Transit's overall goals for the project and looks forward to continued collaboration. Please accept this letter as a revision to the City's prior comment letters.

Sincerely,



Steven R. Sarkozy
City Manager

Attached: Mercer Slough Nature Park Modified Design

Cc: Patrick Foran, Director, Parks and Community Services Department
Bernard Van de Kamp, East Link Project Manager
Joni Earl, Sound Transit



**DRAFT CONCEPTUAL
SOUND TRANSIT EAST CORRIDOR PROJECT - PE (PHASE 3)**
 SEGMENT B - MERCER PARK MITIGATION SUPPORT
 AUGUST 22, 2011

SCALE: 1" = 100'



CH2M HILL
 EAST LINK TEAM

**Recreation and Conservation Funding Board
Resolution 2015-04
Approving Conversion for Mercer Slough Nature Park
(RCO Projects #73-026 and 78-513)**

WHEREAS, the City of Bellevue and Washington State Parks and Recreation Commission used state bond funds and a grant from the Land and Water Conservation Fund (LWCF) to acquire land to expand the Mercer Slough Nature Park; and

WHEREAS, the Washington State Parks and Recreation Commission is in the process of transferring their grant interests to the City of Bellevue,

WHEREAS, the construction of Sound Transit’s East Link Light Rail project will convert of a portion of the property; and

WHEREAS, as a result of this conversion, a portion of the property no longer satisfies the conditions of the RCO grant; and

WHEREAS, the city is asking for Recreation and Conservation Funding Board (board) approval to replace the converted property with property purchased under a waiver of retroactivity; and

WHEREAS, the proposed replacement property is in close proximity to the conversion sites, has an appraised value that is greater than the conversion site, and has greater acreage than the conversion sites; and

WHEREAS, the site will provide opportunities that closely match those displaced by the conversion, will consolidate public ownership in the park’s overall boundary, and meets needs that have been identified in the city’s comprehensive plan as acquiring land adjacent to existing community parks, expanding wetland preservation of wildlife habitat, thereby supporting the board’s goals to provide funding for projects that result in public outdoor recreation purposes; and

WHEREAS, the sponsor sought public comment on the conversion and discussed it during an open public meeting, thereby supporting the board’s strategy to regularly seek public feedback in policy and funding decisions;

NOW, THEREFORE BE IT RESOLVED, Recreation and Conservation Funding Board approves the conversion request and the proposed replacement site for RCO Projects #73-026 and 78-513 as presented to the board in April 2015 and set forth in the board memo prepared for that meeting; and

AND BE IT FURTHER RESOLVED, that the board hereby authorizes the RCO director to give interim approval for the property acquired with LWCF funds and forward the conversion to the National Park Service (NPS) for final approval.

Resolution moved by: _____

Resolution seconded by: _____

Adopted/Defeated/Deferred (underline one)

Date: _____

From: kcexec@kingcounty.gov [<mailto:kcexec@kingcounty.gov>]

Sent: Monday, March 16, 2015 2:51 PM

To: RCO MI General Info (RCO)

Cc: 'trinity.parker@soundtransit.org'; Arkills, Chris

Subject: Letter from Executive Constantine

Dear Recreation and Conservation Funding Board:

Attached is an electronic copy (pdf) of a letter from King County Executive Dow Constantine to Chair Harriet Spanel, Director Kaleen Cottingham, and the members of the Board regarding the City of Bellevue's proposal to convert one acre of the Mercer Slough Nature Park. I will send a paper follow copy via U.S. Mail.

James Bush

Communications Specialist

for King County Executive Dow Constantine



King County

Dow Constantine

King County Executive
401 Fifth Avenue, Suite 800
Seattle, WA 98104-1818

206-263-9600 Fax 206-296-0194

TTY Relay: 711

www.kingcounty.gov

March 16, 2015

Harriet Spanel, Chair
Kaleen Cottingham, Director
Recreation and Conservation Office
P.O. Box 40917
Olympia, WA 98504-0917

Dear Chair Spanel, Director Cottingham and members of the Board:

This letter is in support of the City of Bellevue's proposal to convert approximately one acre of Mercer Slough Nature Park (Conversion) for use with the Sound Transit East Link Extension project (East Link). On behalf of the Sound Transit Board, I respectfully request that the Recreation Conservation and Funding Board (RCF Board) approve the Conversion proposal.

The Sound Transit Board and the City of Bellevue have each approved the East Link project, following nearly eight years of environmental review and collaborative work with local, state and federal agencies. I urge that the RCF Board approve the Conversion request for the following reasons:

- All practical alternatives to the conversion have been evaluated and rejected based on sound technical analysis and in compliance with the National Environmental Policy Act (NEPA), State Environmental Policy Act (SEPA) and Section 4(f) of the Department of Transportation Act. Furthermore, the Conversion analysis was upheld in two separate appeal proceedings including approval by a Hearing Examiner, a Superior Court judge and a federal district court judge.
- The proposal provides for replacement park land at a ratio of 6-to-1, and provides an estimated \$138,120 more in market value return to the Mercer Slough Nature Park. Additionally, the replacement parcels contain significant wetland habitat and will provide a connection between previously separated portions of the Park. These replacement parcels are the last missing pieces to make the entire Park contiguous and whole.
- The public has had extensive opportunities for participation in the process.

Harriet Spanel
Kaleen Cottingham
March 16, 2015
Page 2

Thank you for your attention to this topic and I urge your approval of this Conversion request.

Sincerely,

A handwritten signature in black ink that reads "Dow Constantine". The signature is written in a cursive style with a long horizontal stroke at the end.

Dow Constantine
King County Executive
Chairman of the Board, Sound Transit

From: Duncan Greene [mailto:dmg@vnf.com]

Sent: Monday, March 16, 2015 4:19 PM

To: Barker, Myra (RCO); Loosle, Wendy (RCO)

Cc: Weinberg, Perry (perry.weinberg@soundtransit.org); elma.borbe@soundtransit.org; 'CParker@bellevuewa.gov'; Faller, Brian (ATG)

Subject: Conversion Request: City of Bellevue, Mercer Slough Phase 1, #73-026A and Mercer Slough #78-513A

Ms. Barker and Ms. Loosle:

Attached please find a PDF copy of a letter in support of the above-referenced conversion request, which we are submitting on behalf of Sound Transit, with two attachments. A hard copy of the letter will be mailed today with the attachments as well as the enclosures noted in the letter (CDs of the Final EIS and 2013 SEPA Addendum for the East Link Extension Project).

Please let me know if you have any problems with the attached files. Thank you.

Duncan Greene | Partner
Van Ness Feldman LLP

719 Second Avenue, Suite 1150
Seattle, Washington 98104-1728

(206) 623-9372 | dmg@vnf.com | vnf.com

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719 Second Avenue, Suite 1150
Seattle, WA 98104-1728
206-623-9372
vnf.com

March 16, 2015

VIA U.S. MAIL AND E-MAIL

Harriet Spanel, Chair
Recreation and Conservation Funding Board
Kaleen Cottingham, Director
Recreation and Conservation Office (RCO)
P.O. Box 40917
Olympia, WA 98504-0917

Re: Conversion Request: City of Bellevue, Mercer Slough Phase 1, #73-026A and
Mercer Slough #78-513A

Dear Chair Spanel, Director Cottingham, and members of the Board:

This firm represents the Central Puget Sound Regional Transit Authority ("Sound Transit"). Sound Transit is a party to the above-referenced proposal by the City of Bellevue (the "City") to convert portions of two parcels within the Mercer Slough Nature Park (the "Conversion") for the purpose of constructing Sound Transit's East Link Extension light rail project (the "Project").

As you may know, Sound Transit's Project has been litigated extensively in administrative and judicial appeals by numerous parties, including several parties who now oppose the Conversion in this proceeding before the Board. Consequently, Sound Transit retained Van Ness Feldman in anticipation of potential litigation regarding the Conversion. Although RCO staff is doing an excellent job in providing you with the factual information you have requested to answer your questions, this letter provides additional information regarding the legal framework surrounding the Board's decision and the application of the Conversion approval criteria to the record before the Board. It also provides copies of key documents regarding the environmental review and prior litigation regarding the Project to ensure that the record before the Board is complete.

For the reasons summarized in this letter and detailed in the Supplemental Information prepared by the City of Bellevue and Sound Transit, Sound Transit respectfully requests that the Board approve the Conversion.

1. Overview of approval criteria for the Conversion

When reviewing conversion requests, the Board considers the following key factors:

- All practical alternatives to the conversion have been evaluated and rejected on a sound basis;
- A new development will serve as a replacement which is of at least equal fair market value and of reasonably equivalent recreation usefulness and location; and
- The public has had opportunities for participation in the process.¹

As explained below, the information provided to the Board demonstrates that each of these criteria has been met.

2. All practical alternatives to the Conversion have been evaluated and rejected on a sound basis.

- a. The EIS and the Section 4(f) analysis provided a “sound basis” for rejecting alternatives to the Conversion.

Through almost eight years of study and public process, Sound Transit and other agencies conducted an extensive evaluation of reasonable and practicable alternatives to the Conversion in its Environmental Impact Statement (EIS) for the Project, including avoidance, under the National Environmental Policy Act (NEPA), the State Environmental Policy Act (SEPA), and Section 4(f) of the Department of Transportation Act. Sound Transit’s alternatives analysis was reviewed and approved by multiple federal, state, and local agencies with expertise in transportation, environmental, and open space issues, and RCO was consulted in 2009-2010 as part of this process.² Sound Transit’s analysis conducted precisely the type of evaluation that is required for conversions of Board-funded acquisitions. The analysis evaluated all reasonable, prudent and feasible alternatives to the Conversion and rejected all of those alternatives, including alternatives that opponents of the Conversion now advocate to the Board.

Sound Transit’s alternatives analysis is summarized in Section 2 of the Supplemental Information provided to the Board. Enclosed with this letter are CDs of the Final EIS and 2013 SEPA Addendum for the Project. In addition, Section 3 of the Supplemental Information addresses specific questions regarding Sound Transit’s alternatives analysis raised by Board members and commenters during the meeting on October 30, 2014. These materials clearly

¹ See WAC 286-40-060. See also Washington State Recreation and Conservation Office, Manual 7, Long-Term Obligations (February 1, 2014), pp. 10-14. As explained in the Briefing Memo prepared by Myra Barker, the Conversion also meets the other basic requirements for conversions, including administration by the same political jurisdiction (the City of Bellevue), satisfaction of needs in an adopted plan (the City of Bellevue Parks and Recreation Comprehensive Plan), and meeting funding eligibility requirements. See Briefing Memo dated October 2014, p. 6.

² RCO staff was contacted in September and October 2009 to identify Section 6(f) resources in the East Link study area, including the Mercer Slough Nature Park, and Project staff met with RCO staff and staff from the National Park Service in April 2010 to discuss these resources. See East Link Project Final EIS, Appendix D Section 4(f)/6(f) Supplemental Evaluation, p. D-75.

show that all practical alternatives were evaluated and rejected on a “sound basis,” as required by the Conversion criteria.

b. The record of appeals upholding the EIS and Sound Transit’s alternatives analysis reinforces the “sound basis” for rejecting alternatives.

In 2011, the Final EIS for the Project was appealed to Sound Transit’s Hearing Examiner under the SEPA by Will Knedlik, who recently presented testimony in opposition to the Conversion at the Board’s October 2014 meeting.³ Similarly, in 2012, the EIS was appealed to federal district court under NEPA by two groups – Building a Better Bellevue and Friends of Enatai – whose members have opposed the Conversion in this Board proceeding. As discussed below, those members now ask the Board to reconsider the same arguments regarding Project alternatives that were rejected in the 2012 NEPA appeal.

