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## **March 14, 2023 SLS Appeal Narrative re Hyla Crossing Stormwater Project**

The identified permits SHO22-00007 (SSDP) and SHO21-00010 (shoreline variance) were incorrectly issued for the following reasons.

Note: The inclusion of the term “VAR” indicates provisions related only to the Shoreline Variance decision. The remainder of the paragraphs apply to both the Shoreline Substantial Development Permit and the Shoreline Variance Decisions as is required for the overall proposal.<sup>1</sup>

1. A new threshold determination should be issued for the current proposal. The original threshold determination (MDNS) was issued eleven years ago (March 14, 2012) for a different project and a new threshold determination should be issued for the revised project now under consideration. As the staff reports admit, “*the upland outfall was not evaluated under the original SEPA checklist and threshold determination.*” The SEPA Addendum issued February 13, 2023, is not appropriate compliance with SEPA.
2. Pursuant to the deed from King County to the City of Issaquah for this parcel under Recording Number 20070521001826 (May 21, 2007), the City “covenants that the Property shall be continued to be used for open space, or recreational purposes or that other equivalent facilities within the County shall be conveyed to the County in exchange therefore.” The City has violated this covenant by allowing or permitting the proposed stormwater facility to be established on public property, with apparent intent to convey a stormwater easement for a private, commercial, development proposal.
3. The subject property was “purchased for open space with funds from Open Space Bonds authorized in 1989 by King County Ordinance 9071.” As

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<sup>1</sup>Issaquah Shoreline Master Program Paragraph 8.2.5.2: “A Shoreline Variance shall follow the provisions in this section and other applicable sections of the Shoreline Master Program.”

described in Recording Number 20070521001826, when the City of Issaquah received the deed it covenanted that the Property will continue to be used for the purposes contemplated by (King County) Ordinance 9071 which prohibits “both active recreation and motorized recreation such as off-road recreational vehicles but allows passive recreation.” The City violates this provision by issuing the subject permits and conveying an easement or other property rights for the project inconsistent with these covenants.

4. For the reasons stated above, the permit and anticipated transfer of an easement also violates an Interlocal Agreement between King County and the City of Issaquah from 2006.<sup>2</sup>
5. (VAR) WAC 173-27-170(2)(a) and Paragraph 8.2.5 of the Issaquah SMP, which sets standards for shoreline variances, provides that the applicant must demonstrate:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;

(Emphasis supplied). As noted above, the reasonable use of the property, as specified in the deed, Recording Number 20070521001826, and interlocal agreement 2006-0571, is open space and passive recreation.

6. (VAR) The Staff Report for the shoreline variance indicates that the “unnecessary hardship” requirement of WAC 173-27-170 is met by the following at pages 3-4 of the staff report:

The Rowley’s have a development agreement with the City to redevelop the Hyla Crossing neighborhood. The method of stormwater provided for the development was indicated in the Hyla Crossing and Rowley Center EIS, Planned Action Ordinance and DA for the site. Changes to the DA of this magnitude will constitute a breach of contract and/or make the City liable for monetary costs incurred for changes to stormwater infrastructure.

(Emphasis supplied). The threat of litigation from a project applicant is not the

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<sup>2</sup>King County Clerk of the Council File No. 2006–0571:  
<https://mkkcclegisearch.kingcounty.gov/LegislationDetail.aspx?ID=553886&GUID=5B850DA4-896A-4F12-AFA8-8749CE514435&Options=&Search=>

basis for a finding of hardship. WAC 173-27-170(2)(b) provides that the hardship must be:

the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;

7. Because the City is concerned that it may be “liable for monetary costs” the City’s Hearing Examiner should be recused and an independent Hearing Examiner appointed to hear these appeals.
8. The City has improperly segmented and piecemealed the decisions on the shoreline substantial development permit and the shoreline variance into two separate applications, with separate staff reports and decisions; all decisions should be combined for review and appeal. In addition, the application materials do not include impacts of the pipeline on critical areas leading to the discharge point in the shoreline zone and the necessity of review of such uses under the critical area ordinance.
9. (VAR) The application and analysis of the variance request did not provide the information required by WAC 173-27-180(9) as follows:
  - (m) On all variance applications the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

The application does not accurately describe the location of the pipeline, outfall and maintenance road as required by WAC 173-27-180(f)

10. (VAR) Variance criteria include the following requirement at WAC 173-27-170(4):
  - (4) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

See also Paragraph 8.2.5(6)(h) of the Issaquah SMP.

Cumulative impacts must also be considered in the review of shoreline substantial development permits.

The discussion of cumulative impacts for both the variance and shoreline substantial development permit is deficient in that it does not discuss plans for other possible future connections to the pipeline and pumping systems, other stormwater pipelines, roadway and pedestrian improvements, stream modifications and other public and private development that are currently under consideration in the area that would add to cumulative impacts.

11. The City did not provide notice to interested parties of record, including SLS, of the applications, neighborhood meeting or agency meeting as described in the staff report and as anticipated in Exhibits 2 and 4 to the staff report. Appellant SLS was a party of record in these proceedings in 2011-12 and a party to the FEIS on the project.
12. The applicant, Rowley Properties, lacks standing to apply for shoreline permits on publicly owned land.
13. The applicant knew, or should have known, when it proposed this pipeline, and other development, that the public property in question was limited in its use since 2007 as described in the deed in Recording Number 20070521001826. When deed or land use regulations limit the permissible use of property, the applicant cannot reasonably expect to use the property in question for prohibited purposes. The subject property was “purchased for open space with funds from Open Space Bonds authorized in 1989 by King County Ordinance 9071.”
14. The proposal is likely to have significant adverse impacts on shoreline resources critical areas and fishery resources, including wetlands that would be disturbed to construct the proposal, including, but not limited to, dewatering impacts to adjacent wetlands and streams.
15. The velocity of water from the pipeline is likely to create erosion and scouring which will impact the shoreline, adjacent critical areas and Lake Sammamish.
16. (VAR) The proposal does not meet the standards and review criteria for variance permits under WAC 173-27-170(1) and (2).
17. The proposal violates stormwater design criteria and common law which require discharge at the natural location.
18. The proposal violates Paragraph 5.8.2 of the Issaquah SMP, which requires:

2. Development in FEMA designated floodplains and floodways, channel migration areas, and/or riparian buffers shall be required to demonstrate no adverse impact on habitat for fish species listed as threatened or endangered under the federal Endangered Species Act.

19. The proposal violates Paragraph 4.4.5(3) of the Issaquah SMP which requires:

- A proponent of any new shoreline use or development shall mitigate adverse environmental impacts whether or not the use/development requires a shoreline substantial development permit or is exempt from a shoreline permit. The mitigation sequence prescribed in WAC 173-26-201(2)(e) and IMC 18.10.490 shall be used in mitigating impacts from shoreline uses and development.

20. The proposal violates Paragraph 5.6.2 of the Issaquah SMP which requires:

Mitigation Sequence - A proponent of any new shoreline use or development shall mitigate adverse environmental impacts whether or not the use/development requires a shoreline substantial development permit or is exempt from a shoreline permit. The mitigation sequence prescribed in WAC 173-26-201(2)(e) and IMC 18.10.490 shall be used in mitigating impacts from shoreline uses and development.

21. The proposal violates Paragraph 5.18.2 of the Issaquah SMP which requires:

2. Utility production and processing facilities and transmission facilities shall locate outside of the shoreline jurisdiction, unless no other feasible alternative exists.