

March 3, 2025

VIA E-FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: *The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—
in King County, WA*, STB Docket No. AB-6 (Sub-No. 380X)

Dear Ms. Brown:

I have attached for e-filing King County, Washington's Motion to Hold Proceedings in Abeyance, in the above-referenced proceeding.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Charles A. Spitulnik

Attachment

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-6 (Sub-No. 380X)

**THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
—ABANDONMENT EXEMPTION—
IN KING COUNTY, WA**

**MOTION OF KING COUNTY, WASHINGTON TO HOLD PROCEEDINGS IN
ABEYANCE**

Communications with respect to this pleading should
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Counsel for King County, WA

Dated: March 3, 2025

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-6 (Sub-No. 380X)

**THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
—ABANDONMENT EXEMPTION—
IN KING COUNTY, WA**

**MOTION OF KING COUNTY, WASHINGTON TO REQUEST TO HOLD
PROCEEDINGS IN ABEYANCE**

King County, Washington (the “County”) hereby requests that the Board hold these proceedings in abeyance pending the outcome of federal court proceedings that raise substantially similar issues to those raised by Waverly Hills Club (“Waverly”) and Raymond and Lael Spencer (the “Spencers”) in these proceedings. Holding these proceedings in abeyance will promote efficiency by avoiding simultaneous Board and federal court proceedings addressing the same facts and overlapping claims, many of which the Board normally declines to hear. Additionally, holding these proceedings in abeyance will not be fundamentally unfair to any party because obtaining answers to the state law claims asserted by Waverly and the Spencers (collectively, “Petitioners”) will allow a more complete and accurate adjudication of any remaining issues that are not resolved in federal court. The County respectfully requests an expedited decision on its request.

BACKGROUND

These proceedings concern a 12.45-mile segment of railbanked right-of-way (the “Line”) located between Redmond and Issaquah that is owned by the County and is within its jurisdiction. The Line was established well over 100 years ago by grant from the federal government under the

1875 Act to the Seattle, Lake Shore & eastern Railway Company (“SLS&E”) as a 200-foot wide right-of-way. In 1997, SLS&E’s successor in interest to the Line, the Burlington Northern & Santa Fe Railroad (“BNSF”), conveyed its ownership interest in the Line to The Land Conservancy, which in turn conveyed the Line to King County in 1998. In 1998 the Board granted BNSF’s abandonment exemption and issued a Notice of Interim Trail Use (“NITU”) for the Line. *The Burlington Northern and Santa Fe Railway Co.—Abandonment Exemption—In King County, WA*, AB-6 (Sub-No. 380X) et al. (STB served May 13, 1998); AB-6 (Sub-No. 380X) (STB served Sept. 18, 1998) (“NITU Decision”). The County serves as the trail sponsor for the Line, and has constructed a trail on the Line, known as the East Lake Sammamish Trail. The County has converted the Line into a trail and the Line remains preserved as part of the interstate rail network and available for reactivation of rail service at a future time.

Petitioners each own property adjacent to different segments of the Line. Petitioners each admit to separately encroaching on the Line. Waverly Pet. at 4, 42; Spencers Pet. at 3, 14.

On January 28, 2025, Waverly filed a Petition to Reopen NITU Decision Or, In the Alternative, Petition for Declaratory Orders (“Waverly Petition”) in this docket. The Waverly Petition requested that the Board alternatively:

- (1) Reopen the NITU Decision and “remove 21,688 square feet being used by the Club from the railroad right of way”.
- (2) Declare that the County’s easement is held “in abeyance” so that it cannot “preclude the Club’s use of the right of way or charge rent”.
- (3) Declare that the “Club’s use and minor improvements—grass, gravel parking, and security fence—are noninterfering as to potential future railroad and as to trail use.”

Waverly Pet. at 43-44.

On January 29, 2025, Waverly filed a complaint (“Waverly Complaint”) against the County in the Superior Court of Washington for Pierce County. *See* Waverly Complaint, attached as **Exhibit 1**. As in the Waverly Petition, the Waverly Complaint concerned the Waverly’s encroachment on the Line and sought:

- (1) “A declaratory order that the Club may use the right of way in any manner that does not materially interfere with King County’s rights to use the right of way under its easement rights; and further, that the Club’s current use of the right of way . . . does not materially interfere with King County’s easement rights and may continue.”
- (2) “A declaratory order that the Land Use Fees effectively attempt to charge rent to the fee owner is illegal, and otherwise is not a railroad purpose under the railroad easement and not a trail purpose under the trail easement.”
- (3) “Awarding Plaintiff any other relief which is permitted by law or which the court finds equitable, appropriate, or just, including costs and attorney fees allowed by law.”

Waverly Complaint at 18. The Waverly Complaint acknowledged that the Waverly Petition had been filed and stated that “if the STB does not resolve these issues, then the Club would seek to have this Court decide these issues and also decide an issue not before the STB—whether the land use fees are illegal.” Waverly Complaint at 15.

On January 30, 2025, the Spencers filed a Petition for Declaratory Orders (“Spencers Petition”) in this docket seeking “a declaration that the County’s banked railroad easement is held in abeyance or inactive, precluding it from asserting present rights to exercise a railroad easement and a declaration that the Spencers’ described activities and improvements in the right of way do not interfere with trail use or potential future railroad use.” *See* Spencers Pet. at 19.

On January 31, 2025, the Spencers filed a complaint (“Spencers Complaint”) against the County in the United States District Court for the Western District of Washington. *See* Spencers Complaint, attached as **Exhibit 2**. Similarly to the Spencers Petition, the Spencers Complaint concerned the Spencers’ encroachment on the Line and sought:

- (1) A declaratory judgment that “the Spencers have the right to use the right of way which exists on their property in any way which does not interfere with King County’s current trail use or potential railroad use.”
- (2) A judgment quieting title between the Plaintiffs and King County that confirms that Plaintiffs own the following described property in fee, subject to King County’s trail easement created under the Trails Act and a dormant railroad easement subject to reactivation by a decision of the Surface Transportation Board.”.
- (3) A “declaratory judgment regarding the Plaintiffs’ and King County’s rights and obligations under” an earlier settlement agreement between the County and neighbors adjacent to the Line.
- (4) A “declaratory judgment that King County has violated Plaintiffs’ right to equal protection of the laws under the Fourteenth Amendment of the United States Constitution and that Plaintiffs are entitled to declaratory relief under 42 U.S.C. Sections 1983 and 1988.”
- (5) Injunctive relief prohibiting conduct inconsistent with the declarations requested above.

Spencers Complaint at 23-24. The Spencers Complaint noted filing of the Spencers Petition before the Board. Spencers Complaint at 16, 23.

On February 11, 2025, the County filed a request in this docket for extension of time to reply to both the Waverly Petition and the Spencers Petition (collectively, the “Petitions”). Petitioners filed responses stating they did not object to the extension of time, and on February 14, 2025, the Board granted an extension to March 21, 2025 for the County to reply.

On February 18, 2025, the County answered the Waverly Complaint and filed counterclaims for quiet title, ejectment, and trespass. *See* County Answer to Complaint, attached as **Exhibit 3**. On the same day, the proceedings were removed to the United States Court for the Western District of Washington. *See* Notice to Plaintiff of Removal, attached as **Exhibit 4**.

On February 28, 2025, the court case initiated by the Spencers was transferred as related to the same federal district court judge handling the Waverly Complaint because of its related nature. *See* Minute Order of Judge James L. Robart, attached as **Exhibit 5**.

Without waiving its right to reply by March 21, 2025, the County hereby requests that the Board hold these proceedings in abeyance pending conclusion of the parallel federal court cases.

ARGUMENT

I. The Board should hold the Petitions in abeyance pending outcome of the court cases.

The County requests the Board to hold the proceedings in abeyance pending the outcome of the court cases that Waverly and Spencer separately initiated, both of which are the more appropriate forum to resolve Petitioners’ claims. This request will not unfairly prejudice any party. The Board may hold proceedings in abeyance where doing so would promote efficiency and would not be fundamentally unfair to any party. *Ballard Terminal R.R. Co., LLC—Petition for Declaratory Order*, FD 36261, slip op. at 4 (June 27, 2019). “The Board has broad discretion to determine whether to hold a proceeding in abeyance.” *Pet. of the Nat’l R.R. Passenger Corp. for*

Relief Pursuant to 49 U.S.C. § 24905, FD 36048, slip op. at 3 (STB served Oct. 3, 2016). Whether it does so “is highly dependent on the facts and circumstances of the case.” *Id.* (quoting *E.I. DuPont de Nemours & Co. v. Norfolk S. Ry.*, NOR 42125 et al., slip op. at 4 (STB served Nov. 29, 2012)).

Here, both criteria for holding these proceedings in abeyance are satisfied. First, it would promote efficiency by allowing a court with proper jurisdiction over the claims concerning state and federal law issues to resolve those claims, rather than asking the Board to interpret what are clearcut questions of state property law and federal law claims beyond the Board’s jurisdiction. As is clear from the Petitions, both the Waverly’s and the Spencers’ requests for relief hinge largely on interpreting the scope of the County’s easement interest in the Line in relation to Petitioners’ underlying fee interests. The Petitioners ask the Board to determine whether and to what extent the County can exercise its easement rights as against Petitioners, and whether Petitioners have rights to use land that they own in fee interest as they please, even though it is burdened by an easement. *See* Waverly Pet. at 6-7, 31-32; Spencers Pet. at 4 n.2. The Board normally declines to hear questions of property law, because they are more appropriately decided by courts. *Petition of Union Pacific R.R. Co. for Declaratory Order*, FD 35960, slip op. at 6 (STB served Sept. 30, 2016). *See also V&S Ry.—Pet. for Declaratory Order—R.R. Operations in Hutchinson, Kan.*, FD 35459, slip op. at 7 (STB served July 12, 2012).

Likewise, Petitioners’ claims regarding the County’s so-called “misuse” of its easement in implementing and managing trail use and enforcement of local regulations concerning trail use are matters of state law best left for a court to determine. Waverly Pet. at 4, 29-36; Spencers Pet. at 4, 11-13. As the Board has noted, “a trail use must comply with State and local land use plans, zoning ordinances, and public health and safety legislation.” *Idaho N. & Pac. R.R.—Abandonment & Discontinuance Exemption—In Washington & Adams Counties, ID*, 3 S.T.B. 50, 59 (1998)

(quoting *Iowa Southern R. Co.—Exemption—Abandonment*, 5 I.C.C.2d 496, 505 (1989), *aff'd sub nom Goos*, 911 F.2d 1283 (1990)). The Board's oversight of implementation of a trail on a railbanked line is narrow: "nothing in [the] Trails Act rules or procedures is intended to usurp the right of state, regional and local entities to impose appropriate safety, land use, and zoning regulations on recreational trails." *Id.* (quoting same). The Board's "chief concern, once a trail condition has been imposed, is that the statutory rail banking condition not be compromised, and that nothing occur that would preclude a railroad's right to reassert control over the right-of-way at some future time to revive active service." *Id.*

The grounds for the Board to intervene in management of a railbanked rail line are not found here; instead, Petitioners' problems are with the County's assertion of property rights and enforcement of County policies and (for the Spencers) regulations. *See Waverly Pet.* at 36-38; *Spencers Pet.* at 11. But how the County decides to implement its trail lies largely outside of the scope of the Board's jurisdiction – except to the extent that the County is required to preserve the right of way for restoration of rail service in accordance with the statute – and will instead rest largely on the legality of the County's regulatory and proprietary rights under state law. These local issues are best left to a court to decide.