The 2012 NEPA appeal specifically affirmed the analysis of alternatives in the EIS. Thus, the “sound basis” for Sound Transit’s alternatives analysis includes not only the extensive documentation contained in the EIS and the Section 4(f) analysis, but also the record showing that these analyses were scrutinized and upheld in federal court. In particular, in the NEPA appeal, Federal District Court Judge John Coughenour issued a detailed order in 2013 (Attachment 1) upholding the alternatives analysis. In his order, Judge Coughenour rejected the very same arguments that opponents of the Conversion raise in this proceeding before the Board, including arguments about the “tunnel” alternative and the B7R alternative. Judge Coughenour also upheld the agencies’ conclusions under Section 4(f) that there were no prudent and feasible alternatives that would avoid all recreational resources, including the Mercer Slough Nature Park, and that the EIS identified all reasonable measures to cause the least overall harm to those resources.

The parties to the 2011 SEPA appeal and the 2012 NEPA appeal have exhausted all of their appeal options, and no further opportunities exist to challenge Sound Transit’s alternatives analysis under NEPA, SEPA, or Section 4(f).⁴

c. The Board should not conduct a new alternatives analysis.

It bears emphasis that it is not the Board’s job to conduct a new, independent analysis of alternatives to the Conversion. Rather, the Board’s role is limited to reviewing Sound Transit’s analysis and determining whether that analysis evaluated and rejected all practical alternatives “on a sound basis.”⁵ This “sound basis” standard applied by the Board is the same as the “arbitrary and capricious” standard applied by courts, which asks whether a decision was made

³ After a multi-day hearing, the Hearing Examiner denied the SEPA appeal and upheld the EIS. Mr. Knedlik appealed the Hearing Examiner’s decision to the King County Superior Court, which dismissed his appeal.

⁴ Under the doctrine of collateral estoppel, parties who raised issues in the 2011 SEPA appeal and the 2012 NEPA appeal would be barred from attempting to re-litigate the same issues in a subsequent proceeding. See, e.g., *Citizens for Safety & Environment v. Washington State Dep’t of Transportation*, 124 Wn. App. 1020, Not Reported in P.3d (2004), 2004 WL 2651499 at * 5 (holding that re-litigation of EIS issues under NEPA was barred because “the EIS traffic impact analysis was challenged, fully litigated, and found adequate by a federal court on the same grounds and utilizing the same standards applicable in state court under SEPA”).

⁵ WAC 286-40-060(2)(a).

“without consideration and in disregard of the facts.”⁶ As the courts have explained, even if individual Board members were to disagree with particular aspects of Sound Transit’s analysis, that would not mean that the analysis is “arbitrary or without a sound basis.”⁷ Because the record before the Board conclusively demonstrates that the analysis was not made “in disregard of the facts,” it cannot be considered to be “arbitrary and capricious” or lacking a “sound basis.” Indeed, as explained above, Judge Coughenour already determined that Sound Transit’s analysis was not arbitrary or capricious. The Board should similarly conclude that the analysis rested on a sound basis.

This deferential approach is particularly appropriate for the Board’s review of the parcel acquired using funding from the Land and Water Conservation Fund (LWCF). Court cases discussing the proposed conversion of LWCF properties have made it clear that state and federal approval of conversions does not require reviewing agencies to conduct an independent analysis of alternatives. For example, in a case involving a challenge to a National Park Service (NPS) decision regarding conversion of a LWCF property, a federal district court explained that the NPS was not required to undertake an independent analysis of alternatives:

While the NPS will only consider the conversion request if the request meets a list of several requirements, including that “[a]ll practical alternatives to the proposed conversion have been evaluated,” 36 C.F.R. § 59.3, the regulations do not require the NPS to undertake an independent evaluation of all practical alternatives to the proposed conversion. Rather, the only NPS mandate is to ensure that the state has done this analysis prior to the submission of a conversion. Thus, plaintiffs seek to measure NPS’s obligations under a standard far more expansive than the limited one that actually applies to the NPS.⁸

The opponents of the Conversion in this proceeding similarly ask the Board to conduct a more in-depth analysis of alternatives than is legally required under the Board’s regulations or would be appropriate given the Board’s expertise and resources. The opponents’ position is a thinly-veiled attempt to use the Conversion process to revisit Project alignment alternatives, like the B7R alternative, that were previously rejected on a sound basis. The Board should reject the opponents’ request for a “do-over” of the eight-year alternatives analysis that was conducted by Sound Transit, approved by multiple agencies with jurisdiction, and upheld after close scrutiny by the courts.

⁶ *Carlson v. City of Bellevue*, 73 Wn. 2d 41, 49, 435 P.2d 957, 959 (1968).

⁷ *Id.* at 49-50 (upholding zoning decision by Bellevue City Council and noting that, even though reasonable minds could differ about the wisdom of the City Council’s decision, that “does not mean that the city council’s decision is arbitrary or without a sound basis. It means, simply, that its decision, because of conflicting local views, was a difficult one to make-not that it was a capricious one.”).

⁸ *Save Our Parks v. Kempthorne*, No. 06 CIV.6859 NRB, 2006 WL 3378703, at *12 (S.D.N.Y. Nov. 15, 2006) (rejecting challenge to alternatives analysis and noting that “[a]n entire chapter of the FEIS evaluates the feasibility of all alternatives suggested by the plaintiffs”). While the Board’s conversion criteria add the concept of a “sound basis” to the regulatory criteria applied by NPS, the addition of that phrase does not substantially change the nature of the Board’s review compared to the role of NPS. As explained above, at most, the “sound basis” language authorizes the Board to review the Conversion under the “arbitrary and capricious” standard.

d. Cost is an appropriate consideration in evaluating alternatives.

In conducting its review of Sound Transit's alternatives analysis, the Board should be aware that cost was one factor that Sound Transit was required to consider and, in fact, did consider in comparing alternatives to the Conversion. While Sound Transit did not reject any alternatives solely on economic grounds, cost was considered among many other factors, and it is appropriate for Sound Transit to consider the relative cost of various alternatives under NEPA and Section 4(f). For example, federal NEPA guidance states that "reasonable alternatives" under NEPA "include those that are practical or feasible from the technical and economic standpoint and using common sense."⁹ Similarly, under federal regulations implementing Section 4(f), agencies are required to consider factors such as "construction, maintenance, or operational costs" in evaluating whether an alternative is "prudent," and must consider "[s]ubstantial differences in costs among the alternatives" in evaluating whether an alternative causes the "least overall harm."¹⁰

Cost considerations are also relevant to the Board's decision in this proceeding. Nothing in the Board's conversion criteria suggests that cost cannot be considered, and any such interpretation of the Board's rules would be untenable, particularly for major, multi-billion dollar undertakings like the Project. Agencies like Sound Transit have a fiduciary obligation to consider costs in comparing alternative alignments, and federal regulations under NEPA and Section 4(f) reflect this common-sense need to consider economic factors. The Board's conversion criteria should similarly be interpreted to allow reasonable consideration of cost in evaluating alternatives.

e. The alleged environmental impacts of the Project are not a basis for denying the Conversion.

Several public comments opposing the Conversion suggest that the Board should deny the Conversion based on the alleged environmental impacts of the Project on the Mercer Slough Nature Park, including areas outside the proposed Conversion area. These issues are irrelevant to the Board's review of the Conversion in this proceeding. None of the Board's conversion criteria suggest that a conversion may be denied simply because a project that necessitates a conversion proposal will have environmental impacts, whether inside the area proposed for conversion or elsewhere. While the relative impacts of various alternatives are relevant to the question of whether Sound Transit evaluated and rejected alternatives on a "sound basis," project impacts are not, by themselves, a basis for denying the Conversion.

As explained below, the public has had numerous opportunities to raise issues related to Project impacts through the almost eight year NEPA and SEPA environmental review process. Bellevue's Conversion request before the Board, however, is not the proper forum for continued debate over issues related to environmental impacts from the Project.

⁹ CEQ, *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026 (March 23, 1981) (hereafter referred to as "*Forty Most Asked Questions*"), Question 2a (emphasis added).

¹⁰ 23 C.F.R. §§ 774.17, 774.3 (emphasis added).

Nevertheless, in Section 3 of the Supplemental Information, Sound Transit has provided responses to questions regarding various Project impacts, including visual impacts, hydrologic impacts, impacts to significant trees, wetlands and wetland buffers, wildlife impacts, park access, and construction impacts. As noted above, we have also provided the Board with a complete electronic copy of the Final EIS and 2013 SEPA Addendum, which discuss Project impacts in great detail.

3. A new development will serve as a replacement which is of at least equal fair market value and of reasonably equivalent recreation usefulness and location.

This criterion has clearly been met. As a purely economic matter, it is undisputed that the fair market value of the replacement property exceeds the value of the converted property by \$138,120.¹¹ Further, the record shows that the proposed new development on the replacement property will have greater recreation usefulness and location than the existing development on the properties proposed for conversion.

The following sections provide a brief comparison between the recreation usefulness and location of the parcels proposed for conversion and the new development proposed on the replacement property. A more detailed comparison was provided by the City of Bellevue in its response to public comments on the Conversion (Attachment 2).

a. Parcels proposed for conversion.

Usefulness. The parcels proposed for conversion, which encompass approximately one acre, have limited recreation usefulness. The north parcel is vegetated open space, with wetland buffer and a small area of wetland, and does not contain trails providing access for the public or any other recreational facilities. The south parcel includes vegetation, wetland buffer, a small area of wetland, and a rental house. The only recreational feature on the south parcel is a short trail segment that will be detoured during construction and replaced with a new boardwalk trail segment. No other recreational facilities within the conversion areas will be impacted.

Location. Both parcels are located adjacent to a congested arterial, Bellevue Way SE, and the park's Periphery Trail sidewalk. The south parcel provides access to the park, but this access will be moved and consolidated at the Winters House as part of the Project mitigation. In addition, as discussed below, the replacement property will provide additional access and connectivity where none currently exists.

¹¹ One commenter suggested that the appraisal prepared for the Conversion is deficient because it failed to account for "the value loss to the remainder of the site(s) that will be realized from visual blight, noise, loss of significant trees, wetlands loss and public access resulting from the approval of this conversion." See E-mail from Geoffrey J. Bidwell to Camron Parker dated October 12, 2014. Sound Transit disagrees with this characterization of project impacts, but in any event, any such "loss" would be irrelevant to the question of whether the new development is of at least equal fair market value to the property proposed for conversion. The regulation cited by Mr. Bidwell addressing partial conversions, 36 C.F.R. § 59.3(b)(5), applies to other aspects of the conversion review process by the National Park Service (NPS), and does not apply to NPS' review of appraisals. Appraisal requirements are found in a different subsection of the regulation: 36 C.F.R. § 59.3(b)(2). It is undisputed that the appraisal for the Conversion meets all requirements found in that subsection of the regulation.

b. New development on replacement property.

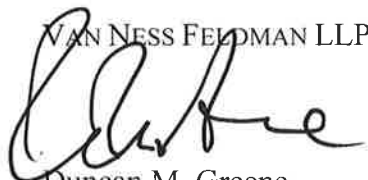
Usefulness. By comparison, the six-acre replacement property is reasonably equivalent to the one-acre conversion parcels, and the proposed replacement property will provide greater recreation usefulness than the conversion parcels. The general characteristics of the replacement property are similar to those of the conversion parcels, including undeveloped open space consisting of wetlands, wetland buffers, and natural vegetation. Moreover, the replacement property consists of a much larger undisturbed natural area than the conversion parcels and will better serve the park's core functions. This is particularly true when the Board considers not only the replacement property but the new development proposed on the property, which includes the construction of a new interior trail to connect the Mercer Slough Environmental Education Center to the rest of the Mercer Slough Nature Park. The City also plans to add a sidewalk, where none exists, along the edge of the replacement property that fronts 118th Avenue SE.

Location. The location of the replacement property is far superior to the conversion parcels. The replacement property serves a key "missing link" that will provide recreational as well as environmental benefits by connecting two publicly-owned sections of the park. The bulk of the replacement property is located further away from Bellevue Way SE and other busy roadways, providing a more immersive recreational experience for trail users.

4. The public has had extensive opportunities for participation in the process.

It is undisputed that the public has had extensive opportunities to participate in the conversion process. As explained in the Supplemental Information, even before the Conversion was formally requested, Sound Transit's alternatives analysis provided numerous opportunities for public comment and other forms of participation, including opportunities for multiple appeals to neutral decision makers. A summary of the opportunities for public involvement in the alternatives and project development process is provided in Section 2 of the Supplemental Information. In addition, the public has had ample opportunity to participate in this Conversion proceeding before the Board, including two meetings in 2014 and the upcoming meeting in April 2015.

Very truly yours,

VAN NESS FELDMAN LLP

Duncan M. Greene

DMG/aka

Enclosures

cc: Perry Weinberg, Sound Transit (w/o encl.)
Elma Borbe, Sound Transit (w/o encl.)
Camron Parker, City of Bellevue (w/o encl.)
Brian Fowler, Assistant Attorney General (w/o encl.)

ATTACHMENT 1

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUILDING A BETTER BELLEVUE;
and FRIENDS OF ENATAI,

Plaintiffs,

v.

U.S. DEPARTMENT OF
TRANSPORTATION, FEDERAL
TRANSIT ADMINISTRATION; R.F.
KROCHALIS, in his official capacity as
the Regional Administrator of the FTA,
Region X; U.S. DEPARTMENT OF
TRANSPORTATION, FEDERAL
HIGHWAY ADMINISTRATION; and
DANIEL M. MATHIS, in his official
capacity as the Division Administrator,
Washington Division, for the Federal
Highway Administration,

Federal Defendants,

and

CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY ("SOUND
TRANSIT"),

Interested Party.

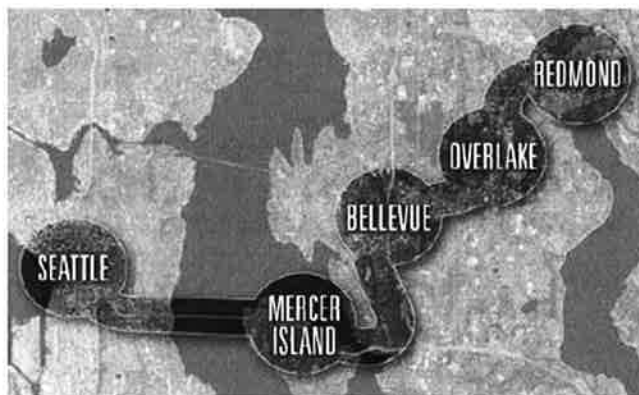
CASE NO. C12-1019-JCC

ORDER GRANTING
DEFENDANTS' MOTIONS FOR
SUMMARY JUDGMENT

1 This matter comes before the Court on the parties' cross-motions for summary judgment
2 (Dkt. Nos. 24, 28–29). Having thoroughly considered the parties' briefing and the relevant
3 record, the Court finds oral argument unnecessary and hereby DENIES Plaintiffs' motion (Dkt.
4 No. 24) and GRANTS Defendants' motions (Dkt. Nos. 28–29) for the reasons explained herein.

5 **I. BACKGROUND**

6 Central Puget Sound Regional Transit Authority ("Sound Transit") plans to construct an
7 extension of its light rail transit system between Seattle and the east side of Lake Washington
8 (the "East Link"). The East Link would cross Lake Washington and Mercer Island along U.S.
9 Interstate 90 from Seattle to south Bellevue ("Segment A"), travel north from I-90 to downtown
10 Bellevue ("Segment B"), continue through downtown Bellevue ("Segment C"), travel north to
11 Overlake ("Segment D"), and finally connect Overlake to Redmond ("Segment E"). (AR
12 004527.) The stated purpose of the East Link project is "to expand the Sound Transit Link light
13 rail system from Seattle to Mercer Island, Bellevue, and Redmond via I-90 in order to provide a
14 reliable and efficient alternative for moving people throughout the region." (AR 004539.)



22
23 In connection with the East Link project, Sound Transit and Defendant Federal Transit
24 Administration prepared a final environmental impact statement. The Federal Transit
25 Administration found that the impact statement satisfied the requirements of the National
26 Environmental Policy Act and that the project satisfied Section 4(f) of the Department of

1 Transportation Act of 1966. (AR 011415, 011419, 011426, 011432–11434.) Defendant Federal
2 Highway Administration then adopted the final environmental impact statement for purposes of
3 that agency’s required approvals. (AR 017137, 017141.)

4 Plaintiff Building a Better Bellevue is an association of Bellevue homeowners, residents,
5 businesses, and neighborhood groups. (Dkt. No. 1 at 3 ¶ 10.) Plaintiff Friends of Enatai is an
6 association of residents of South Bellevue neighborhoods along Bellevue Way and 112th Avenue
7 SE between I-90 and Bellevue’s Main Street, along the Mercer Slough Nature Park. (*Id.* at 4
8 ¶ 13.) In this action, Building a Better Bellevue and Friends of Enatai seek a declaratory
9 judgment that the Federal Transit and Highway Administrations were arbitrary and capricious
10 and failed to comply with federal law when they found that the East Link final environmental
11 impact statement satisfied the requirements of the National Environmental Policy Act and that
12 the project satisfied Section 4(f) of the Department of Transportation Act.

13 **II. DISCUSSION**

14 **A. National Environmental Policy Act**

15 The National Environmental Policy Act “is a purely procedural statute.” *Neighbors of*
16 *Cuddy Mountain v. Alexander* (“*Cuddy Mountain I*”), 303 F.3d 1059, 1070 (9th Cir. 2002). It
17 “does not mandate particular results, but simply provides the necessary process to ensure that
18 federal agencies take a ‘hard look’ at the environmental consequences of their actions.”
19 *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 814 (9th Cir. 1999) (per curiam)
20 (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)) (quotation
21 marks omitted). One aspect of that process is the mandated preparation of an environmental
22 impact statement for “major Federal actions significantly affecting the quality of the human
23 environment.” 42 U.S.C. § 4332(2)(C). “The goal of [the Act] is two-fold: (1) to ensure that the
24 agency will have detailed information on significant environmental impacts when it makes
25 decisions; and (2) to guarantee that this information will be available to a larger audience.”
26 *Cuddy Mountain II*, 303 F.3d at 1063.

1 Courts assess the adequacy of an environmental impact statement under “a ‘rule of
2 reason’ that does not materially differ from an ‘arbitrary and capricious’ review.” *Id.* at 1071.
3 The relevant inquiry is whether the impact statement contains a “reasonably thorough discussion
4 of the significant aspects of probable environmental consequences.” *Neighbors of Cuddy*
5 *Mountain v. U.S. Forest Serv.* (“*Cuddy Mountain I*”), 137 F.3d 1372, 1376 (9th Cir. 1998)
6 (quotation marks omitted). If the court is “satisfied that an agency’s exercise of discretion is truly
7 informed, [the court] must defer to that informed discretion.” *Greenpeace Action v. Franklin*, 14
8 F.3d 1324, 1332 (9th Cir. 1992) (quotation marks and indications of alteration omitted).

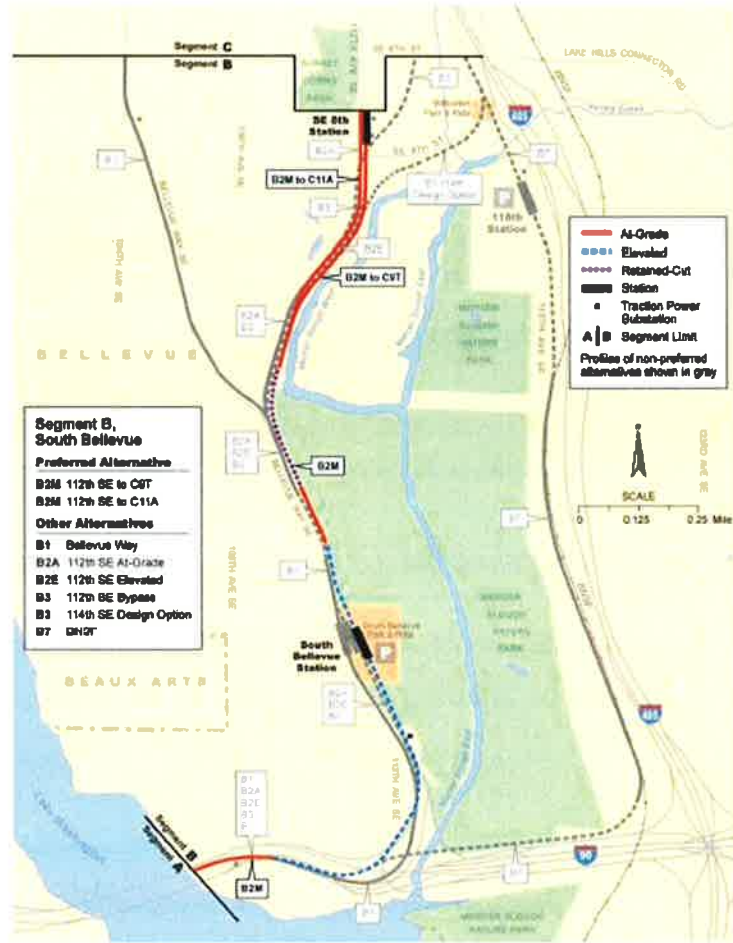
9 **1. Failure To Address Reasonable Alternatives**

10 An environmental impact statement “shall inform decisionmakers and the public of the
11 reasonable alternatives [for a project] which would avoid or minimize adverse impacts or
12 enhance the quality of the human environment.” 40 C.F.R. § 1502.1. It must “[r]igorously
13 explore and objectively evaluate all reasonable alternatives”—*i.e.*, “alternatives that are
14 ‘reasonably related to the purposes of the project’”—and, “for alternatives which were
15 eliminated from detailed study, briefly discuss the reasons for their having been eliminated.” 40
16 C.F.R. § 1502.14(a); *League of Wilderness Defenders-Blue Mountains Biodiversity Project v.*
17 *U.S. Forest Serv.*, 689 F.3d 1060, 1069 (9th Cir. 2012) (quoting *Westlands Water Dist. v. U.S.*
18 *Dep’t of Interior*, 376 F.3d 853, 868 (9th Cir. 2004)). An impact statement’s consideration of
19 alternatives is sufficient “if it considers an appropriate range of alternatives, even if it does not
20 consider every available alternative.” *Headwaters, Inc. v. Bureau of Land Mgmt.*, 914 F.2d 1174,
21 1181 (9th Cir. 1990); *see Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*,
22 435 U.S. 519, 551 (1978) (“[T]he ‘detailed statement of alternatives’ cannot be found wanting
23 simply because the agency failed to include every alternative device and thought conceivable by
24 the mind of man.”). The Court reviews “both the choice of alternatives as well as the extent to
25 which the . . . Impact Statement . . . discuss[es] each alternative” under a rule of reason. *City of*
26 *Carmel-By-The-Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997).