As to questions regarding the preemptive scope of the Board's jurisdiction over state property rights, there is overlap between the court proceedings and these proceedings because Waverly and the Spencers have raised substantially the same claims in court as it has before the Board. Because federal courts have concurrent jurisdiction to hear such issues, *Brookhaven Rail Terminal—Pet. For Declaratory Order*, FD 35819, slip op. at 4 (STB served Aug. 28, 2014), the court can resolve these issues and others that clearly fall outside of the Board's jurisdiction. The Board often declines to grant petitions for declaratory order regarding the preemptive scope of its

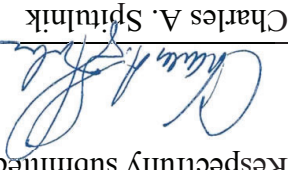
jurisdiction where courts do not refer such issues to the Board. *See, e.g., id.* Holding these proceedings in abeyance will allow for one tribunal to hear these and other issues raised, allowing the Board to focus more narrowly on issues that cannot be answered by the court if or when that occurs. Accordingly, the fact that resolution of the federal court proceeding will likely reduce or eliminate the disputed issues between the parties, supports holding this proceeding in abeyance, thereby promoting efficiency.

Second, holding these proceedings in abeyance would not be fundamentally unfair to any party. Petitioners, not the County, have chosen to initiate parallel proceedings covering the same facts and many of the same issues, reflecting that they have no objection to a court deciding these issues. Petitioners themselves acknowledge the redundancy of these and the court proceedings. Waverly Complaint at 15; Spencers Complaint at 61, 23. Resolution of the issues raised in court will inform, or could even resolve, the Petitioners' claims here. Both Waverly and the Spencers argue that the County's easement is held "in abeyance" and cannot prevent either Petitioner from using the respective properties in question as they wish. Waverly Pet. at 31; Spencers Pet. at 19. This is a question of state¹ law involving interpretation of the validity of an easement that will impact both parties, which will provide the Board with a more complete and accurate adjudication of any preemption dispute. *See Ballard Terminal*, FD 36261, slip op. at 5 (holding proceeding concerning preemption claims related to a railbanked line, pending resolution of contractual issues in state court).

¹ Petitioners' assertion that railbanking holds the County's property interest in the Line "in abeyance" is not supported by any legal citation. Petitioners miss that the Board's role is regulatory and ministerial, and it is not involved in matters of property rights. *See Georgia Great S. Div., S. Carolina Central R.R. Co., Inc.—Abandonment and Discontinuance Exemption—Between Albany and Dawson, In Terrell, Lee, and Dougherty Counties, GA*, AB 389 (Sub-No. 1X), slip op. at 3 (STB served Feb. 2, 2004). This is an issue that the federal court is equipped to handle, based on the significant amount of guidance and precedent provided by the Board in other proceedings.

The County respectfully requests expedited consideration of its request to hold these proceedings in abeyance. If the Board does not hold these proceedings in abeyance, the County reserves right to reply to the Petitions by March 21, 2025, and may join Petitioners in requesting that the Board open up the proceedings in order to complete the record necessary for the Board to make an informed decision. *See* Waverly Pet. at 41-42; Spencers Pet. at 19. WHEREFORE, and in view of the foregoing, the County respectfully requests the Board hold these proceedings in abeyance pending a final determination in the parallel federal court proceedings.

Respectfully submitted,



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Counsel for King County, WA

Dated: March 3, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have on the 3rd day of March 2025, caused to be served a copy of the foregoing Motion and Request upon all parties of record in this proceeding by email or by first-class mail.


Charles A. Spitulnik

Dated: March 3, 2025

EXHIBIT 1

Waverly Complaint

January 29 2025 12:26 PM

CONSTANCE R. WHITE
COUNTY CLERK
NO: 25-2-05817-0

SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY

WAVERLY HILLS CLUB,
INCORPORATED, a Washington nonprofit
corporation,

Plaintiff,

vs.

KING COUNTY,

Defendant.

No.

COMPLAINT

Plaintiff Waverly Hills Club, Incorporated, alleges as follows:

INTRODUCTION

1. Plaintiff Waverly Hills Club, Incorporated (“Waverly Hills Club” or “the Club”), owns and manages a community beach on Lake Sammamish on behalf of about 105 hillside homeowners. Waverly Beach has provided a wonderful recreation resource serving the Waverly Hills community for almost 60 years. Waverly Beach is located on the Lake side of the historic rail line that ran along the east side of Lake

STEPHENS & KLINGE LLP
10900 NE 4th Street, Suite 2300
Bellevue, WA 98004
(425) 453-6206

1 Sammamish from the 1880s to the mid-1990s. For over 30 years, the Waverly Hills
2 Club had no conflicts with railroad operations—the railroad tracks were located on a
3 berm behind the waterfront area used by the Club. This was true even though the
4 Club was using land owned by the Club but subject to the railroad’s right of way
5 easement. King County succeeded the railroad in 1998 and in the mid-2000s
6 constructed an interim trail where the railroad tracks had been located. The Club’s
7 uses also had no conflicts with King County’s interim trail. The County completed
8 permanent paved pedestrian and biking trail at the Waverly Beach location in 2023,
9 and there have been no conflicts with the permanent trail.

10 2. Previously, King County had taken the position that King County owned
11 the land underlying the right of way—not the Waverly Hills Club. The County has
12 subsequently accepted that the County only has an easement for the right of way, and
13 does not own the fee. But the County contends that having only an easement does not
14 change its authority and that the County completely controls the easement and has
15 the right to terminate the Club’s use of the right of way. The County also takes the
16 position that the County, as the easement holder, can charge arbitrary “land use fees,”
17 *i.e.* rent, to the fee owner, here the Club. The County is asserting these positions even
18 though the Club’s use of a portion of the right of way does not interfere with the trail
19 or future railroad uses, if any. The result is that King County is effectively
20 threatening the continued operation of Waverly Beach as it has been enjoyed for
21 almost 60 years by the Waverly Hills community. The Waverly Hills Club determined
22 that it must bring a lawsuit to end the uncertainty and obtain permanent recognition
23

1 of the Club's right to use the right of way for uses that do not interfere with the
2 County's trail or potential future railroad use.

3 3. The original lawsuit was filed by the Club on December 30, 2019 (Pierce
4 County Superior Court No. 19-2-12944-7). The original lawsuit had the effect intended
5 by the Club—to trigger negotiations. The parties immediately signed, and many times
6 extended, a Tolling Agreement expressly authorizing dismissal of the original lawsuit
7 and, if negotiations were unsuccessful, to refile the lawsuit. Unfortunately, although
8 cumulatively thousands of hours have gone into seeking a resolution, the Club must
9 bring this lawsuit to protect its rights and seek justice.

10 **PARTIES, JURISDICTION AND VENUE**

11 4. Plaintiff Waverly Hills Club, Incorporated, is a Washington nonprofit
12 corporation, that operates as a Homeowners' Association under Chapter 64.38 RCW.

13 5. Defendant King County is a political subdivision of the State of
14 Washington.

15 6. This Court has jurisdiction over this matter under RCW 2.08.010 and
16 article IV, section 6 of the Washington Constitution. The case is properly filed in
17 Pierce County Superior Court based on the venue for actions against counties
18 statute as determined by the Administrative Office of the Courts. RCW 36.01.050.

19 7. The parties signed and extended a Tolling Agreement that authorizes
20 the filing of this lawsuit as if this lawsuit was filed on December 30, 2019—the date
21 the original lawsuit was filed. The Tolling Agreement is attached as Exhibit 2 and
22
23

1 the last extension agreement is attached as Exhibit 3. The Club is exercising its
2 rights under the Tolling Agreement by filing this lawsuit.

3 BACKGROUND FACTS

4 8. **Railroad established and site location.** The Seattle Lake Shore &
5 Eastern Railway Company constructed the rail line along the east side of Lake
6 Sammamish in the 1880s from Redmond to Issaquah. A small unincorporated town
7 historically known as Monohan was formed. A County Road was constructed
8 originally known as the Issaquah-Redmond Road, later East Lake Sammamish Road,
9 and now East Lake Sammamish Parkway. Situated about four miles north of
10 Issaquah, Monohan is the location of the current Waverly Hills neighborhood and
11 Waverly Beach in what is now the City of Sammamish.

12 9. By the late 1940s, new property owners looked to develop the area for
13 housing. In 1948, the Plat of New Monohan Addition created 26 lots on the east side of
14 Issaquah-Redmond Road (now East Lake Sammamish Parkway) accessed by what is
15 now SE 33rd Street. Then, the Plat of Waverly Hills was created in 1959 followed by
16 the Plat of Waverly Hills No. 2 in 1963 with 87 lots total in the two Waverly Plats.
17 The Waverly Hills neighborhood was up the hill and east of “East Lake Sammamish
18 Road” and accessed by what is now SE 32nd Street. During the 1960s, the developer
19 sold lots or homes in the Plat of New Monohan Addition and Plats of Waverly Hills
20 No.1 and No. 2 with community beach rights on Lake Sammamish—Waverly Beach,
21 which the developer also owned. The home and lot owners had an undivided
22 ownership interest in the beach in common with other owners.
23

1 10. Waverly Beach was and is on the Lake side of the historic rail line that
2 ran along the east side of Lake Sammamish. In this area, the rail line was cut into the
3 moderate slope adjacent to, and on the Lake side, of what is now East Lake
4 Sammamish Parkway. The historic rail line was on an embankment—a raised
5 earthen structure—about ten feet above the Waverly Beach area. From Waverly Hills,
6 the residents and their guests could walk across East Lake Sammamish Parkway at
7 SE 32nd Street, then traverse over the rail line and down the embankment directly to
8 the Waverly Beach. Vehicles (and pedestrians) accessed Waverly Beach by crossing
9 the rail line on SE 33rd Street and turning north onto an access road now known as
10 East Lake Sammamish Shore Lane SE. These pedestrian and vehicle access points
11 have remained in use since the 1960s.

12 11. **Waverly Hills Club established and thrives for almost 60 years.**
13 The Waverly Hills Club was incorporated in 1967 to manage the community beach on
14 Lake Sammamish known as Waverly Beach. The Club took steps to join all the lot
15 owners with beach rights into the homeowners' association. Specifically, the members
16 were property owners with beach rights that owned lots in the Plat of New Monohan
17 Addition and the Plats of Waverly Hills and Waverly Hills No. 2. In 1969, the
18 developer deeded the beach land to the Waverly Hills Club, Incorporated, thus
19 affording the homeowners' association full control of Waverly Beach for the benefit of
20 the lot owners. Homes continued to be built in the 1970s and beyond with a few
21 vacant lots still existing today. There are currently 105 homeowners in the Club.
22
23

1 12. Waverly Beach was, and is, the community focal point every summer.
2 Beach activities include swimming at the swim beach, picnicking on the grass or at
3 picnic tables, and boating with a boat dock, boat ramp, and a few shared boat moorage
4 slips. A parking area is provided along with a storage shed. Residents with their
5 numerous guests flock to the beach for summer activities. Hundreds of kids and adults
6 learned to swim, water ski or wakeboard at Waverly Beach and also enjoyed tubing
7 and other boating activities . Over the decades, Waverly Hills community activities
8 included annual opening day and beach cleanup parties, kids' campout/movie nights,
9 taste of Waverly potlucks, annual closing day events. Members have also held parties
10 at Waverly Beach for all occasions, including birthdays, graduations, and
11 anniversaries. As homes were resold, new residents and their guests discovered
12 Waverly Beach, joined the community activities, and made new friendships.

13 13. **The Waverly Hills Club maintained a right of way lease with the**
14 **railroad, but asserted fee ownership of the railroad right of way.** After gaining
15 full control of the beach area in 1969, the Waverly Hills Club managed Waverly Beach
16 adjacent to the operating railroad. By the 1970s, the rail line was operated by
17 Burlington Northern and Santa Fe Railway Company, also known as Burlington
18 Northern or BNSF. The railroad typically had a right of way of 50 feet on each side of
19 the centerline, but in the Waverly Beach area the railroad originally had a right of
20 way of 100 feet on each side of the centerline—a total 200-foot right of way.
21 Nevertheless, the railroad used less than 50 feet on each side of the centerline for
22 railroad operations. On the Waverly Beach side, the railbed and embankment utilize
23

1 only about 30-40 feet from the centerline. The Waverly Hills Club controlled and used
2 a portion of the railroad right of way—the area on the Lake side of the embankment,
3 for most of the parking area, a large part of the grass picnicking area at the north, a
4 chain link security fence, and the entire access road. Exhibit 4 hereto is a 2023 aerial
5 photo of Waverly Beach and Exhibit 5 is diagram showing that the Club's use of the
6 right of way is 21,688 square feet.

7 14. Even though the railroad made no use of the right of way being used by
8 the Club, BNSF had the Waverly Hills Club sign a lease in 1973 for use of a
9 specifically mapped area of the right of way and an annual rent of \$900. It was easier
10 to pay than to argue until BNSF sought an increase ten years later. Then, the
11 Waverly Hills Club objected because the railroad only held an easement to the right of
12 way and the Club owned the land underlying the right of way easement and believed
13 it could use its land—the right of way—as long as the Club's use did not interfere with
14 the railroad uses. In 1983, to avoid further conflict, a compromise was reached in
15 which the Club agreed to pay a mere \$1500 in annual rent under protest with no
16 future increases.

17
18 15. In 1996, Catellus Management Corporation managed the rail line on
19 behalf of BNSF and sought a substantial increase in rent. The Waverly Hills Club
20 sent a letter to Catellus dated August 25, 1996, which explained that the earlier
21 compromise addressed the issue, that the Club owned the underlying land, and that
22 the Club intended to pay only \$1500 annual rent per the previously agreed
23 compromise. The letter stated in part:

1 The agreement was set in place as a mutual remedy over the actual title and
2 the conditions under which the easement to B&N was granted. Waverly's
3 belief is that the Act of March 3, 1875 (43 U.S.C. Section 934) granted an
4 easement to B&N and not fee title and furthermore retained for the fee
5 owner the right to use the property in a manner that does not interfere with
6 railroad usage. Clearly, our use of the property does not interfere with the
7 operation of the railroad. The multitude of court cases has consistently
8 upheld that easement is all that was granted to B&N. As previously stated,
9 the lease of \$1500 was a compromise and is best left in place.

10 16. The Waverly Beach Club declared in that letter its continuing
11 understanding that the Club was the fee owner of the railroad right of way, but as a
12 compromise would pay BNSF the same \$1500 in annual rent. BNSF accepted the
13 \$1500 annual rent compromise for 1996, thus confirming the Club's position and the
14 existing compromise.

15 17. The Waverly Hills Club letter to Catellus stated the Club's position that
16 BNSF held only an easement to the right of way pursuant to "the Act of March 3, 1875
17 (43 U.S.C. Section 934)." That refers to the General Railroad Right of Way Act of 1875
18 (the 1875 Act). The 1875 Act afforded railroads the opportunity to obtain a 200-foot
19 right of way over public lands—lands that had not yet been granted to private parties
20 such as by land patents granted to homesteaders. The railroad was required to file a
21 Map of Definite Location approved by the United States Secretary of Interior to
22 establish its rights; deeds are not issued under the 1875 Act.

23 18. Waverly Hills Club was correct that the railroad only held an easement.
In 1887, the Seattle Lake Shore & Eastern Railway Company had established a
railroad right of way through public lands. The Railway Company did this by

1 preparing a Map of Definite Location and having it accepted and approved by the
2 Secretary of Interior and Government Land Office on July 5, 1887. The Railroad
3 Company never received a land patent or other deed to the right of way at Waverly
4 Beach; rather, the railroad's rights were entirely dependent on the rights afforded
5 under the 1875 Act. The Map of Definite Location established a right held by the
6 railroad company to claim only an easement under the 1875 Act. *Great Northern*
7 *Railway Co. v. United States*, 315 U.S. 262 (1942). The United States Supreme
8 Court stated that the 1875 Act "clearly grants only an easement, and not a fee." *Id.*
9 at 271. This holding was affirmed by the United States Supreme Court in *Marvin*
10 *M. Brandt Revocable Trust v. United States*, 572 U.S. 93 (2014) (*Brandt*). The
11 easement is 100 feet wide on each side of the centerline of the tracks per Section 1
12 of the 1875 Act. After the *Brandt* decision, King County was slow to accept the high
13 Court's conclusion, but the County was forced to address this issue at the
14 Washington Supreme Court in *King County v. Abernathy*, 2 Wn.3d 697 (2024), and
15 the Court concluded that: "The parties [including King County] do not dispute that
16 the 1875 Right-of-Way Act granted only an easement over the Corridor." *Id.* at 702.
17 Thus, King County officially accepted that for the areas of the right of way that
18 were 200 feet wide pursuant to the 1875 Act, the County only has an easement.

19
20 19. **The Waverly Hills Club chain of title.** Waverly Beach is located in
21 Section 8, Township 24 North, Range 6 East, Willamette Meridian, specifically in
22 Government Lot 1 of Section 8. The Waverly Hills Club's chain of title to Waverly
23 Beach begins with John Anderson who obtained a United States Government land

1 patent in 1892 (Rec. No. 92788, 2/19/1892). The land described in the patent
2 included all of Government Lot 1—the location of the Waverly Beach property, and
3 other land. The patent was based on a cash entry homestead claim made by John
4 Anderson on September 14, 1889. Hence, the later issued patent was a perfection of
5 the rights already accruing to John Anderson based on his homestead claim in 1889.
6 Anderson's land patent was subject to the prior easement rights obtained by the
7 Seattle Lake Shore & Eastern Railway Company in 1887. In reliance upon the
8 issuance of the expected land patent, John Anderson and Addie E. Anderson, his
9 wife, deeded the land to George W. Olts (Rec. No. 48531, 3/4/1890). George W. Olts
10 and Bessie Olts deeded the land to Allen & Nelson Mill Company (Rec. No. 48532,
11 3/4/1890). The second class shorelands in front of Government Lot 1 were conveyed by
12 the State of Washington to John E. Bratnober who was a President of Allen & Nelson
13 Mill Company (Rec. No. 540375, 3/21/1908). Bratnober then deeded the second class
14 shorelands to the Company (Rec. No. 665209, 2/9/1910). The Allen and Nelson Mill
15 Company was succeeded by the Bratnober Lumber Company and the land and
16 shorelands were transferred to the new company.
17

18 20. As part of a company liquidation, the Bratnober Company sold the
19 area of Waverly Beach—the uplands and second class shorelands—to Carl Pearson
20 and Earl Pearson, doing business as Issaquah Lumber Company (Rec. No. 4070390,
21 10/20/1950). The Pearsons sold the land to Nyal W. Headley via a real estate contract
22 (Rec. No. 4948038, 9/26/1958). Nyal Headley assigned his interest in the real estate
23 contract to Factoria Development Corporation and Cougar Mountain Associates (a

1 limited partnership) (Rec. No. 5353956, 11/16/1961; re-record Rec. No. 5378449
2 1/23/1962; fulfillment Rec. No. 550639). Factoria Development and Cougar Mountain
3 Associates were the land developers with Cougar Mountain Associates owning the
4 portion of the land at Waverly Beach. Cougar Mountain Associates deeded the land to
5 Waverly Hills Club in 1969 via a Statutory Warranty Deed (Rec. No. 6604585,
6 12/31/1969).

7 21. Thus, the Waverly Hills Club became the owner the Waverly Beach area.
8 A portion of that area used for Waverly Beach and the entire access road are within
9 the 200-foot right of way while the waterfront area was outside the 200-foot right of
10 way. The Waverly Hills Club has used the area westerly of the railroad embankment
11 since 1969 without any other private party claiming ownership of the fee interest of
12 the right of way.

13 22. BNSF formally was allowed to discontinue the rail line in 1998 with the
14 rail line designated for trail use under the Rails to Trails program. BNSF had
15 conveyed the right of way by quit claim deed, *i.e.* whatever interests it held, to The
16 Land Conservancy of Seattle and King County (TLC). The quit claim deed expressly
17 stated that the deed was subject “to all existing interests.” TLC then conveyed the
18 right of way by quit claim deed to Defendant King County in 1998. Because BNSF
19 held only an easement under the 1875 Act, TLC and King County in turn could only
20 obtain an easement. The County was the designated trail operator. The railroad
21 tracks were removed, and King County constructed an interim trail that opened in
22 2006. King County has recently completed the permanent trail known as the East
23

1 Lake Sammamish Trail or ELST. Defendant King County had never objected to the
 2 Club's use of the right of way from 1998 when King County obtained its rights until
 3 after the original lawsuit was filed in this matter.

4 **23. Waverly Hills Club obtains deeds to right of way as alternative**
 5 **ownership.** The Waverly Hills Club sought to strengthen its title position. The Pearson
 6 heirs were contacted and they all agreed to sell any interest that they might hold in
 7 the right of way to the Waverly Hills Club. Thus, in 2003, the Waverly Hills Club
 8 obtained four Quit Claim Deeds from Jennie Esther Pearson, Louise Pearson Henkin,
 9 Marilyn Pearson, and Thelma Dorothy Pearson each with an identical legal
 10 description set forth in Exhibit 1. The deeds conveyed the right of way for the entire
 11 Government Lot 1 substantially beyond the area occupied by the Club.

12 **24.** The four deeds were recorded on July 8, 2003, as King County Recording
 13 Nos. 20030708002298, 20030708002299, 20030708002300, 20030708002301.
 14 Defendant King County recognized the sale and transfer of ownership to Waverly
 15 Hills Club in the tax account records with the following short form description:

16 PORTION BURLINGTON NORTHERN & SANTA FE RAILWAY CO'S
 17 FORMERLY NP RAILWAY CO SNOQUALMIE BRANCH LINE R/W 200
 18 FT IN WIDTH OVER & ACROSS GOVT LOT 1 & SW QTR OF ETC

19 **25.** Based on the Pearson deeds, Defendant King County began assessing
 20 property taxes to the Waverly Hills Club—prorated for 2003 and the full amount for
 21 2004 which was \$5,362.35. Waverly Hills Club paid all taxes legally assessed on tax
 22 parcel number 082406-9214 each year forward through 2015. In 2016, without any
 23 request from Waverly Hills Club, King County sought to refund back to Waverly Hills

1 Club property taxes paid by Waverly Hills Club for 2015 amounting to \$6,121.07.

2 Defendant King County gave no reason for the refund order. Defendant King County
3 then stopped sending property tax invoices to Waverly Hills Club. Had King County
4 sent property tax invoices to Waverly Hills Club, the property taxes would have been
5 paid by the Club.