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a. Segment B Tunnel Alternative

The East Link final environmental impact statement discusses six alternatives for Segment B: five following Bellevue Way SE north from I-90, parallel to the western edge of the Mercer Slough Nature Park and to the residential communities of south Bellevue, and one continuing east parallel to I-90 on an elevated structure across Mercer Slough before turning north to run parallel to I-405 (the “B7” alternative). (AR 004652, 004659–4662.) All of the alternatives are above-ground.



1 Plaintiffs contend that a tunnel for Segment B was a seventh reasonable alternative that
2 the environmental impact statement should have considered. Sound Transit’s determination that
3 such a tunnel was not a reasonable alternative was not arbitrary and capricious. Sound Transit
4 considered and screened out a tunnel alternative during the scoping phase¹ of the project because
5 it did not meet Sound Transit’s criteria for tunnel candidates: locations with steep slopes,
6 physical barriers, inadequate rights of way, building density, and high train frequencies. (AR
7 004646, 020705, 020227; see AR 004642 (explaining that the voter-approved funding package
8 provides funds for at-grade or elevated alternatives).) A tunnel alternative would also have been
9 more expensive, risky, and disruptive, undermining several goals of the project.² (AR 004646,
10 020705, 020227; see AR 004636 (discussing project’s goals of providing financially feasible
11 solution and reducing construction risk).) By contrast, Sound Transit is considering a tunnel for
12 Segment C (through downtown Bellevue) because of the density of development and limited
13 availability of rights of way, and because the City of Bellevue executed an agreement with
14 Sound Transit to find additional funding sources to pay for the tunnel. (AR 020227, 004663,
15 004642 (explaining that the non-tunnel alternative for Segment C “is preferred if additional
16 funding and scope reductions cannot be found to afford the tunnel”).)

17 Nor did Sound Transit “fail[] to discuss and explain the reasoning behind eliminating
18 consideration of a tunnel within the [impact statement] itself.” (Dkt. No. 30 at 11.) The impact
19 statement explicitly addresses why a tunnel was considered a reasonable alternative for some
20

21 ¹ “The purpose of the scoping period is to notify those who may be affected by a
22 proposed government action, which is governed by [the Act], that the relevant entity is beginning
23 the [environmental impact statement] process. This notice requirement ensures that interested
24 parties are aware of and able to participate meaningfully in the entire [impact statement] process,
25 from start to finish.” *Coalition for a Sustainable 520 v. U.S. Dep’t of Transp.*, 881 F. Supp. 2d
26 1243, 1248–49 (W.D. Wash. 2012); see 40 C.F.R. § 1501.7.

² Plaintiffs’ substanceless assertion that “[i]t is . . . reasonable to assume that a tunnel
may be economical” (Dkt. No. 24 at 10; Dkt. No. 30 at 9) does not call into question the impact
statement’s operating assumption that tunnels involve substantially greater expense than above-
ground builds.

1 segments (like Segment C) but not others (like Segment B). (AR 004646 (explaining that “[t]he
2 proposed route and station alternatives vary in profile as traveling at-grade . . . , in an elevated
3 configuration, or in a tunnel” and that, “[b]ecause of the conditions along the corridor, the East
4 Link Project is largely elevated or at-grade; however, tunnel alternatives were also considered in
5 Downtown Bellevue (Segment C),” and going on to describe the criteria for using tunnels.)
6 Thus, even if the concept of a tunnel *had* developed into a standalone alternative that was
7 nevertheless subsequently eliminated from detailed study, the environmental impact statement
8 would have satisfied 40 C.F.R. § 1502.14(a)’s requirement of a “brief[] discuss[ion]” of reasons
9 for eliminating it. But since Sound Transit eliminated the tunnel concept long before it became a
10 studied alternative, even that brief discussion was not necessary to comply with the Act.

11 Adding to the reasonableness of Sound Transit’s decision not to include a Segment B
12 tunnel alternative in the final environmental impact statement is the fact that it also did not
13 include this alternative in the *draft* or *supplemental draft* impact statements, and of the hundreds
14 of comments it received on Segment B, none (including Plaintiffs’) suggested that Sound Transit
15 reconsider a Segment B tunnel alternative.³ “[T]he very purpose of a draft [environmental impact
16 statement] and the ensuing comment period is to elicit suggestions and criticisms to enhance the
17 proposed project.” *Carmel-By-The-Sea*, 123 F.3d at 1156; *see Dep’t of Transp. v. Pub. Citizen*,
18 541 U.S. 752, 764 (2004) (“[Parties] challenging an agency’s compliance with [the Act] must
19 structure their participation so that it alerts the agency to the parties’ position and contentions, in
20 order to allow the agency to give the issue meaningful consideration.”) (quotation marks and
21 indications of alteration omitted). Had Plaintiffs objected to Sound Transit’s failure to include a
22 Segment B tunnel alternative in the drafts, Sound Transit *might* have had reason to discuss that
23 alternative in the final impact statement. But no one objected; Sound Transit had already ruled
24 that alternative out; and it was therefore neither arbitrary nor capricious for Sound Transit not to

25
26 ³ One person advanced the distinct and infeasible concept of a tunnel for Segments B–E,
based on his view of “the destruction of what trains do to an area.” (AR 008968.)

1 reintroduce it in the final impact statement.

2 In their reply, Plaintiffs move to supplement the record with a declaration prepared after
3 the commencement of this litigation, purporting to show that Segment B meets Sound Transit's
4 criteria for tunnel eligibility. The Court DENIES Plaintiffs' motion. Judicial review of agency
5 actions is generally limited to the administrative record. *Nat'l Audubon Soc'y v. U.S. Forest*
6 *Serv.*, 46 F.3d 1437, 1447 (9th Cir. 1993). "[C]ertain circumstances may justify expanding
7 review beyond the record . . ." *Id.* (quotation marks omitted). Two such circumstances include
8 (1) when extra-record evidence is necessary to explain technical terms or complex subject matter
9 and (2) when the agency has "swept stubborn problems or serious criticism under the rug."
10 *Animal Def. Council v. Hodel*, 840 F.2d 1432, 1436–37 (9th Cir. 1988) (quotation marks and
11 indications of alteration omitted). Plaintiffs argue the declaration should be admitted because it
12 "addresses technical, complex subject matter that the agency 'swept under the rug.'" (Dkt. No.
13 30 at 6.) Not so. Early on in the scoping process, Sound Transit eliminated a tunnel alternative
14 for Segment B because it determined that Segment B did not meet its (easy-to-understand)
15 criteria for tunneling and would be riskier and more expensive. After that, no one resuscitated the
16 tunnel idea, so there was no further analysis to be done—let alone to be "swept under the rug."
17 Plaintiffs have not established the existence of circumstances creating an exception to the general
18 rule that "[p]arties may not use post-decision information as a new rationalization either for
19 sustaining or attacking the Agency's decision." *Ctr. for Biological Diversity v. U.S. Fish &*
20 *Wildlife Serv.*, 450 F.3d 930, 943 (9th Cir. 2006) (quotation marks omitted).

21 **b. B7R Alternative**

22 While Sound Transit was preparing the supplemental draft environmental impact
23 statement—and more than a year and a half after the draft environmental impact statement was
24 issued—the City of Bellevue requested that Sound Transit consider a variation on the B7
25 alternative, called the "B7 Revised" alternative or "B7R." (AR 004640.) The two alternatives are
26 similar, the chief differences being the location of a new station and parking garage. (AR

1 005232.) The final environmental impact statement does not consider B7R as a standalone
2 alternative; instead, it compares B7 to B7R in detail (AR 004576–4577, 004670, 005231–5236;
3 *see* 011365–11414) and concludes:

4 With mitigation, B7R would result in improved traffic operations along Bellevue
5 Way SE compared with B7 which does not affect or change this roadway. B7R
6 would have greater residential displacements, property acquisition, visual, noise,
7 park, and ecosystem impacts than B7 []. But, B7R would have less business and
8 employee displacements than B7 []. The B7R [] Station parking garage would
9 result in visual impacts and require residential acquisitions, while the 118th
10 Station for B7 requires business displacements. Like B7, the B7R Mercer Slough
11 Nature Park impacts are in areas of wetlands and wetland buffer. B7R would be
12 on a retained fill on the east side of Sturtevant Creek, requiring relocation of the
13 creek. Construction of B7R may result in higher ecosystem impacts along Mercer
14 Slough, the wetland areas surrounding the slough and Sturtevant Creek than B7 [].

11 (AR 004576–4577.) The impact statement also observes that ridership within Segments B and C,
12 and project-wide, would be 12,500 and 50,500, respectively, with B7R, and 10,500 and 49,000,
13 respectively, with B7, and that “the B7R modifications increase the project cost [by]
14 approximately \$10 to \$14 million [over] . . . B7.” (AR 004576–4577.)

15 Plaintiffs argue that the impact statement fails to adequately consider B7R. But the
16 detailed discussion of B7R versus B7 is more than sufficient to satisfy 40 C.F.R. § 1502.14(a)’s
17 requirement of a “brief[] discuss[ion]” of reasons for not considering B7R as a standalone
18 alternative. As the quoted text shows, B7R was not a clear winner over B7; it was better in some
19 respects and worse in others. It was entirely reasonable, then, to compare only B7, and not also
20 B7R, to the other six Segment B alternatives in determining the preferred Segment B alignment.
21 *See Westlands*, 376 F.3d at 871–72 (9th Cir. 2004) (Act does not require agency to consider
22 “every conceivable permutation” of alternatives); *Headwaters*, 914 F.2d at 1181 (agency need
23 not undertake “separate analysis of alternatives which are not significantly distinguishable from
24 alternatives actually considered, or which have substantially similar consequences”); *N. Alaska*
25 *Envtl. Ctr. v. Kempthorne*, 457 F.3d 969, 978 (9th Cir. 2006) (agency need not “discuss
26 alternatives similar to alternatives actually considered”); *see, e.g., Laguna Greenbelt, Inc. v. U.S.*

1 *Dep't of Transp.*, 42 F.3d 517, 524 (9th Cir. 1994); 520, 881 F. Supp. 2d at 1256–57. The
2 alternatives set forth in the impact statement, supplemented with a detailed discussion of B7R,
3 “permit a reasoned choice” and an agency “hard look,” and are sufficient to satisfy the Act.
4 *California v. Block*, 690 F.2d 753, 767 (9th Cir. 1982).

5 **c. Alternatives to Light Rail**

6 Plaintiffs also complain that Sound Transit failed to consider any modes of high-capacity
7 transit other than light rail. But the stated purpose of the project is to “[e]xpend the Sound Transit
8 Link light rail” to the east side. (AR 004625.) Plaintiffs respond that, by confining the purpose to
9 expanding the light rail—as opposed to high-capacity transit generally—Sound Transit
10 “unreasonably avoided consideration of other transit modes, such as bus rapid transit,” that might
11 have had fewer environmental impacts. (Dkt. No. 24 at 13.)

12 This argument is a non-starter. The choice of light rail over bus service was the result of
13 years of analysis and deliberation. (AR 004635–4636 (describing the process leading to
14 “Identification of Light Rail as the Preferred Mode”), 011416–11418.) A 2004 assessment
15 deemed bus rapid transit, light rail transit, and monorail appropriate for the east corridor. (AR
16 004635.) Around the same time, in connection with updating its long-range plan, Sound Transit
17 analyzed potential high-capacity transit projects, implementing an “extensive public outreach
18 process” to consider the alternatives. (*Id.*) In 2005, the board adopted an updated long-range
19 plan, which identified light rail and rail-convertible bus rapid transit for further consideration.
20 (*Id.*) It then directed staff to conduct additional analyses and feasibility and traffic studies, and
21 based on the results, “identified light rail as the preferred [high-capacity transit] transportation
22 mode for the East Corridor” in July 2006:

23 The Sound Transit Board identified light rail because it provides the benefits of
24 operating in an exclusive right-of-way separated from general-purpose and HOV
25 traffic. . . . Light rail in the East Corridor would [also] use the same technology as
26 the Central Link line and build on that investment. It would provide a higher level
of system integration by interlining directly with the Central Link line and
providing a direct ride between the Eastside, Downtown Seattle, and the North

1 Corridor stations Light rail provides the highest level of ridership and the
2 shortest travel times of all technologies evaluated in the corridor.

3 (AR 004635–4636.) In July 2008, Sound Transit adopted “ST2,” known as the mass transit
4 expansion proposal, a package of high-capacity transit investments in the regional transit system
5 that includes the East Link project. (*Id.*) Voters approved ST2 in November 2008. (*Id.*)

6 Sound Transit’s decision to confine the purpose of the East Link project to expanding the
7 light rail system was anything but arbitrary. To the contrary, it was the result of a long, careful,
8 and deliberative process, and the light rail-specific purpose responds precisely to the
9 transportation problems that needed to be solved. *See* 23 C.F.R. § 450.212(a)(1) (allowing
10 agency to use planning processes of state and local transportation authorities to narrow and focus
11 purpose and need statements);⁴ *see, e.g., Carmel-By-The-Sea*, 123 F.3d at 1155–57 (rejecting
12 Plaintiffs’ argument that the agency “preordained . . . the preferred choice” by “unjustifiably
13 narrow[ing] its statement of ‘Purpose and Need,’” observing that the agency’s goal was
14 “legitimate” and reasonable because it directly responded to the identified needs to “significantly
15 alleviate traffic congestion, reduce accidents and achieve other transportation goals”; “[t]hat the
16 Federal Highway Administration and Caltrans viewed Level of Service C as important and as the
17 most plausible project goal given the severe traffic problems along this stretch of Highway 1
18 cannot be said to be unreasonable simply because Level of Service D would have been a
19 ‘tolerable’ alternative”). Because confining the purpose of the East Link to expanding light rail
20 was reasonable, the environmental impact statement was not required to study alternatives—like
21 bus rapid transit—that did not meet that purpose. *See City of Angoon v. Hodel*, 803 F.2d 1016,

22 ⁴ Plaintiffs argue that “the local transportation planning process relied upon to limit the
23 purpose of the project to light rail took place prior to the 2007 adoption of 23 C.F.R. § 450.212”
24 and that “[n]othing in the 2007 regulations allows for retroactive application.” (Dkt. No. 30 at
25 19.) That the regulations explicitly approved the use of local planning processes to narrow an
26 impact statement’s purpose and need statements in 2007 does not mean that, prior to 2007, such
use was impermissible. In any event, the draft impact statement was issued in December 2008,
and the final impact statement was issued and approved in 2011—well after the regulations
authorized use of local planning studies to produce purpose and need statements.

1 1021 (9th Cir. 1986).

2 **2. Failure To Consider Cumulative Impact of Extending Light Rail to**
3 **Issaquah**

4 An environmental impact statement must consider the cumulative impact of the proposed
5 action: “the impact on the environment which results from the incremental impact of the action
6 when added to other past, present, and reasonably foreseeable future actions.” 40 C.F.R.

7 § 1508.7. “[R]easonably foreseeable actions . . . include proposed actions.” *Ctr. for Env'tl. Law &*
8 *Policy v. U.S. Bureau of Reclamation*, 655 F.3d 1000, 1010 (9th Cir. 2011) (quotation marks and
9 indications of alteration omitted). For example, when an agency issues a notice of intent to
10 prepare an impact statement for an action, “[the] action is not too speculative to qualify as a
11 proposed action” *Id.* (quotation marks omitted). On the other hand, when an action “could
12 conceivably” occur but “it is at least as likely that it will never” occur, the “future activity is not
13 reasonably foreseeable,” and its possible cumulative effects need not be considered. *Headwaters*,
14 914 F.2d at 1182. Courts “defer to an agency’s determination of the scope of its cumulative
15 effects review.” *Cuddy Mountain II*, 303 F.3d at 1071.

16 Plaintiffs argue that the environmental impact statement should have discussed the
17 cumulative effect of the East Link project *and* a possible future project extending the light rail to
18 Issaquah. They point out that one possible alignment for such an extension would connect the
19 extension to the East Link around I-90 and Bellevue Way SE and continue east along the
20 southern boundary of the Mercer Slough (as B7 and B7R would do). If such an extension were
21 ultimately constructed, they argue, then the southern boundary of the Mercer Slough would
22 eventually be impacted anyway, and so the East Link environmental impact statement should
23 prefer B7 or B7R over the other Segment B alternatives, since B7 and B7R *also* run along the
24 southern boundary, whereas the other Segment B alternatives run parallel to the *western*
25 boundary, as well as impact the Winters House and Surrey Downs Park (discussed *infra*).

26 An Issaquah extension that runs along the southern boundary of the Mercer Slough is not

1 a reasonably foreseeable proposed action, and so the environmental impact statement
2 appropriately did not consider it. The Issaquah extension is the subject of a preliminary study
3 funded by ST2 that has not yet commenced. (AR 019886.) Voters would have to approve an ST3
4 or ST4 funding package before Sound Transit would even start seriously considering potential
5 alternatives and alignments. Even assuming the Issaquah extension were ultimately planned,
6 approved, permitted, and funded—a big if—it may not cross the Mercer Slough at the southern
7 boundary—and thus may not strengthen the case for B7 or B7R. (AR 020614, 020617–20618.)
8 In other words, such an alignment “could conceivably” be built, but “it is at least as likely that
9 [that alignment] will never” be built, and that Sound Transit will choose an alternative alignment.
10 *Headwaters*, 914 F.2d at 1182. The Issaquah extension—and the particulars about how it might
11 connect to the preexisting light rail system—are far too speculative and uncertain to merit
12 consideration in the East Link impact statement’s cumulative effects analysis.

13 **3. Failure To Adequately Identify Mitigation for Affected Wetlands and**
14 **Wetland Buffers**

15 The Act “requires only that an [impact statement] contain ‘a reasonably complete
16 discussion of possible mitigation measures.’” *Kemphorne*, 457 F.3d at 979 (quoting *Robertson*,
17 490 U.S. at 352). It need not contain a “complete mitigation plan [that is] actually formulated
18 and adopted,” *Robertson*, 490 U.S. at 352, and the mitigation plan may be “conceptual” and
19 remain “flexible to adapt for future problems,” *Carmel-By-The-Sea*, 123 F.3d at 1154; *see, e.g.*,
20 *Laguna Greenbelt*, 42 F.3d at 528 (discussion of impacts and “potential” and possibly
21 unsuccessful mitigation measures satisfies the Act). “[I]t would be inconsistent with [the Act’s]
22 reliance on procedural mechanisms—as opposed to substantive, result-based standards—to
23 demand the presence of a fully developed plan that will mitigate environmental harm before an
24 agency can act.” *Robertson*, 490 U.S. at 353.

25 The East Link environmental impact statement sufficiently discusses possible mitigation
26 measures to ensure that the agency fairly evaluated the project’s environmental consequences.

1 Sound Transit commits in the impact statement to achieving no net loss of wetland function and
2 area on a project-wide basis. (AR 005018, 010624.) Its plan for doing so is to apply interagency
3 wetland mitigation guidance to identify compensatory mitigation sites—a proven wetlands
4 mitigation method—within the same drainage basin as the affected areas and to compensate for
5 lost functions in-kind. (AR 005018.) Although there are no existing approved mitigation banks in
6 the Kelsey Creek subbasin—a subbasin affected by the project—“[d]uring field work, Sound
7 Transit determined there are several opportunities for wetland mitigation within the study area
8 close to potentially impacted areas that are expected to meet required mitigation ratios,” and
9 Plaintiffs have pointed to no evidence showing that Sound Transit’s expectations are
10 unreasonable. (*Id.*; *see also* AR 010626 (discussing four potential approaches to achieving
11 wetlands mitigation goal).) Finally, the Federal Transit Administration has made mitigation
12 achieving zero net wetlands loss a condition of its approval of the project and is requiring that
13 Sound Transit establish a monitoring plan to ensure the effectiveness of its mitigation measures.
14 (AR 011424–11425, 011430, 011478.) The impact statement’s commitment to zero wetlands
15 loss, made credible with a plan to use already-identified opportunities for compensatory
16 mitigation, and by the Federal Transit Administration’s conditioning approval of the project on
17 achieving that commitment, is sufficient to “ensure that environmental consequences have been
18 fairly evaluated.” *Robertson*, 490 U.S. at 352. The Act requires nothing more. *See, e.g.*,
19 *Okanogan Highlands Alliance v. Williams*, 236 F.3d 468, 476 (9th Cir. 2000) (that impact
20 statement’s discussion of “procedures for ensuring compliance with applicable water-quality
21 standards . . . are stated in somewhat general terms” does not render them “deficient” under the
22 Act); *Carmel-By-The-Sea*, 123 F.3d at 1154 (upholding “proposed mitigation plan [that] is
23 intended to be ‘conceptual’ only”); *compare, e.g., Cuddy Mountain I*, 137 F.3d at 1381 (impact
24 statement deficient where it “did not discuss which (or whether) mitigating measures might
25 decrease the increased sedimentation in the three creeks affected by the timber sale,”
26 “suggest[ed] that the [agency] did not even consider mitigating measures for the creeks actually

1 affected by the sale,” and failed to “provide[] an estimate of how effective the mitigation
2 measures would be if adopted, or give[] a reasoned explanation as to why such an estimate is not
3 possible,” and where “it [wa]s also not clear whether any mitigating measures would in fact be
4 adopted”).

5 In reviewing Plaintiffs’ challenges to the environmental impact statement under the
6 National Environmental Policy Act, the Court may not “substitute [its own—or Plaintiffs’—]
7 judgment for that of the agency concerning the wisdom or prudence of [the] proposed action.”
8 *Or. Env’tl. Council v. Kunzman*, 817 F.2d 484, 492 (9th Cir. 1987). The Court’s role is limited to
9 ensuring that the agency took a hard look at a reasonable range of alternatives whose impacts on
10 the environment were discussed in sufficient detail to render the agency’s decision informed. The
11 final environmental impact statement here meets that standard.

12 **B. Department of Transportation Act Section 4(f)**

13 Section 4(f) of the Department of Transportation Act of 1966 provides:

14 [T]he Secretary may approve a transportation program or project . . . requiring the
15 use of publicly owned land of a public park, recreation area, or wildlife and
16 waterfowl refuge of national, State, or local significance, or land of an historic site
of national, State, or local significance . . . only if—

17 (1) there is no prudent and feasible alternative to using that land; and

18 (2) the program or project includes all possible planning to minimize harm
19 to the park, recreation area, wildlife and waterfowl refuge, or historic site
20 resulting from the use.