6 26. **Current status and disputed rights.** Defendant King County asserts
7 trail easement rights and railroad easement rights to assert exclusive control of the
8 entire right of way, including the authority to preclude the Club's use of the right of
9 way.¹ The County's assertions exceed the scope of the railroad and trail easements.
10 The railroad easement can only be utilized by a railroad company for railroad
11 purposes. The County is not a railroad company and is ineligible to assert the railroad
12 easement, and merely precluding use is not a railroad purpose. Similarly, the trail
13 easement is for a trail and does not afford the County general rights control non-
14 interfering uses. The Waverly Hills Club is the fee owner of the right of way subject to
15 Defendant King County's proper exercise of railroad easement and trail easement
16 rights. The Waverly Hills Club further asserts that the use by the Club of the right of
17 way does not improperly interfere with Defendant King County's rights to future
18 railroad use or trail use. In particular, railroad use requires less than a 100-foot right
19 of way as demonstrated by about three decades of use adjacent to the Waverly Beach.
20 King County has even asserted in other litigation that a 100-foot right of way is
21 sufficient in this area and the courts agreed. Defendant King County constructed the
22

23

¹ The County has not sought to prohibit use of the access road.

1 permanent ELST on the same railroad centerline well away from the Waverly Beach.
 2 Thus, the Waverly Beach improvements and activities do not interfere with King
 3 County trail operations.

4 27. Also, King County now asserts that it can, in the alternative to
 5 preclusion, charge rent, which it euphemistically calls “Land Use Fees,” but the intent
 6 is clear. The County explains that a Land Use Fee is required when: “a landowner
 7 adjacent to one of King County’s regional trails or parks proposes to use public land
 8 for their own private, non-park purposes.”² Of course, the Club’s position is that King
 9 County only has an easement, so the right of way at the Waverly Beach site is not
 10 “public land” subject to rental type charges. The website goes on to state: “The Land
 11 Use Fee represents the cost of the private use or ‘rental’ of public lands,” and that,
 12 “Land Use Fees reflect market rate value and the costs associated,” with
 13 administration.³ Thus, it is more than clear that the County is charging rent based
 14 on, “market rate land values.” In addition, King County has specifically threatened to
 15 charge the Club for back rent. Charging rent to a fee owner for using its own land is
 16 improper and is an illegal property tax, and also exceeds the scope of the railroad and
 17 trail easements. The King County Code, Chapter 14.30 is entitled Permit System for
 18 County property requiring special use permits for any use of County property. KCC
 19 14.30.020. The Club contends that, as the owner of the fee, it is using its own property,
 20
 21

22 ² Website last visited 1/22/25:

23 https://www.dropbox.com/scl/fi/vrlcw3ykczd7rf5myrd07/KCP_SUP_Fee_Structure_Final.pdf?rlkey=c9eorzmn5mlfzyk32rxt8cxn6&e=1&dl=0

³ See footnote 2.

1 not County property, so no permit should be required. Furthermore, another provision
2 states that the County real estate services section shall charge an annual fee for uses
3 of County property (KCC 14.30.060.B.), but says nothing about charging rent based on
4 market values. Thus, Chapter 14.30 does not provide authority to charge rent to the
5 fee owner.

6 **28. Protective Complaint.** Waverly Hills Club files this complaint as a
7 protective complaint. The Club has filed a Petition at the United States Surface
8 Transportation Board (STB) seeking to: (1) have the Board reduce the size of the right
9 of way to eliminate the Waverly Beach area; (2) declare that King County cannot
10 assert the railroad easement because King County is not a railroad company and
11 because the railroad easement is in abeyance; (3) declare that King County is
12 exceeding the scope of its railroad and trail easements in asserting total control of the
13 right of way and for seeking to charge rent; and, (4) declare that the Club's usage and
14 minor improvements in the right of way do not materially interfere with potential
15 future railroad operations or the trail. The railroad right of way and the conversion to
16 trail were federal statutory programs, so the Club expects the STB to resolve these
17 issues. However, if the STB does not resolve these issues, then the Club would seek to
18 have this Court decide these issues and also decide an issue not before the STB—
19 whether the land use fees are illegal.
20

21 ///

22 ///

FIRST CAUSE OF ACTION
(Declaratory Judgment)

29. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 28 above.

30. Plaintiff Waverly Hills Club seeks a declaratory judgment of rights and obligations under the Washington Uniform Declaratory Judgment Act, Chapter 7.24 RCW and Civil Rule 57. An actual dispute exists between Plaintiff and the County whose interests are genuinely opposing in nature. These disputed interests are direct and substantial. A judicial determination can provide a final and conclusive resolution as to the parties' rights and responsibilities.

31. Specifically, Plaintiff Waverly Hills Club holds fee ownership to the land legally described in Exhibit 1, including the land at Waverly Beach, the access road, and substantial other land. Since 1969, the Club has continuously used and maintained Waverly Beach uplands and shorelands, including the area within the right of way. Exhibits 4 and 5. The Club recognizes that the Club's fee ownership rights are subject to easement rights held by King County. However, the Club asserts that the Club can exercise the Club's fee ownership rights to use the right of way while not interfering with King County's easement rights. Contrary to these contentions, Defendant King County asserts the right of exclusive control over the right of way under its easement rights, including the right to terminate the Club's use of the right of way. Plaintiff seeks a declaration of rights as to these issues consistent with the State Supreme Court pronouncement that fee owners of railroad

1 rights of way: “are entitled to use the right-of-way in such a manner as does not
2 materially interfere with” the easement holder’s use of the right of way. *Veach v.*
3 *Culp*, 92 Wn.2d 570 (1979).

4 32. Furthermore, the County is not a railroad and cannot assert any
5 railroad purposes under the railroad easement. The Club contends that precluding
6 the Club’s use and minor improvements at Waverly Beach or charging rent to the
7 fee owner are not valid railroad purposes or trail purposes and hence exceed the
8 County’s authority under the easements. Waverly Hills Club agrees that the Club’s
9 use of the right of way cannot materially interfere with the County trail use. The
10 Club can readily agree to this point because there has been no conflict with the
11 County’s interim trail which has been open since 2006 and no conflict with trail
12 operations on the recently completed permanent paved trail.

13 33. The Club also seeks a declaration regarding the County’s “Land Use
14 Fees” which is rent that the County contends can be charged to fee owners using the
15 right of way—using their own land. To the extent the County relies upon any
16 provision of Chapter 14.30 of the King County Code, then the Club challenges the
17 Code provisions in that Chapter. Charging rent to the fee owner is not a valid
18 railroad purpose under the railroad easement and is not a valid purpose under the
19 trail easement. In addition, the County seeks to charge the rent to the fee owner
20 based on the fee owner use of its own property, and the result is that the rent is an
21 unauthorized and illegal property tax, which amounts to improper double taxation.
22 Because it applies only to situations where a special use permit might be required,
23

1 the tax violates the constitutional prohibitions against nonuniform taxation of real
2 property. Wash. Const. art. VII, § 1 (amend. 81). The tax is not a statutorily
3 authorized tax on property, and hence, exceeds the constitutional taxing authority
4 of the municipality. Wash. Const. art. VII, § 5 and § 9.

5 **REQUEST FOR RELIEF**

6 WHEREFORE, Plaintiff Waverly Hills Club, Incorporated, requests that the
7 Court enter judgment against Defendant King County as follows:

8 A. A declaratory order that the Club may use the right of way in any
9 manner that does not materially interfere with King County's rights to use the right of
10 way under its easement rights; and further, that the Club's current use of the right of
11 way shown in Exhibits 4 and 5 does not materially interfere with King County's
12 easement rights and may continue.

13 B. A declaratory order that the Land Use Fees effectively attempt to
14 charge rent to the fee owner is illegal, and otherwise is not a railroad purpose under
15 the railroad easement and not a trail purpose under the trail easement.

16 C. Awarding Plaintiff any other relief which is permitted by law or which
17 the court finds equitable, appropriate, or just, including costs and attorney fees
18 allowed by law.
19

20 ///

21 ///

22 ///

1 RESPECTFULLY submitted this 29th day of January, 2025.

2 STEPHENS & KLINGE LLP

3 /s/ *Charles A. Klinge*

4 By:

Charles A. Klinge, WSBA #26093

5 Richard M. Stephens, WSBA #21776

10900 NE 4th Street, Suite 2300

6 Bellevue, WA 98004

(425) 453-6206

7 Email: klinge@sklegal.pro

Email: stephens@sklegal.pro

8 *Attorneys for Plaintiff Waverly*

9 *Hills Club, Incorporated*

EXHIBIT 1

LEGAL DESCRIPTION OF PEARSON DEEDS:

THOSE PORTIONS OF THE SOUTHWEST QUARTER OF THE NORTHWEST AND OF GOVERNMENT LOT 1 IN SECTION 8, TOWNSHIP 24 NORTH, RANGE 06 EAST, W. M. IN KING COUNTY, WASHINGTON, LYING BETWEEN TWO LINES DESCRIBED AS FOLLOWS.

(A) A LINE PARALLEL WITH AND 100 FEET DISTANT NORTHEASTERLY OF THE "AS-BUILT" CENTER LINE OF THE NORTHERN PACIFIC RAILWAY COMPANY'S ALLEGED RIGHT OF WAY,

(B) A LINE PARALLEL WITH AND 100 FEET DISTANT SOUTHWESTERLY OF THE "AS-BUILT" CENTER LINE OF THE NORTHERN PACIFIC RAILWAY COMPANY'S ALLEGED RIGHT OF WAY,

SUBJECT TO THE RIGHTS OF THE PUBLIC TO ANY PORTIONS THEREOF LYING WITHIN THE RIGHT OF WAY OF EAST LAKE SAMMAMISH PARKWAY SOUTHEAST (ISSAQUAH- REDMOND ROAD AND ISSAQUAH-REDMOND ROAD REVISION); WHICH ARE ESTABLISHED ROAD RIGHTS OF WAY

(Also known as, and described of record as:

"All that portion of the Railway Company's 200.00 foot wide Branch line right of way, being 100.0 feet wide on each side of the Main Track centerline upon, over and across Government Lot 1 and the SW1/4 SW1/4 NW1/4 of Section 8, Township 24 North, Range 6 East, bounded on the Northwest by the West lines of said Government Lot 1 and the SW1/4 SW1/4 NW1/4, and bounded on the Southeast by the East line of said Government Lot 1;")

WAVERLY HILLS COMPLAINT

EXHIBIT 2

TOLLING AGREEMENT: WAVERLY HILLS CLUB AND KING COUNTY

This Tolling Agreement ("Agreement") is entered into between Waverly Hills Club Incorporated, Plaintiff ("Waverly Hills Club"), and King County, a home rule charter county, Defendant ("County"), collectively referred to as "Parties."

RECITALS

A. Waverly Hills Club filed a Complaint in Pierce County Superior Court on December 30, 2019, Case No. 19-2-12944-7 ("Lawsuit"). In the Complaint, Waverly Hills Club makes claims for Quiet Title and Declaratory Relief against King County. These claims form the basis of the dispute between Waverly Hills Club and King County ("Dispute"). The Dispute relates to ownership and rights to use a portion of the former Burlington Northern railroad right of way at the east side of Lake Sammamish, specifically ownership and rights to use King County Tax Parcel No. 082406-9214.