21 49 U.S.C. § 303(c). Section 4(f) thus requires a two-phase inquiry: First, the agency determines
22 whether there are any feasible and prudent “avoidance alternatives” to the taking of protected
23 property. 23 C.F.R. § 774.3(a)(1). If no avoidance alternative is available, the agency must
24 approve the alternative that “[c]auses the least overall harm in light of the statute’s preservation
25 purpose” by balancing seven factors. 23 C.F.R. § 774.3(c)(1).

26 Here, the Federal Transit Administration issued a record of decision, adopting the final

1 environmental impact statement's preferred alignments for Segments B and C. (AR 011415–
2 11854.) Those selected alignments impact the following Section 4(f) resources: (1) the Mercer
3 Slough, a 320-acre park characterized by wetland systems and upland habitat (AR 005134), (2)
4 the Winters House, a National Registry of Historic Places property located in the Mercer Slough
5 (AR 005117), and (3) Surrey Downs Park, which contains athletic fields, play structures, internal
6 trails, open space, remnant stands of heritage filbert trees, and the King County District
7 Courthouse (AR 005134–5135). The agency determined that “no project alignment alternative
8 provided a prudent and feasible alternative that avoids all [Section 4(f)] resources” and that the
9 environmental impact statement identified all reasonable measures to cause the least overall
10 harm to those resources. (AR 011433; *see* AR 011433–11434, 005354–5358.) The agency did
11 not analyze the B7R alternative in its Section 4(f) evaluation because the proposal was not
12 sufficiently formulated when the environmental impact statement and Section 4(f) analysis were
13 prepared. (AR 005374.) The City of Bellevue and the Department of the Interior reviewed the
14 agency's least-harm analysis and concurred with its conclusions. (AR 011631–11632, 015071–
15 15072.)

16 Plaintiffs claim that the Federal Transit Administration's Section 4(f) analysis was
17 “arbitrary and capricious.” First, Plaintiffs argue that, “[b]y failing to take a hard look at a
18 Segment B tunnel alternative, the Section 4(f) analysis failed to consider a feasible and prudent
19 alternative that would avoid use of Section 4(f) resources.” (Dkt. No. 24 at 22.) But because
20 Sound Transit rejected the tunnel alternative during scoping, it was not a feasible and prudent
21 4(f) alternative that the agency was required to consider. *See* 520, 881 F. Supp. 2d at 1259
22 (“Section 4(f) does not require that the agency ‘circle back’ to reconsider an option that it has
23 already ruled out as imprudent.”) (quoting *Safeguarding the Historic Hanscom Area's*
24 *Irreplaceable Res., Inc. v. Fed. Aviation Admin.*, 651 F.3d 202, 213 (1st Cir. 2011)). In any
25 event, Plaintiffs' assertion that a tunnel-based alternative would *not* use Section 4(f) resources is
26 entirely conclusory. Indeed, in their reply, they assert that “[a] tunnel alignment would eliminate

1 impacts to Section 4(f) resources, including at least the Winters House and Surrey Downs
2 Park”—thus apparently conceding that it would not necessarily avoid the Mercer Slough. (Dkt.
3 No. 30 at 27; *see also* Dkt. No. 24 at 10 (asserting that “[a] tunnel alternative would [only] likely
4 avoid impacts to many Section 4(f) resources”) (emphasis added).)

5 Plaintiffs next argue that B7 and B7R are “avoidance alternatives” to the preferred and
6 adopted Segment B alignment, since B7 and B7R, unlike the adopted alignment, would
7 completely avoid use of the Winters House and Surrey Downs Park. The agency did not see it
8 this way. In its view, since *all* the Segment B alternatives (including B7 and B7R) impacted the
9 Mercer Slough in one way or another, none of the alternatives was an “avoidance alternative”—
10 *i.e.*, an alternative that avoided use of 4(f) properties altogether—and so the agency proceeded to
11 the second phase of the inquiry and approved one of the alternatives that caused the “least overall
12 harm.” The agency’s decision not to treat alternatives that would use the Mercer Slough as
13 avoidance alternatives was neither arbitrary nor capricious. *See* 23 C.F.R. § 774.17 (defining
14 “feasible and prudent avoidance alternative” as an alternative that “avoids using Section 4(f)
15 property,” and describing the § 774.3(a)(1) avoidance alternative analysis as one that “search[es]
16 for feasible and prudent alternatives that *avoid Section 4(f) properties altogether*”) (emphasis
17 added). What *is* arbitrary is *Plaintiffs’* proposed 4(f) analysis—which would count an alternative
18 as an “avoidance alternative” because it avoids some, but not all, Section 4(f) properties, thus
19 immunizing it from a “least overall harm” comparison with the other alternatives. *See, e.g.,*
20 *Druid Hills Civic Ass’n, Inc. v. Fed. Highway Admin.*, 772 F.2d 700, 715 (11th Cir. 1985).

21 Plaintiffs next argue that, even if B7 and B7R are not “avoidance alternatives,” “the
22 [agency]’s conclusion that the preferred . . . alternative would result in less harm to Section 4(f)
23 resources than [the B7 or B7R] alternatives . . . arbitrarily failed to balance in favor of
24 preservation and instead skewed the balance in favor of a possible slight increase in ridership and
25 slight decrease in cost.” (Dkt. No. 24 at 23.) First, as discussed, the agency did not consider the
26 B7R alternative in its Section 4(f) analysis because the proposal was not sufficiently formulated

1 when the final environmental impact statement and Section 4(f) analysis were prepared. As for
2 B7, a review of the agency's analysis belies Plaintiffs' contention that the agency arbitrarily
3 tipped the Section 4(f) factors against that alternative. The agency carefully considered the seven
4 factors: Using the seven criteria, it prepared a matrix examining all possible permutations of
5 Segment B and C options for a total of thirty-five alternatives. (AR 005361, 005385–5390.)
6 From those thirty-five options, it identified eleven that caused the least overall harm, and it chose
7 its preferred alignments for Segments B and C from among those eleven. (AR 005384.)

8 B7 was not among the eleven "least harmful" options. That is because the combinations
9 of B7 with the various Segment C alternatives were generally more expensive and less
10 accessible, and significantly reduced ridership in Segments B and C, thus scoring lower on the
11 factor of "degree to which each alternative meets the purpose and need for the project" and, at
12 best, no better on the factor of "[s]ubstantial differences in costs among the alternatives." 23
13 C.F.R. § 774.3(c)(1)(v) & (vii). (AR 005375, 005378–5381, 005383.) The B7 combinations also
14 scored equally to or lower than other Segment B options on "[t]he ability to mitigate adverse
15 impacts to each Section 4(f) property (including any measures that result in benefits to the
16 property)" and "[t]he relative severity of the remaining harm, after mitigation, to the protected
17 activities, attributes, or features that qualify each Section 4(f) property for protection." *Id.*
18 § 774.3(c)(1)(i) & (ii). That is because, while B7's impact on the Mercer Slough could not be
19 mitigated to create a net benefit, other Segment B alternatives allowed for a plan to add to the
20 Mercer Slough up to three acres of land to replace the land permanently occupied by the project,
21 which is projected to yield a net *benefit* to the park.⁵ (AR 005362–5365, 005367–5368.)
22 Similarly, post-mitigation, some non-B7 alternatives would "have a net benefit to Surrey Downs
23 Park" by "removing the King County District Courthouse and replacing the site with landscaped
24

25 ⁵ As discussed *supra*, the expected net benefit to the Mercer Slough from compensatory
26 mitigation is not, contrary to Plaintiffs' contention, "unfounded," "conclusory," or "speculative."
(Dkt. No. 30 at 5, 30–31.)

1 park grounds”—something the B7 combinations could not offer. (AR 005366, 005368.) And
2 post-mitigation, non-B7 alternatives (unlike B7) are projected to yield a net benefit to the
3 Winters House by providing “more historically appropriate landscaping” and “new interpretive
4 signage.” (AR 005367–5368.)

5 Plaintiffs appear to believe that the only acceptable outcome of the Section 4(f) analysis
6 was the emergence of B7 as the winner, since B7 would permanently impact fewer acres of the
7 Mercer Slough and avoid any impact to the Winters House and Surrey Downs Park. But
8 permanent, un-mitigated impact is not a factor for consideration under 23 C.F.R. § 774.3(c).
9 Without exception, the § 774.3(c) factors direct the agency to consider *post*-mitigation impact,
10 including any resulting net benefits. *Id.* § 774.3(c)(1)(i), (ii) & (vi). And as discussed, post-
11 mitigation, the B7 alternatives fared no better than the non-B7 alternatives, and in some cases
12 fared worse because they were not projected to yield a net benefit. Thus, even if, as Plaintiffs
13 contend, “the balance must always be struck in favor of preservation of the Section 4(f)
14 properties” and “the balance must . . . give paramount importance to preservation” (Dkt. No. 30
15 at 28, 30), there is no indication that the agency failed to strike the balance in favor of
16 preservation here.

17 Finally, for the same reasons the environmental impact statement was not required to
18 consider the cumulative impact of the possible Issaquah extension—with its possible alignment
19 along the southern boundary of the Mercer Slough—the agency was not required to consider that
20 impact in its Section 4(f) evaluation.

21 **III. CONCLUSION**

22 For the foregoing reasons, the Court GRANTS Sound Transit’s and Defendants’ motions
23 for summary judgment (Dkt. Nos. 28–29) and DENIES Plaintiffs’ motion for summary judgment
24 (Dkt. No. 24).

25 //

26 //

1 DATED this 7th day of March 2013.

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A handwritten signature in black ink, reading "John C. Coughenour". The signature is written in a cursive style and is positioned above a solid horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE

ATTACHMENT 2

RESPONSES TO PUBLIC COMMENT

Mercer Slough Nature Park Parkland Conversion and Replacement

October 2, 2014

This recent public comment period resulted in comments submitted by seven individuals. One was submitted before the September 19, 2014, public comment deadline, all others were submitted after the deadline. The comments submitted cover several common themes. Those themes are summarized below including sample quotes from the comment letters. A response follows each.

Theme: Recreational impacts to park facilities, visual character change, tree loss and wetland impacts
Sample Comment: The proposed alignment along Bellevue Way/112th Ave represents the potential to significantly affect the outdoor recreation experience of the Mercer Slough when the impacts from vision, sound and the loss of over 800 significant trees are considered.

Existing Outdoor Recreational Experience

Of the two parcels adjacent to Bellevue Way within the RCO grant boundaries, the north parcel does not have outdoor recreational facilities within the conversion area. The south parcel conversion area includes one bark mulch trail segment that will be detoured during construction and permanently replaced with a new boardwalk trail segment, to be located at an increased distance from the light rail structure. Other recreational facilities impacted by the project are outside of the conversion area.

Impacts to recreational facilities and features adjacent to Bellevue Way *outside of the conversion area*, including the historic Winters House, the Sweylocken Boat Launch and the Overlake Blueberry Farm have been considered in the design of the final alignment. Public access to outdoor recreation facilities will be retained during construction. After construction, these recreation facilities and features have been redesigned and relocated to minimize, where possible, the park user's views of the light rail. The Eastside Heritage Center, the programming agency for Winters House stated in a letter dated April 15, 2013, "...for the sake of long-term viability and public benefit of this historic resource, the trench [final alignment] remains our preferred option."

Impacts to the wetlands and wetland buffers in Mercer Slough are being mitigated outside of this conversion process under the authority of the City and other state and federal regulatory agencies. Compensatory mitigation is planned, including a seven acre wetland restoration project within Mercer Slough that will restore native ecology, plant and wildlife habitat.

Visual Character and Tree Loss

Expansion of the right-of-way along Bellevue Way SE to include light rail and its associated infrastructure will have a visual character change from what exists today. The final alignment selected uses a retained cut and recessed profile north of the South Bellevue Park and Ride to minimize the views of light rail from Bellevue Way SE. Tree loss will occur. Approximately 128 significant trees are marked for removal within the conversion area. More will be removed in other parts of the park outside of the conversion area, where conflicts exist. The City of Bellevue will regulate tree loss through its Design and Mitigation permit process. The City will require Sound Transit to avoid, protect and/or prune trees that are within the project limit, but may be able to be preserved. For trees that must be removed, a replacement requirement will be part of the City's permit approval conditions.

Theme: Incompatibility with a planned trail project

Sample Comment: The planned construction of the nature path from 112th Avenue South on the west side of the Mercer Slough parallel with Bellevue Way will be cancelled.

In 2009, the City reached agreement with the Bellefield Office Park to construct a public trail on private property that would terminate at the northwest corner of Mercer Slough Nature Park. The City chose to cancel this trail project before it was constructed to avoid potential future conflict with the East Link alignment. This conversion is not intended to compensate for the unrealized trail.

Theme: Replacement property suitability for conversion

Sample Comment: The property proposed for replacement is not of equivalent usefulness and location as that being converted and is not in a reasonable equivalent location. The proposed replacement property will not meet the same or similar recreation and farm needs for the community as the converted site.

The recreational facilities and features impacted by light rail are being mitigated along the west edge of the park. The proposed replacement property is intended to maintain the overall size, value and recreational utility of the RCO grant boundary. To meet that end, the replacement property is directly adjacent to the impacted park. It exists in a state most similar to the areas of the park being converted. The property connects two publicly-owned sections of the park and is directly adjacent to the existing RCO grant agreement boundary. The appraised value of the 6.00 acres being added to the boundary exceeds the appraised value of the 1.06 acres being removed from the boundary.

Theme: Replacement property acquisition history

Sample Comment: The replacement property currently being proposed for this conversion was to have been purchased and incorporated into the park using funds from a 1988/1989 open space park bond. This park land should already be in Bellevue ownership.

The Moon/Ross property, along with many other privately held properties were identified for purchase in 1988. The City was successful in acquiring most of these properties from willing sellers following passage of the bond. The City has actively negotiated with the Moon/Ross property owners multiple times over several decades to no avail. In 2014, the property owners indicated interest in selling the property and an agreement was finally able to be reached [Council Resolution No. 8744, May 19, 2014]. In a letter dated May 7, 2014, RCO approved use of this property for parkland replacement for a future conversion action.

Theme: Noise impacts of light rail

Sample Comment: Noise from trains traveling every 3-7 minutes for 19 to 20 hours a day will be disruptive to wildlife and people trying to enjoy the peacefulness quiet of Mercer Slough Park.

The 2011 East Link EIS noise analysis found that existing noise levels along the west and south edge of Mercer Slough Nature Park (where the light rail project will be constructed) are already dominated by traffic noise from the Bellevue Way SE and I-90. With a projected light rail noise of 66 dBA along Bellevue Way, the anticipated project noise is within the current 61 to 67 dBA range for this corridor.

Theme: Future implications of conversion

Sample Comment: Using Moon/Ross property sets precedent for using parkland for future commercial development

The ability to convert land acquired or developed with RCO grant funding is given to all grantees, subject to RCO and NPS approval. This action does not set a precedent. The deed restriction for outdoor recreation that will be placed on the Moon/Ross property as part of the conversion process is a disincentive to using Mercer Slough parkland for future commercial development. As a result of this conversion, the area within the park permanently restricted to outdoor recreation use will increase by five additional acres.

Theme: Objection to conversion and preference for other light rail alignments

Sample Comment: 7. Conversion of land at Mercer Slough to facilitate light rail should be rejected

Each route alternative studied in the East Link EIS had varying levels of park impact. The East Link EIS process concluded that the final alignment was one that had least overall impact on parklands (including, but not limited to Mercer Slough). The federal Department of Interior (National Park Service) concurred with this conclusion in a letter dated August 19, 2011. Understanding the park impacts and mitigation plan, the Bellevue City Council and Sound Transit Board selected this alignment in November 2011 following years of public debate and community engagement. The City Council re-confirmed the alignment choice along Bellevue Way following additional public outreach and a public hearing in April 2013.

From: Borbe, Elma [<mailto:elma.borbe@soundtransit.org>]

Sent: Monday, March 16, 2015 4:56 PM

To: Barker, Myra (RCO)

Cc: Parker, Camron; Irish, James

Subject: Sound Transit, Mike Harbour Letter

Hi Myra,

Please consider the attached letter from Sound Transit's Deputy Chief Executive Office in support of the City of Bellevue's proposal to convert a portion of Mercer Slough Nature Park for transportation use, along with their proposed replacement property.

Please let me know if we can provide you with any additional information.

Sincerely,

Elma Borbe
Environmental Planner



March 16, 2015

Harriet Spanel, Chair
Kaleen Cottingham, Director
Recreation and Conservation Office
P.O. Box 40917
Olympia, WA 98504-0917

Dear Chair Spanel, Director Cottingham and members of the Board,

Thank you for considering this letter in support of the City of Bellevue's proposal to convert about one acre of Mercer Slough Nature Park for transportation use (Conversion). The proposed Conversion will allow Sound Transit's East Link Extension project (East Link) to be built along the western edge of the park. On behalf of Sound Transit, I respectfully request that the Recreation Conservation and Funding Board (RCF Board) approve the Conversion.

Sound Transit's mission supports communities, the environment and economy by providing affordable, environmentally-friendly public transit that connects residents to where they live, work and play. The East Link Extension expands the regional light rail system from downtown Seattle to Redmond, connecting Mercer Island and Bellevue along the way. After almost eight years of environmental review, collaborative work with local, state, and federal agencies, and extensive public involvement, the East Link project was approved by the Sound Transit Board and the Bellevue City Council in 2013.

Sound Transit urges that the RCF Board approve the Conversion request for the following reasons:

- All practical alternatives to the Conversion have been evaluated and rejected based on sound technical analysis.
- The proposed replacement land is of at least equal fair market value and of reasonably equivalent recreation usefulness and location.
- The public has had opportunities for participation in the process.

First, all practical alternatives to the Conversion have been evaluated and rejected on a sound basis. Through almost eight years of study and public processes, Sound Transit conducted an extensive evaluation of reasonable and practicable alternatives to the conversion, including avoidance, under the National Environmental Policy Act (NEPA), State Environmental Policy Act (SEPA), and

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CHIEF EXECUTIVE OFFICER

Joni Earl

Section 4(f) of the Department of Transportation Act. Sound Transit's alternatives analysis was reviewed and approved by multiple federal, state, and local agencies with expertise in transportation and open space issues, including the Federal Transit Administration, the Federal Highway Administration, and U.S. Department of Interior. In two separate appeal proceedings, Sound Transit's analysis was challenged and upheld by a Hearing Examiner, a Superior Court judge, and a federal district court judge. This rigorous alternative evaluation process to select the adopted East Link project meets state and federal requirements for converting properties.

Second, the proposed replacement properties for the converted lands are more than fair market value and of greater recreation usefulness and location. The one acre of converted land will be replaced with a six acre property. The fair market value of the replacement properties is \$138,120 more than the value of the converted properties. One of the converted properties includes a small residence and is adjacent to the Blueberry farm retail buildings and parking. The other converted property is steeply sloping with vegetation and trees. In addition, the locations of these properties are adjacent to the congested arterial, Bellevue Way SE. In comparison, the replacement properties are natural open space and wetlands that would support the natural habitat park functions better than the existing properties. Additionally, the replacement properties are the last missing pieces to make the entire Mercer Slough Nature Park contiguous and whole.

Third, the public has had extensive opportunities for participation in the process. Sound Transit's alternatives analysis provided numerous opportunities for public comment and other forms of participation, including opportunities for appeals to a Hearing Examiner, to state court, and to federal court. With the Board's consideration of the Conversion Request in two meetings in 2014, the public has had more opportunities to participate in the RCO conversion process.

Thank you for considering the City of Bellevue's Conversion Request and Sound Transit urges you to approve it.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Harbour", written in a cursive style.

Michael Harbour
Deputy Chief Executive Officer

Cc: Brad Miyake, City Manager City of Bellevue



City of
Bellevue

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MAR 18 2015

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RECREATION AND CONSERVATION OFFICE

March 10, 2015

Harriet Spanel, Chair
Kaleen Cottingham, Director
Recreation and Conservation Office
P.O. Box 40917
Olympia, WA 98504-0917

Dear Chair Spanel, Director Cottingham and Members of the Board,

Thank you for considering the City of Bellevue's request to convert land, acquired with Recreation and Conservation Office (RCO) grants, in Mercer Slough Nature Park. The Mercer Slough is a treasured resource for the city and region. RCO's long-standing partnership in this effort has been critical to the park's success.

This conversion is necessary to allow for Sound Transit's East Link light rail project to serve the existing South Bellevue Park and Ride, which is a key station between Downtown Bellevue and Downtown Seattle. The park and ride is surrounded on three sides by Mercer Slough Nature Park. Selecting the final alignment for East Link was a long and thoughtful process for the Bellevue City Council and the Sound Transit Board. Many factors, including impacts to the park, were considered in the selection.

After several years of public debate, the Bellevue City Council unanimously selected their final preferred East Link alignment on November 11, 2011, in Resolution 8322. After additional study of design alternatives, the Council again unanimously confirmed its preference for the final alignment on April 22, 2013, in Resolution 8576. Finally, understanding the need to comply with the RCO/LWCF grant conversion requirements, the City Council approved the purchase of the proposed replacement property on May 19, 2014, in Resolution 8744.

As memorialized in the City's Section 4(f) concurrence letter dated November 15, 2011, the City and Sound Transit agreed on the major park mitigation elements that would be necessary for the City to support this final alignment. Since that time, the City and Sound Transit have collaboratively designed the East Link project based on this mitigation plan.

The mitigation package for Mercer Slough includes:

- Adding six-acres to the park through acquisition of the replacement property;
- Conducting 6.4 acres of wetland and wetland buffer restoration within the park;
- Planting more than 2,800 new trees in the park to offset the 691 being removed for the project;
- Constructing 700 linear feet of new ADA-compliant boardwalk trail to replace an existing non-ADA compliant mulch and gravel trail;
- Constructing a new 1,500 square-foot building to house park user restrooms and u-pick blueberry and seasonal farm-fresh produce sales;


Harriet Spanel, Chair
Kaleen Cottingham, Director
March 10, 2015
Page 2

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- Constructing approximately 4,000 linear feet of new multi-purpose path along Bellevue Way SE (part of the park's Periphery Loop Trail) with new planter beds and street trees to buffer sidewalk users from car and truck traffic;
- Constructing 550 linear feet of new trail across the replacement property, creating a new off-street trail connection between the Mercer Slough Environmental Education Center and the park's interior trail systems;
- Constructing a direct connection to the park from the South Bellevue Station allowing residents throughout King County to use light rail as a way to travel to the park.