B. Waverly Hills Club has not yet effectuated service of process of the Lawsuit on King County, but Waverly Hills Club intended to effect service of process before 90 days after filing of the Complaint to cause tolling of any statute of limitation on the date of filing of the Complaint pursuant to RCW 4.16.170.

C. Waverly Hills Club and King County have met and communicated through representatives and counsel to discuss the Dispute and Lawsuit. The Parties believe that further discussions and communications could lead to settlement of the Dispute. No assurances are being made, but the Parties want to make a good faith effort to pursue settlement negotiations because settlement would avoid the cost and uncertainty of litigation.

D. Settlement discussions are likely to require a period of three to four months before an agreement could be reached. Waverly Hills Club is committed to serving the Lawsuit within the 90-day deadline, but that would trigger immediate procedural options or requirements before settlement discussions could be expected to achieve a resolution. Thus, the Parties would necessarily commit resources to the Lawsuit to protect their rights and these resources would be entirely or partly wasted if settlement discussions lead to an agreement resolving the Dispute.

E. Therefore, the Parties are entering into this agreement to formalize their intent to conduct settlement discussions and also to preserve the status quo resulting from the filing of the Lawsuit. Waverly Hills Club is willing to dismiss the Lawsuit without prejudice in favor of settlement discussions if the status quo is preserved such that if no settlement occurred, then Waverly Hills Club would have the right to file a new lawsuit with any statute of limitations or other time limited/time based defense or legal theory tolled as of December 30, 2019—when the original Lawsuit was filed. King County is willing to allow this approach in favor of settlement discussions to avoid the need to respond to the Lawsuit, removal to federal court and/or filing its own lawsuit. Waverly Hills Club's temporary forbearance of the

right to pursue a lawsuit or other claim and King County's temporary forbearance of the right to assert statute of limitations or other time limited/time based defense or legal theory and King County's temporary forbearance of filing its own lawsuit, removal to federal court or other claim against Waverly Hills Club constitute valuable consideration for this Agreement along with other consideration.

F. The Parties desire to have an end date for the settlement negotiations while also being able to extend that date and to also control an early end to the settlement negotiations. The tolling period will run from December 30, 2019, to the end date as defined below. The initial end date will be set as June 30, 2020. On or before the end date, the Parties may extend the end date by written agreement. On or before the end date, Waverly Hills Club may end settlement negotiations by refiling the lawsuit in which case the tolling period end date will be the filing date. King County may give notice to terminate settlement negotiations and the tolling period end date will be the 15th day after the notice or the initial end date whichever is earlier. King County will not file a lawsuit or other claim against Waverly Hills Club during the tolling period, thus affording Waverly Hills Club the option of refiling the lawsuit to reestablish the current status quo.

NOW, THEREFORE, in consideration of the mutual understandings and covenants contained above and herein, Waverly Hills Club Incorporated and King County hereby agree as follows:

AGREEMENT

1. **Dismissal of Lawsuit.** Pursuant to CR 41(a), Waverly Hills Club shall file a request to voluntarily dismiss the Lawsuit without prejudice and without costs within 10 court days after this Agreement is fully executed, and Waverly Hills must follow through to obtain the dismissal.

2. **Tolling Provisions.** For purposes of this Agreement, the Tolling Period applicable to the Parties means the period starting on December 30, 2019, and ending on the Tolling Period End Date defined below. No period of limitation, whether contractual, statutory, common law or otherwise applicable to Waverly Hills Club's claims or causes of action, as originally set forth in the Complaint filed with the Court on December 30, 2019, or any other claim arising out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the Complaint shall run between the Parties during the Tolling Period. Similarly, no period of limitation, whether contractual, statutory, common law or otherwise, shall run between the Parties during the Tolling Period with regard to any claims, counterclaims or defenses that King County might have asserted in answer to the Lawsuit. Neither Party shall put forward or rely upon such Tolling Period as a waiver or estoppel or as a time bar under the doctrine of laches or any other legal theory, whether offensive or defensive in nature, in order to preclude or defeat an action by Waverly Hills Club to pursue the claims in the Complaint, or by King County to raise claims, counterclaims or defenses in its answer; provided, however, that nothing in this Agreement modifies or otherwise alters any time-bar existing prior to December 30, 2019, and no claims,

suits, actions, counterclaims, defenses or rights for which a limitation period of time requirement which expired as of that date are revived or in any way effected by this Agreement. It is acknowledged by King County that, in exchange for this Tolling Agreement, Waverly Hills Club is voluntarily dismissing the Lawsuit without prejudice and that Waverly Hills Club would have taken all steps necessary to preserve the right to pursue the claims under the Lawsuit absent this Tolling Agreement. It is acknowledged by Waverly Hills Club, in exchange for this Tolling Agreement, that King County is not currently taking steps to defend against the lawsuit (including removal to federal court) or raising counterclaims, claims and defenses that it would have raised in its answer absent this Tolling Agreement.

3. Tolling Period End Date and Automatic Adjustment. The Tolling Period End Date is the date upon which the Tolling Period ends. The initial Tolling Period End Date is set forth in subpart (a) below. On or before the Tolling Period End Date, the Parties may agree in writing to an extension. The Tolling Period End Date automatically adjusts according to subparts (b) and (c) below.

- a) The initial Tolling Period End Date shall be June 30, 2020.
- b) Waverly Hills Club may terminate settlement negotiations early by refileing the lawsuit on or before the Tolling Period End Date and giving King County notice of said refileing. If said refileing occurs, then the Tolling Period End Date shall automatically adjust to the date of filing of the new lawsuit.
- c) King County may terminate settlement negotiations early by giving notice to Waverly Hills Club more than 15 calendar days prior to the Tolling Period End Date and, if that occurs, then the Tolling Period End Date shall automatically adjust to the 15th calendar day after the notice to terminate settlement discussions.
- d) It is expressly understood by the Parties that Waverly Hills Club may file, but is not required to file, a new lawsuit against King County related to the Dispute if King County gives notice to terminate settlement negotiations, in which case subparts (b) and (c) would determine the Tolling Period End Date. It is further expressly understood by the Parties that King County cannot file a lawsuit against Waverly Hills Club during the Tolling Period which Period includes the 15 calendar day period after giving notice of early termination of settlement negotiations under subpart (c).

4. Standstill Intended. Except as an end to settlement negotiations as just described, Waverly Hills Club promises not to file a new lawsuit or other claim of any form or nature during the Tolling Period against King County, or against any agent or agency of King County, related to the Dispute; and in exchange, King County

promises not to file a lawsuit or other claim of any form or nature during the Tolling Period against Waverly Hills Club, or any agent thereof, related to the Dispute.

5. Reservation of Rights. The Parties reserve all existing rights, claims, privileges, defenses and contentions as of December 30, 2019, against one another without regard to any actions or proceedings. The Parties enter into and proceed under this Agreement without prejudice to or waiver of any of those rights, claims, privileges, defenses and/or contentions. The Parties agree that neither of them is making any admission of fact or law by entering into this Agreement, and in particular the Parties agree that this Agreement does not waive or otherwise effect King County's position on proper venue for the hearing of Waverly Hills Club's claims. This Agreement is intended to be a confidential agreement protected by Evidence Rule ER 408. Except to enforce the terms of this Agreement or to respond to assertions about its effect, no party shall use the execution of this Agreement or any negotiations leading to it, or the negotiations of its terms, against any other party in any litigation, administrative proceedings or legal controversy of any kind.

6. Enforcement of Agreement. The Parties understand that this Agreement restricts the legal rights of the Parties and that enforcement of the Agreement would necessarily entail mandatory compliance with the terms of this Agreement and no other remedies.

7. Modification. This Agreement may be modified only in a writing signed by authorized representatives of each party to this Agreement.

8. Signatures and Counterparts. The Parties agree that scanned or electronic signatures and counterparts are accepted and that a copy of this Agreement with scanned or electronic signatures and counterparts shall be deemed an original for all purposes.

9. Notice. Any notice required under this this Agreement shall be by email to the email addresses for each of the opposing attorneys listed below with a copy delivered to the office address. Said notice shall be effective on the day that is the later of sending the email or effecting delivery.

10. Authorization of Signing Persons. The persons signing below warrant that they are authorized representatives with authority to sign on behalf of the entities they represent.

IN WITNESS WHEREOF, the Parties hereby agree to the terms and conditions set forth above.

FOR PLAINTIFF WAVERLY HILLS CLUB, INCORPORATED

By: ^{Authentisign}
Tom Dieker
Tom Dieker, Its President

Dated: 2/27/2020

FOR DEFENDANT KING COUNTY

By: Warren Jimenez
Warren Jimenez
Director, King County Parks Department

Dated: 2/27/2020

APPROVED AS TO FORM:

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RICHARD M. STEPHENS, WSBA #21776
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Attorneys for Plaintiff
Waverly Hills Club, Incorporated

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: David J. Hackett
DAVID J. HACKETT, WSBA #21236
Senior Deputy Prosecuting Attorney
David.hackett@kingcounty.gov
Attorneys for Defendant King County

WAVERLY HILLS CLUB COMPLAINT

EXHIBIT 3

**TENTH EXTENSION OF TOLLING AGREEMENT:
WAVERLY HILLS CLUB AND KING COUNTY**

This Tenth Extension of Tolling Agreement ("Extension") is entered into between Waverly Hills Club Incorporated ("Waverly Hills Club"), and King County, a home rule charter county ("County"), collectively referred to as "Parties."

RECITALS

A. The Parties entered in to a Tolling Agreement signed and effective on February 27, 2020. A copy of the Tolling Agreement is attached hereto and incorporated hereby as Exhibit A. The nature of the dispute between the Parties and the reasons for a tolling agreement are set forth in the Tolling Agreement.

B. The Tolling Agreement at Section 3 establishes an initial Tolling Period End Date of June 30, 2020. Section 3 states that: "The Tolling Period End Date is the date upon which the Tolling Period ends." The Section continues by stating that: "On or before the Tolling Period End Date, the Parties may agree in writing to an extension." The Parties agreed to the first Extension of the Tolling Agreement extending the Tolling Period End Date to September 30, 2020. The Parties agreed to the second Extension of the Tolling Agreement extending the Tolling Period End Date to December 31, 2020, a third extension to June 30, 2021, a fourth extension to September 30, 2021, a fifth extension until January 31, 2022, a sixth extension until September 30, 2022, a seventh extension until June 30, 2023, an eighth extension until March 31, 2024, and a ninth extension until September 30, 2024. The purpose of this Tenth Extension document is to effectuate a further written extension of the Tolling Period.

NOW, THEREFORE, in consideration of the mutual understandings and covenants contained above and herein, Waverly Hills Club Incorporated and King County hereby agree as follows:

EXTENSION OF TOLLING AGREEMENT

1. Tolling Period End Date. Section 3(a) of the Tolling Agreement establishes the initial Tolling Period End Date as June 30, 2020, which was extended by the Parties to September 30, 2024. The Parties agree to a new initial Tolling Period End Date as follows:

a) The initial Tolling Period End Date shall be January 31, 2025.

2. Remaining Provisions. Except as to the above change in the initial Tolling Period End Date, the Parties confirm that all other provisions of the Tolling Agreement shall remain in effect,

3. **Signatures and Counterparts.** The Parties agree that scanned or electronic signatures and counterparts are accepted and that a copy of this Extension with scanned or electronic signatures and counterparts shall be deemed an original for all purposes.