The City values its long-standing partnership with the RCO and Washington State Parks at Mercer Slough. The request to convert and replace grant-supported land is not taken lightly. The mitigation plan for Mercer Slough Nature Park has involved many years of negotiation and collaborative design with Sound Transit. Impacts and changes to the park will occur as today's South Bellevue Park and Ride transforms into East Link's South Bellevue Station. In recognition of this, the City believes that the replacement property and the mitigation commitments described above safeguard both the recreational experience and the financial investment that the State has made in Mercer Slough Nature Park.

Sincerely,



Brad Miyake, City Manager

cc: Bellevue City Council
Patrick Foran, Director, Parks & Community Services

From: Shefali Ranganathan [<mailto:Shefali@transportationchoices.org>]

Sent: Monday, February 09, 2015 12:54 PM

To: Barker, Myra (RCO)

Subject: Comment letter on Sound Transit's proposed conversion of Mercer Slough parkland

Dear Myra Barker, Chair Spanel and Members of the Board,

We are writing today in strong support of Sound Transit's proposal to convert and replace Mercer Slough parkland as part of the East Link light rail project. This joint letter is co-signed by Transportation Choices, Fuse, Futurewise and Move Bellevue Forward, organizations that work in Bellevue and support the creation of vibrant communities in the region.

Please feel free to contact me if you have further questions

Thanks
Shefali

Shefali Ranganathan
Director of Programs

Transportation Choices

Transit for all!

Phone: 206.329.2336

www.transportationchoices.org

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Feb 09, 2015

Harriet Spanel, Chair
c/o Myra Barker, Compliance Specialist
Recreation and Conservation Office
P.O. Box 40917
Olympia, Washington 98504-0917

Dear Chair Spanel and Members of the Board,

We are writing today in support of Sound Transit's proposed conversion of Mercer Slough Nature Park land and replacement land for the East Link Light Rail project.

Our organizations are dedicated to creating vibrant and sustainable communities in the Puget Sound region. We advocate for common sense solutions to support our region's growing population and job centers and at the same time working to preserve open space, rural lands and protect our natural environment.

We are strong supporters of Sound Transit's East Link light rail project to connect the thriving cities of Mercer Island, Bellevue and Redmond and serve 50,000 daily transit riders by 2030. East Link will foster transit-oriented development bringing new housing, jobs and retail to the eastside.

A win-win for conservation and sustainability

Sound Transit's conversion proposal would replace park land 6 to 1 and better connect the Mercer Slough Nature Park.

Currently, Sound Transit's proposed conversion area is approximately 1 acre, in two separated locations. Both of the areas are adjacent to Bellevue Way SE. One parcel is steep with vegetation and trees. The other is improved with a small A-frame structure, adjacent to the Blueberry Farm retail building.

The replacement property is contiguous, rectangular in shape and contains significant wetlands on the westernmost parcel that borders Mercer Slough. The City of Bellevue will preserve it as open space and wetland habitat that will provide a connection between the previously separated parts of the park. Existing trails to the north and south of the replacement property are currently cut off because this property had long been under private ownership. With approval of the replacement land, the City plans to connect these trails so that recreationists will enjoy exploring the eastern part of the park uninterrupted. The proposed replacement lands are consistent with the City's comprehensive plan to expand wetland preservation and wildlife habitat that results in public outdoor recreation purposes. Similarly, the replacement land supports the Recreation and Conservation Funding Board's goals to provide funding for projects that result in public outdoor recreation purposes.

From our organizations perspective, this plan will actually improve accessibility from within the park and make Mercer Slough Nature Park complete. An approval of this proposed conversion will keep the East Link project moving, eventually connecting even more people to the Mercer Slough Nature Park and beyond.

Light rail to Mercer Island, Bellevue and Redmond has strong support from residents and we are looking forward to the completion of East Link. Your timely approval of this important proposal will ensure that this voter-approved project moves forward.

Thank you for your consideration.

If you have questions about this letter, please feel free to contact Shefali Ranganathan, 206-329-2336 or Shefali@transportationchoices.org



From: BetterBellevue [<mailto:info@betterbellevue.org>]

Sent: Monday, January 26, 2015 11:52 AM

To: Barker, Myra (RCO)

Subject: Better Bellevue Presentation To The Bellevue City Council RE RCFB Postponement Action on Mercer Slough Land Conversion

Dear Ms. Barker -

I provide to you herewith a copy of the letter I provided to the members of the Bellevue City Council on December 1 regarding the proceedings of the October 30 meeting of the RCFB.

I was requested to provide this letter by Members of our City Council because neither the City Manager, or any other City Staff had provided any report to the Council, as of that date, regarding the land conversion matter subsequent to the October 30 meeting of the Board.

This should tell you something about how this situation is being "managed" to contain the "bad outcome" of what City Staff had expected to be a "slam dunk" decision by the Board.

A copy of the transcript of the Board hearing discussion of October 30 was also provided to the Council.

It is a sad day when citizens have to work so very hard to protect this natural jewel within our city. Mr. Bidwell and others expended immense personal effort, at their own costs, over numerous years, to bring about the creation on the Mercer Slough Nature Park in the 1980s.

Citizens have also played a vital role in forging the partnerships that brought about the creation of Mercer Slough Nature Park Environmental Education Center, in partnership with the Pacific Science Center, the Eastside Heritage Center, and other community organizations.

These citizens sure never expected that the same challenges would be raised yet again, in this case, by our own City staff, or another governmental agency, Sound Transit.

Members of our Council, and many Bellevue citizens share the sentiment noted in my letter to the Council of December 1 where I stated:

"Simply put, one part of the Slough would be cannibalized to mitigate the permanent loss of another. Shameful."

The entire effort of thousands of citizens, over the last half dozen years, seeking to avoid the wrongful placement of a massively impactful light rail line within some of the most sensitive parts of the entire Mercer Slough Nature Park, must not go in vain.

We seek nothing but truth, honesty, and openness, something that has been immensely missing, far too often, throughout these years, as this deliberative process has gone forth, always in total frustration.

It should tell you something when Don Davidson, DDS, our former Mayor during some of the most difficult years of these deliberations, and the longest serving member of our City Council,

has now joined with Building A Better Bellevue, and its thousands of supporters, and other important Bellevue civic leaders, to do all in his power to preserve our Mercer Slough Nature Park for all the future.

Dr. Davidson is especially motivated in his dedication to truthfulness, and to the preservation of our environmental jewel, by newly discovered facts such as I have noted in my letter regarding Sound Transit's noted intent, in their ST III documents, to do the very thing that they had steadfastly long denied, the crossing of Mercer Slough Nature Park along I-90, in order to reach Issaquah.

This is just a small part of the reasons why I have noted to you that there is a very serious lack of truthfulness and integrity in this entire business.

Bellevue Citizens have reached the point where we believe there is no other means left to accomplish environmental justice than to seek the support from honest and truthful public servants such as the members of the Recreation and Conservation Funding Board, and the Shorelines Hearing Board.

The legal petition filed by the appellants in the case before the Shorelines Hearings Board speaks for itself on these issues and concerns. And, the testimony before your own board, in October, also spoke to some of these very same issues.

We seek only the truth, and the full and permanent protection of our region's Mercer Slough Nature Park environmental jewel, and of its natural inhabitants including endangered fish, turtles, trees, and the flora and fauna that provide essential nutrients to the hundreds of types of animals, birds, insects and other natural things that call Mercer Slough Nature Park their home.

This is the same objective that we all believe is also the very reason for the work of your own organization - The Recreation and Conservation Office. We are your best friends and supporters, not your contesters.

With Kind Regards,

Joe Rosmann

Chair, Building A Better Bellevue

Joseph Rosmann

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December 1, 2014

RE: Washington State Recreation and Conservation Funding Board Reservations Regarding Compromise of Mercer Slough Nature Park Experience for All Future Park Users

Dear Mayor Balducci and Members of the Council:

I write to provide you an update on the Washington State Recreation and Conservation Funding Board's (RCFB) October 30, 2014 decision to postpone action on the City of Bellevue's (COB) request to approve a Land Conversion Plan in Mercer Slough Nature Park.

The RCFB oversees investment decisions involving the acquisition of public lands and provides funds to support the management of such resources across our state. Please refer to the enclosed RCFB Fact Sheet as well as the Washington State Recreation and Conservation Office (RCO) website: www.rco.wa.gov. In addition to summarizing the Board's October 30 discussion, enclosed please find a DVD recording of the meeting. I hope you will each take the time to listen to it.

In brief, the RCFB's action is significant in that the Board raised a major question as to why there is not a less-impactful route for East Link, particularly one that minimizes impacts to the Mercer Slough Nature Park. Board members expressed concerns that Sound Transit's present plan will drastically compromise the Slough's delicate environment and destroy the Parks' natural serenity forever.

In the late 1980's, the RCFB provided the overall direction and support necessary to acquire the many small privately owned land parcels that now comprise the entirety of the Mercer Slough Nature Park. As a result, the RCFB also maintains responsibility for assuring the long term preservation of the entirety of the Park because it guided the original purchase of the property.

Recently, City staff requested that the RCFB approve an exchange of six acres of land purchased earlier this year by our City, located within the existing confines of the Park, to compensate for Sound Transit's permanent conversion of a portion of the Slough lands along Bellevue Way and 112th Avenue SE. This exchange was intended by City staff to satisfy Environmental Protection Act requirements for mitigating the use of other federally-protected park lands.

Simply put, one part of the Slough would be cannibalized to mitigate the permanent loss of another. Shameful.

During the October 30 meeting, the RCFB heard a presentation by RCO staff, and a presentation by City of Bellevue Staff and Sound Transit Staff supporting approval of the City's conversion request. Several Bellevue citizens provided oral comments against the conversion, and the RCFB also received written comments from a number of Bellevue citizens opposing the conversion.

The RCFB questioned the City's representative and inquired about the inappropriate use of RCFB-provided State funds by our City to purchase other park land in 2001, without RCFB review. The Board's questions also suggest that they considered the City's current conversion proposal as disingenuous and misleading because it would, in fact, result in a diminishment of the Mercer Slough Nature Park—not mitigation.

The Board expressed further reservations about the appropriateness of placing the light rail facility in a federally-protected park and wetland, specifically questioning whether Sound Transit made a sufficient effort to identify reasonable, feasible and acceptable alternatives to the Bellevue Way/112th Avenue route.

At the end of the meeting, RCFB members likened the plan for use of Mercer Slough land for the East Link light rail facility to what would have occurred if Seattle voters had not turned down the request of Seattle's leaders to construct the R.H. Thompson Expressway through the Seattle Arboretum Park facility in the 1970s. The Board noted that the National Park Service may refuse to grant use of this federally-protected wetland and nature park for East Link based on similar concerns.

Timing is everything. Last week Sound Transit published its ST3 planning documents. These documents confirm what we've known all along: light rail is now proposed to extend from south Bellevue to Issaquah along I-90. This route follows the City's proposed B-7 East Link alternative that Sound Transit told our City repeatedly that it would not use due to environmental considerations. Their plan even includes tunnels along portions of the route to Issaquah.

It's not too late to change course and preserve the integrity of all the Mercer Slough Nature Park for future generations.

The RCFB would clearly welcome such a result.

Sincerely Yours,

Joseph Rosmann

Enclosures: DVD Disc Recording of RCFB Meeting on the afternoon of October 30, 2014, RCFB Fact Sheet

Note: Unfortunately, the RCO technical staff failed to set the audio recording capture level sufficiently high as the meeting took place in the Olympia conference room. As a result the recording is difficult to hear. However, if you utilize a good set of speakers, or high quality earphones, and set the playback volume sufficiently high, you will be able to clearly discern all the discussion that took place at the meeting.