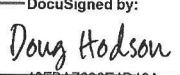
4. **Authorization of Signing Persons.** The persons signing below warrant that they are authorized representatives with authority to sign on behalf of the entities they represent.

IN WITNESS WHEREOF, the Parties hereby agree to the terms and conditions set forth above.

FOR WAVERLY HILLS CLUB, INCORPORATED

By:  Authentic Dated: 09/03/24 9:16 PM
Tom Dieker, Its President

FOR KING COUNTY

By:  DocuSigned by: Doug Hodson, Deputy
Director on behalf
of Warren Jimenez Dated: 8/30/2024 | 2:56 PM PDT
Warren Jimenez
Director, King County Parks Division

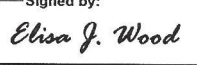
APPROVED AS TO FORM:

STEPHENS & KLINGE LLP

By:  Authentic 09/04/24 10:24 AM
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WAVERLY HILLS CLUB COMPLAINT

EXHIBIT 4

Waverly Beach 2023 EXHIBIT 4



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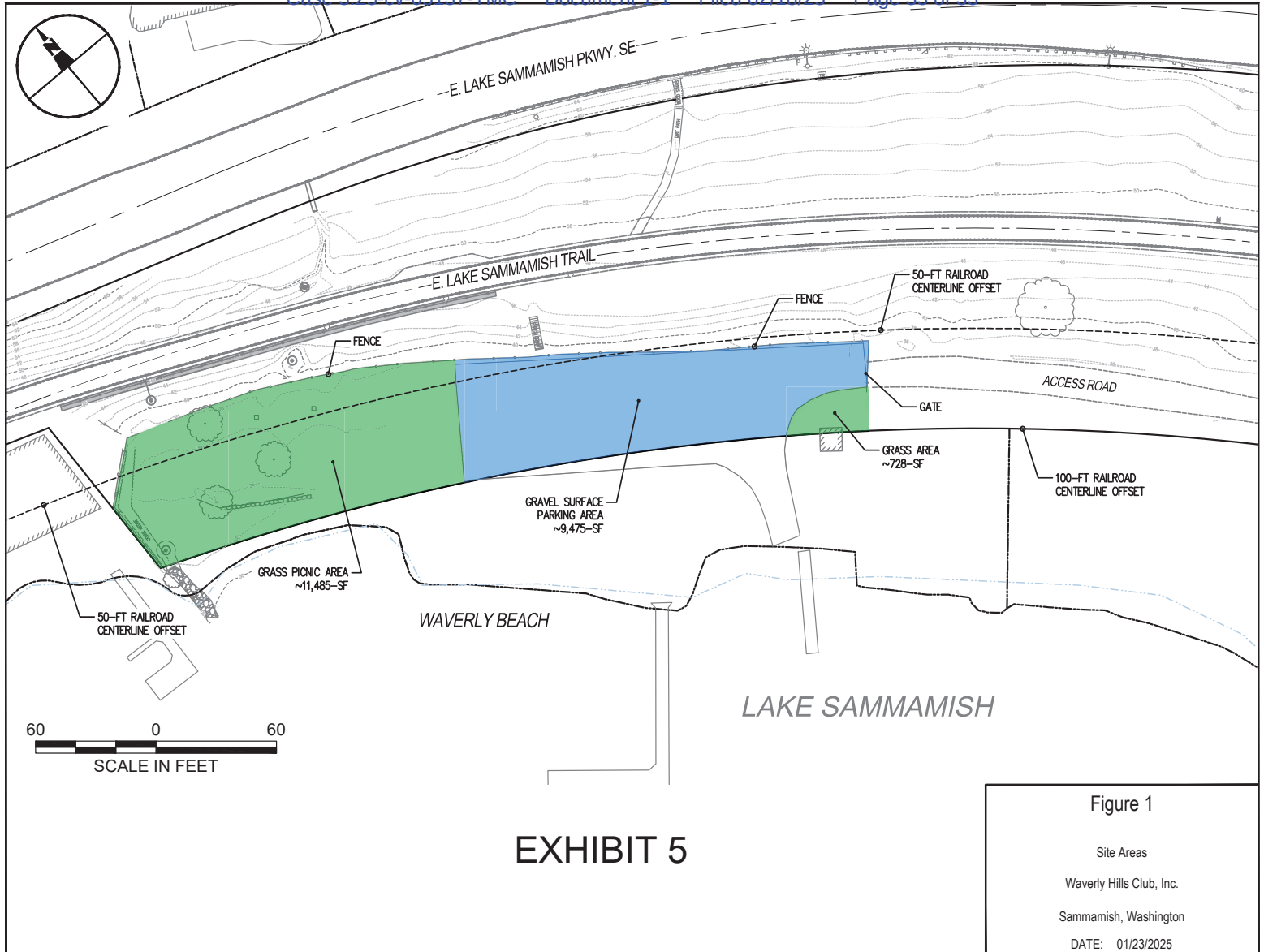
Date: 1/20/2025

Notes:



WAVERLY HILLS CLUB COMPLAINT

EXHIBIT 5



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Waverly Hills Club, Incorporated

(b) County of Residence of First Listed Plaintiff King County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Charles A. Klinge; Richard M. Stepehns
10900 NE, 4th Street, Suite 2300, Bellevue, WA 98004

DEFENDANTS

King County

County of Residence of First Listed Defendant King County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Emily J. Harris; Kristin E. Bateman
1015 Second Ave., Floor 10, Seattle, Washington 19004

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)[Click here for: Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability LABOR ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other ☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☒ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education		IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
1875 Act and Trails Act statutes

Brief description of cause:

Declaratory judgment regarding real property rights under the 1875 Act and Trails Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE See Attached

DOCKET NUMBER

DATE

02/18/2025

SIGNATURE OF ATTORNEY OF RECORD

s/Emily J. Harris

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Related Cases

Judge Estudillo

King County v Abernathy et al. Docket No. 2:20-cv-0060

Judge Robart

Spencer v King County Docket No. 2:25-cv-00204

Judge Pechman

Hornish et al. v King County Docket No. 2:14-cv-00284

Judge Coughenour

Kaseburg et al. v Port of Seattle et al. Docket No.14-cv-00784

CERTIFICATE OF SERVICE

The undersigned certifies as follows:

1. I am employed at Corr Cronin LLP, attorneys for Defendant King County
2. On February 18, 2025, I caused a true and correct copy of the foregoing document to be served on the following via email:

Charles A. Klinge, WSBA No. 26093
Richard M. Stephens, WSBA No. 21776
10900 NE, 4th Street, Suite 2300
Bellevue, WA 98004
klinge@sklegal.pro
stephens@sklegal.pro
Attorneys for Plaintiff

DATED at Seattle, Washington on February 18, 2025.

s/ Elizabeth F. Roth
Elizabeth F. Roth, Legal Secretary

EXHIBIT 2

Spencers Complaint

Richard M. Stephens
STEPHENS & KLINGE LLP
10900 NE 4th Street, Suite 2300
Bellevue, WA 98004
425-453-6206

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

RAYMOND SPENCER AND LAEL
SPENCER,

Plaintiffs,

vs.

KING COUNTY, a political
subdivision of the State of Washington,

Defendants.

Case No.:

COMPLAINT

Introduction

1. This case arises from King County's repeated efforts to deprive Raymond and Lael Spencer of their rights to use their own property underlying the East Lake Sammamish Trail's right of way. While the County has an easement for a public trail, it has acted as if its rights were exclusive and treated people like the Spencers with contempt for holding the County to account for its bullying tactics. Unfortunately, this action is necessary to protect the Spencers' rights to reasonable use of their property and to be treated fairly.

Jurisdiction and Venue

2. This action arises under the Trails Act, 16 U.S.C. § 1247(d) and the Fourteenth Amendment to the United States Constitution. Accordingly, this Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has authority to award the requested relief for damages, declaratory and injunctive relief pursuant to 28 U.S.C. § 2201, 28 U.S.C. § 1343(a) and award recovery of attorney's fees pursuant to 42 U.S.C. § 1988(b).

3. The Court has supplemental jurisdiction under over the claims asserting violations of Washington State law pursuant to 28 U.S.C. § 1367(a).

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) because Defendant King County is located within this district, a substantial part of the events giving rise to Plaintiffs' claims occurred in this district and all the property that is the subject of this action is situated in this district.

Parties

5. Plaintiffs Raymond Spencer and Lael Spencer (the Spencers) are Washington residents who own real property commonly referred to as 133 East Lake Sammamish Shore Lane NE, Sammamish, WA 98074.

6. Defendant King County is a political subdivision of the State of Washington.

Standing

7. Plaintiffs have standing because they have an ownership interest in the property on which the County possesses easement rights and the Spencers and King County dispute the relative rights and responsibilities of each party.

Factual Allegations

A. Plaintiffs and the history of their property

8. Plaintiffs own in fee title the property which they acquired in 1992, located at 133 East Lake Sammamish Shore Lane NE, Sammamish, Washington. This property is located alongside Lake Sammamish and adjoins a railbanked railroad right-of-way. This property is within Government Lot 2 of Section 32, Township 25 N., Range 6. E., W.M (Government Lot 2).

9. On December 4, 1884, Jim Yonderpump was issued a patent from the United States of America, signed by President Chester Arthur for property which includes Government Lot 2

10. Jim Yonderpump and Alice Yonderpump conveyed a right of way to the Seattle, Lake Shore and Eastern Railway (SLS&E Railway) by deed dated May 6, 1887.

11. The deed conveying the right of way issued to the SLS&E Railway conveyed an easement for the operation of a railroad on the land referenced in the deed.

12. The deed did not follow the statutory warranty deed form at the time which would create a presumption that the deed granted fee simple title.

13. The reference to “right of way” under Washington law and custom presumes an easement.

14. The description in the granting clause is to a “right of way strip” which runs “through” and “across” the grantors’ lands, all of which presumes an easement.

1 15. The Yonderpumps' purpose was expressed as being to "receive the benefits
2 from the construction, operation, and maintenance of a railroad" which confirms
3 what was granted was an easement for railroad purposes and not a grant in fee that
4 the grantee could use for any purpose whatsoever.
5

6 16. The Yonderpumps were likely illiterate because they did not sign the deed
7 with their signature but instead marked the deed with an x.
8

9 17. The notary on numerous deeds to the railroad, including the Yonderpumps,
10 was the same person, suggesting he was working on behalf of the railroad.

11 18. Contemporaneous understanding that the term "right of way" meant
12 easement.
13

14 19. After Jim Yonderpump's death, Alice Yonderpump married Jim Zacuse and
15 they both conveyed a portion of Government Lot 2 to George Clark and Tolle
16 Anderson by a quitclaim deed dated October 28, 1911, without mentioning the
17 right of way.
18

19 20. In 1920, Tolle Anderson, his wife, Christina Anderson and Jesse Clark sold
20 all of Government Lot 2 which they owned to William A. Connell.

21 21. William A. Connell never transferred his property in Government Lot 2
22 including the fee underlying the right of way to anyone other than his wife,
23

24 22. Willis J. Connell divided Government Lot 2 with an unrecorded plat dated
25 March 1927 and entitled "Connell's Sub. Of Gov Lot 2". The plat created 31 lots. All
26 the lots are bordered on the west side by Lake Sammamish and bordered on the
27 east side by the Northern Pacific Railway right of way. The unrecorded plat shows
28

1 the distances from the right of way to the lake edge in feet for each lot. These
2 distances are not uniform due to the sinuosities of Lake Sammamish.

3
4 23. William A. Connell never transferred his property in Government Lot 2,
5 including the fee underlying the right of way, to anyone other than his wife, Agnes
6 Elizabeth Connell, upon his death in January of 1928. Agnes Elizabeth Connell
7 died in June of 1928 leaving all her property to their son, Willis J. Connell. Willis
8 J. Connell died in September of 1982, leaving all his estate to his only heir, Edith
9 Jeane Connell. Edith Jeane Connell left her entire estate to her cousin, Jack Moe.
10 When Jack Moe died, he left his entire estate to Agnes Moe..

11
12 24. While the Spencers believed they owned the fee underlying the right of way
13 adjacent to their lot, they realized that their lot may not include the fee underlying
14 the right of way. Considering that possibility, in 2002, the Spencers acquired a quit
15 claim deed from Willis J. Connell's then remaining heir, Agnes Moe, to the fee
16 underlying the railroad right of way for all land owned by Willis J. Connell within
17 Government Lot 2.
18

19 20 **B. History of the Railroad**

21 25. The railroad line in question was originally constructed by the SLS&E
22 Railway in 1887-88.

23
24 26. On July 5, 1887, the SLS&E Railway secured approval from the Department
25 of the Interior of the SLS&E Railway's map identifying the location for proposed
26 construction of a railroad running generally along the eastern shoreline of Lake
27 Sammamish, generally from Redmond to Issaquah, Washington. Construction of
28

1 the railroad was completed in 1888. On April 15, 1891, the SLS&E Railway filed a
2 formal Map of Location showing the final construction of the railroad with the
3 United State Land Office in Seattle, Washington.
4

5 27. A County Road was constructed immediately east of the right of way,
6 originally known as the Issaquah-Redmond Road, later East Lake Sammamish Road,
7 and now known as East Lake Sammamish Parkway (Parkway).
8

9 28. Over the years, the interests of SLS&E Railway were ultimately transferred
10 to Burlington Northern Santa Fe (Burlington Northern). By the 1970s, the rail line
11 was operated by Burlington Northern. The railroad typically had a right of way of 50
12 feet on each side of the centerline, but in some limited locations the railroad had a
13 right of way of 100 feet on each side of the centerline—a total 200-foot right of way.
14

15 29. In some locations along the right of way, Burlington Northern sold portions of
16 its right of way so that it had less than 50 feet of right of way on each side of the
17 centerline. In other circumstances, Burlington Northern acquiesced to adjacent
18 landowners using the portions of the right of way including the building of
19 improvements which did not interfere with rail service, either by taking no action or
20 granting permission for such uses.
21

22 30. Burlington Northern's use of this railroad right of way was limited to three
23 trains per week. In the late 1990s, Burlington Northern wanted to discontinue rail
24 use of the right of way and it applied to the Surface Transportation Board (STB) for
25 an exemption to abandon a 12.45-mile length of railroad between milepost 7.3,
26
27
28

1 near Redmond, Washington, and milepost 19.75, at Issaquah, in King County,
2 Washington.

3
4 31. On September 16, 1998, the STB authorized The Land Conservancy (TLC)
5 to assume financial responsibility for the right of way pursuant to the National
6 Trails System Act Amendments of 1983, 16 U.S.C. § 1247(d) (Trails Act).

7
8 32. The STB also issued a Notice of Interim Trail Use (NITU) on September 18,
9 1998, for the right of way, permitting King County and TLC to establish a public
10 recreational trail over the railroad right of way. The STB's decision had the effect
11 of creating a recreational trail easement pursuant to the Trails Act.

12
13 33. King County subsequently reached an agreement with Burlington Northern
14 for the use of the right of way for trail purposes. On September 29, 1998, counsel
15 for TLC informed the STB that the parties had reached an agreement railbanking
16 the railroad corridor pursuant to the NITU. Since the STB approved interim
17 conversion of the railway to a trail, no railway carriers have used the right of way
18 and King County arranged for the removal of the tracks from the right of way.
19

20 34. By operation of the Trails Act, King County acquired a surface easement for
21 a recreational trail and a railroad easement subject to potential reactivation of a
22 railroad under the STB over the Spencers' land they acquired from the heirs of
23 Willis J. Connell.
24

25 35. Shortly after the Spencers acquired the property on which their residence
26 lies, an agent for Burlington Northern contacted Mr. Spencer asking for their
27 signatures on a crossing agreement and potential payment of a nominal fee. Mr.
28

1 Spencer objected on the grounds that the right of way was only an easement and
2 that the Spencers had the right to cross and use the right of way consistent with
3 the historic use by the previous owner and other residents along East Lake
4 Sammamish Shore Lane (Lane). Mr. Spencer told the agent of his intent to
5 construct a raised bed garden in the right of way and asked the agent where the
6 raised garden could be placed without conflicting with the railroad's use. The agent
7 stated that the raised garden bed could be 11 feet from the westernmost railroad
8 rail and Mr. Spencer constructed the raised garden bed no further east of that
9 location.

12 36. South of that area where Mr. Spencer placed a raised garden bed is a road
13 used as a crossing of the railroad tracks for vehicle traffic to and from the Parkway
14 and the Lane which runs parallel to the Parkway. A few years later, the road
15 crossing the right of way fell into disrepair. The residents along the Lane contacted
16 Burlington Northern regarding their intent to rebuild/repair the crossing.
17 Burlington Northern offered to use its expertise and labor if the residents provided
18 the materials. The residents, including the Spencers, paid for the materials and
19 Burlington Northern repaired the railroad crossing which all residents along the
20 Lane use to access their property from the Parkway.

23 **C. Permitting for King County's Actions**

24 37. After removing the railroad tracks on the right of way, in the early to mid-
25 2000s, King County built a soft surface, unpaved interim trail on the right of way
26 which it referred to as the East Lake Sammamish Trail (ELST). King County
27

1 planned on constructing a paved trail later. On May 28, 2010, King County, the
2 Washington State Department of Transportation and the Federal Highway
3 Administrated issued a Final Environmental Impact Statement (FEIS) to upgrade
4 the entire 11-mile ELST, including paving the trail.
5

6 38. The County's preferred alternative in the FEIS was referred to as the
7 "Corridor Alternative." The Corridor Alternative followed the route of the existing
8 interim trail and consisted of a 12-footwide paved trail with 2-foot shoulders on
9 each side, separated from a 4-foot pedestrian soft surface path by a 3-foot median.
10

11 39. The County later developed the Master Plan Trail which reduced the scope
12 of the Corridor Alternative by removing the pedestrian soft-surface trail.
13

14 40. On or around October 19, 2016, King County Department of Natural
15 Resources and Parks applied with the City of Sammamish (City) for a shoreline
16 substantial development permit (SSDP) to improve approximately three miles of
17 the ELST (commonly referred to as Segment 2B and referred to herein as the
18 "Project") to the Master Plan Trail configuration including a portion abutting the
19 Spencers' property. The application was based on the County's 60% design plans
20 for the Project.
21

22 41. The County prepared a Critical Areas Study (CAS) for the Project. The CAS
23 proposed on-site mitigation to compensate for impacts to critical areas and
24 describes mitigation for unavoidable impacts.
25

26 42. The County retained a Certified Arborist to inventory trees that met the
27 City's definition of "significant trees" in the Sammamish Municipal Code. The
28

1 inventory identified 847 significant trees and proposed to retain 574 and remove
2 273 significant trees.

3
4 43. The City's Hearing Examiner denied the County's permit application
5 without prejudice and the County (and other parties) appealed the denial to the
6 State Shoreline Hearings Board.

7
8 44. On or around November 7, 2018, the State of Washington Shoreline
9 Hearings Board issued its "Findings of Fact, Conclusions of Law and Order,"
10 reversing the Hearing Examiner and ordering the City to issue the permit for the
11 Project with the City's proposed conditions.

12
13 45. Condition 1 required that the final construction plans for the Project
14 substantially conform to the 60% plans submitted with the shoreline permit
15 application.

16
17 46. Condition 7 required that all significant tree removal substantially comply
18 with the arborist's report.

19
20 47. Condition 8 required the County to provide an update to the Tree
21 Preservation Plans that reflect the 90% design as part of its submission for a
22 clearing and grading permit.

23
24 48. The Shoreline Hearings Board found the Project's 60% plans included
25 design elements to maintain privacy for adjacent landowners.

26
27 49. On or around November 6, 2019, the City issued to King County a "Building
28 Permit" for "Clearing and Grading" under Building Permit No. CG2016-03479
("2019 Building Permit").

1 50. The 2019 Building Permit included the following relevant condition:

2 Condition #9: A project of this scale may necessitate design revisions
3 prior to and during construction.

4 Prior to Contractor Notice to Proceed

5 Prior to implementation of design changes, the applicant, King County
6 Parks, shall provide a copy of the proposed design revision through the
7 City's Permit Center in following the standard City adopted protocol for
8 filing permit revisions. The City shall complete review of the proposed
9 design revisions(s) and if conformance to the adopted codes and technical
10 standards is determined, shall issue a permit revision authorizing
11 implementation of the design revision within ten (10) business days of
12 receipt of proposed revision. If, due to the complexity of the design revision,
13 the City determines additional time is needed to adequately complete review
14 of the applicant (King County Parks) initiated design revision, the City shall
15 notify the applicant within five (5) business days of submittal of the
16 proposed design revision that additional time is needed to complete the
17 review and shall specify the anticipated review completion date.

18 51. Building Permit Condition # 10 states:

19 Condition #10: Finished surface conditions (landscaping and amenities)
20 have not been included with the 95% project design for specific reaches of
21 the linear project design. Prior to commencement of construction activity,
22 the applicant, King County Parks, shall update the project plans to include
23 complete surface treatments and proposed amenities for the entire length of
24 the project and submit the updated plans as a design revision. The applicant
25 shall provide a copy of the proposed design revision through the City's
26 Permit Center in following the standard City adopted protocol for filing
27 permit revisions. The City shall complete review of the proposed design
28 revision(s) and, shall issue a permit revision authorizing implementation of
the design revision within ten (10) business days of receipt of proposed
revision demonstrating complete surface conditions. Final designed/planned
surface conditions shall be provided at the following locations:

Station 419+00—426+11 (Zackuse Creek area) LA17 & LA 18. Starting
from driveway #21 at station 419_00, the conditioned/finished area shown on
Sheet EX16 is incomplete through the Zackuse Creek culvert replacement
area. King County shall update the plans to reflect the current existing
conditions and make commensurate corrections as needed on site
preparation and profile sheets.

1
2 52. Driveway #21 is the roadway that connects the Parkway to East Lake
3 Sammamish Shore Lane immediately east of and adjacent to the Spencers'
4 property on which their home is located. The 100% plan made substantial changes
5 from the 65% and 90% plans including, but not limited to, changes in the vicinity of
6 Driveway No. 21. The 100% plan called for clearing and grading on the west side of
7 the trail north of Driveway No. 21 and removal of the Spencers' fruit and vegetable
8 garden and apple tree classified as significant; installation of low shrubs and
9 habitat logs on the north side of the proposed trail and east of Driveway 21; and
10 removal of significant cypress trees that the Arborist Report designated for saving
11 (collectively "Project Revisions").
12
13
14

15 53. The Project Revisions were not submitted following the standard City-
16 adopted protocol for filing permit revisions as required by Condition 10.
17

18 54. The City did not issue a permit authorizing the Project Revisions.
19

20 55. The Project Revisions are contrary to the terms and conditions of the SSDP,
21 the 2019 Building Permit and otherwise violate the City of Sammamish Municipal
22 Code.
23

24 56. King County's 60% plan showed no changes for the Spencers' property. King
25 County's 95% plan showed no changes for the Spencers' property. Not until King
26 County revealed its 100% plan did it show change for the Spencers' property. When
27 the Spencers and their neighbors requested changes, King County responded that
28 it will not consider changes during construction.

D. Sammamish Homeowners Settlement.

57. Several Sammamish property owners and an organization known as Sammamish Homeowners filed an appeal before the Shoreline Hearings Board on January 17, 2013, in a case intitled *Stenson, et al v. King County, et al*, SHB No. 14-001

58. The Spencers are and were at all times relevant members of Sammamish Homeowners.

59. In February of 2014, King County, the individual property owners and Sammamish Homeowners entered into a Settlement Agreement. The Settlement Agreement resulted in the dismissal of the Petition for Review with the Shoreline Hearing Board in exchange for promises as to what landowners along the ELST would be allowed to do within the right of way.

60. Specifically, the Settlement Agreement provides:

The County agrees that owners of real property burdened by, or adjacent to, the County right of way for the ELST may install landscaping improvements and vegetation within the County right of way in accordance with the criteria set forth in Exhibit 1.

...

The County also agrees that, regardless of the existence of formal comment periods required by applicable law, the County will make the 60% and 90% plans available to the public with sufficient time to allow for public review, consideration, and feedback

61. Exhibit 1 of the Settlement Agreement provides:

10) Plantings/landscaping removed as a result of the County's forthcoming construction of the ELST may be replaced in-kind if consistent with the above criteria.

...

1 12) All reference to “landscaping” in these criteria mean other manmade
2 features, including, but not limited to, planning beds, fences, retaining walls,
3 etc.

4 13) All references to “trail” in these criteria means the paved portion of the trail
5 and trail infrastructure, including its 2-foot shoulder.

6 62. The paved portion of the trail on the Spencers’ property is approximately 12
7 feet wide.

8 63. All the work conducted by Mr. Spencer in the right of way constitutes the
9 replacement of landscaping resulting from the County’s construction of the ELST
10 and is consistent with the criteria in Exhibit 1 of the Settlement Agreement.

11 64. King County Parks Department also demanded that the Spencers obtain a
12 Supplemental Use Permit (SUP) for their use of the portion of the right of way
13 which they own and is not part of the trail. King County then responded that it will
14 not accept a SUP application in the middle of construction.
15

16 65. Parks threatened to remove trees on the Spencers’ property, claiming that
17 they blocked a portion of the sight triangle to ensure the safety of travelers on the
18 trail and/or road. Mr. Spencer explained that the sight triangle started 3 feet above
19 the ground and extended only 3.5 feet above the ground. His garden would not
20 extend above three feet, nor would his trees grow branches below 7.5 feet from the
21 ground.
22

23 **E. Zackuse Creek Restoration Project**

24 66. The City of Sammamish (City) undertook a project referred to as the
25 Zackuse Creek Restoration project to replace culverts in East Lake Sammamish
26
27

1 Lane (Lane), the East Lake Sammamish Trail and the Parkway at a location north
2 of Plaintiffs' residential property but still within Government Lot 2. The City
3 requested the Spencers to issue to it a Temporary Construction Easement (TCE)
4 which Plaintiffs issued for the Lane adjacent to their home and for all the right of
5 way in Government Lot 2 in March of 2018.
6

7 67. When the TCE was issued by the Spencers to the City, the related permit
8 issued by the City required restoration of the area to its original condition. The
9 City transferred the project to King County. King County requested and obtained,
10 without notice to the Spencers, an alteration of the permit for work on the
11 Spencers' property that would no longer require restoration. While the permit no
12 longer required restoration, the TCE does.
13
14

15 68. During the Zackuse Creek restoration project, King County claimed that it
16 needed to build a 30-foot-wide road in the general location of the trail at a cost of
17 approximately \$300,000. The contractor in the bid process explained that there was
18 no need for this road to accomplish the Zackuse Creek restoration project and that
19 the road would unnecessarily extend construction by three weeks, placing the
20 whole project close to the salmon spawning season when work could not be done in
21 the creek. King County claimed that this road was necessary for bringing in a
22 crane to install new culverts. The contractor subsequently explained that it would
23 not be bringing in a crane to install the culverts.
24
25
26
27
28

1 69. King County then changed its excuse and claimed that the wider road was
2 necessary for fire suppression purposes. The King County Fire Marshall explained
3 that the road was not necessary for fighting fires.
4

5 70. King County used its role in the Zacuse Creek Restoration Project to
6 circumvent the regulations and decisions applicable to the construction of the
7 ELST and avoid restoration as required by the TCE the Spencers issued.
8

9 **First Claim for Relief**

10 **(Protective Declaratory Relief regarding the Trails Act)**

11 71. Plaintiffs incorporate herein by reference each allegation contained in the
12 preceding paragraphs of this Complaint as though fully set forth herein.
13

14 72. Plaintiffs have filed a Petition for Declaratory Orders with the Surface
15 Transportation Board which implements the Trails Act, 16 U.S.C. § 1247(d) to
16 decide that the Trails Act does authorize King County's assertion of complete
17 control over the right of way as if it were the owner of the right of way in fee simple
18 absolute. Plaintiffs file their First Claim for Relief as a protective measure only if
19 the STB declines to exercise its jurisdiction over this issue.
20

21 73. King County possesses a dormant railroad easement, dormant until the STB
22 authorizes reactivation of a railroad.
23

24 74. King County also possesses a trail easement pursuant to the federal Trails
25 Act enabling it to construct and operate a recreational trail.
26
27
28

1 75. King County has used portions of the right of way for purposes other than
2 operating a trail, including placing storm debris on Plaintiffs' property for the
3 purpose of attracting wildlife and at one time labeling it "wildlife habitat."
4

5 76. King County has demanded that the Spencers not occupy portions of the
6 right of way that are not part of the trail. The Trails Act only allows King County
7 to build and operate a trail within the corridor and not exclude the underlying fee
8 landowner from uses that do not interfere with trail use.
9

10 77. In 2020, the STB wrote that "pre-existing rights of a third party to use part
11 of the rail corridor are not impacted by railbanking and interim trail use under the
12 Trails Act. In other words, trail use under the Trails Act should not prevent a third
13 party from continuing to use a portion of the rail right-of-way in the same manner
14 it was used before the interim trail use on the line, so long as it does not interfere
15 with the potential reactivation of rail service."
16

17 78. Plaintiffs seek a declaratory judgment of rights and obligations under 28
18 U.S.C. Section 2201 and FRCP 57. Plaintiffs seek declaratory relief that King
19 County's assertions of control of actions off the paved trail are inconsistent with
20 the Trails Act and inconsistent with the easement granted to King County under
21 the Trails Act only to the extent that this issue is not resolved by the STB in the
22 proceeding currently pending there.
23
24
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28

Second Claim for Relief

(Quiet Title)

79. Plaintiffs incorporate herein by reference each allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

80. Plaintiffs own the real property described as follows:

Government Lot 2, Section 32, Township 25 North, Range 6 East, of W.M., EXCEPT that portion lying east of the western edge of County road known as East Lake Sammamish Parkway AND EXCEPT that portion lying west of the railroad right-of-way.

81. Plaintiffs' ownership is subject to a trail easement owned by King County and a dormant railroad easement.

82. Plaintiffs request the Court to quiet title as to Plaintiffs' ownership of this property subject to King County's easements and determine King County's property interests in this property.

Third Claim for Relief

(Declaratory Relief on Applicability of Settlement Agreement)

83. Plaintiffs incorporate herein by reference each allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

84. By threatening Plaintiffs with legal action for work done within the right of way which is permissible under King County's settlement with Sammamish Homeowners, King County is in violation of the Settlement Agreement.

85. Plaintiffs are members of Sammamish Homeowners and are entitled to the benefits of that Settlement Agreement.

1 86. Alternatively, Plaintiffs are third party beneficiaries of the Settlement
2 Agreement which was intended to resolve uncertainties about what private
3 property owners would be allowed to do on the right of way adjacent to their
4 property.
5

6 87. King County has a duty imposed by the Settlement Agreement to accept
7 work authorized under the Settlement Agreement.
8

9 88. Plaintiffs seek a declaratory judgment of rights and obligations under the
10 Washington Uniform Declaratory Judgment Act, Chapter 7.24 RCW and Civil Rule
11 57 as to the allegations above. An actual dispute exists between Plaintiffs and
12 Defendant whose interests are genuinely opposing in nature. These disputed
13 interests are direct and substantial. A judicial determination can provide a final
14 and conclusive resolution as to the parties' rights and responsibilities.
15

16 **Fourth Claim for Relief**

17 **(Discriminatory Treatment Under the Fourteenth Amendment)**

18 89. Plaintiffs incorporate herein by reference each allegation contained in the
19 preceding paragraphs of this Complaint as though fully set forth herein.
20

21 90. King County has treated Plaintiffs differently from others along the ELST
22 because they have spoken out about King County's violation of laws in the
23 development and operation of the ELST and because Mr. Spencer has been
24 involved with the leadership of organizations that have been critical of the
25 County's actions regarding the ELST. Nevertheless, Plaintiffs are not opposed to
26 the existence of the ELST.
27

1 91. For instance, King County proposed no changes to the right of way in front
2 of the Spencers' home in any of its variations of plans, except for the 100% plan,
3 which was not subject to any public comment. When Plaintiffs objected, King
4 County asserted that their comments were too late. In response to the 100% plan,
5 King County placed storm debris, such as tree trunks 10-14 feet in length with
6 limbs, large boulders, and branch piles, on the right of way in front of the Spencers'
7 home where the Spencers' garden had been located for decades.
8

9
10 92. King County has treated the Spencers differently than others by not
11 recognizing their rights under the Settlement Agreement to replace and/or restore
12 landscaping.
13

14 93. King County asserted that the Spencers' landscaping and gravel parking
15 area would interfere with sight triangles, which was not true.

16 94. Regarding the Zackuse Creek Project, King County gave shifting and
17 ultimately false reasons for additional work unrelated to the Project and the basis
18 for the TCE in order to pursue work related to the ELST.
19

20 95. Plaintiffs issued a TCE covering the Zackuse Creek Project in Government
21 Lot 2 to the City of Sammamish.

22 96. The City of Sammamish transferred these the TCE to King County. The
23 TCE provides that "[a]ll terms of this Easement shall be binding upon the
24 successors and assigns of the Parties."
25

26 97. The TCE requires the grantee to "restore, repair or rebuild the damaged
27 portion with all due diligence as nearly as possible to at least as good a condition as
28

1 it was in immediately prior to such damages. It is understood and agree that upon
2 completion of construction of said Project, the City or its agents shall restore the
3 Easement Area to its original condition, with the exception of Project
4 improvements that have been constructed.” Paragraph 7 of the TCE.
5

6 98. The Easement Area has not been restored to its original condition except for
7 Project improvements that have been constructed, and the Easement Area has
8 been damaged and not restored, repaired, or rebuilt.
9

10 99. The TCE describes the Project improvements as replacing “the Zackuse
11 Creek culvert under East Lake Sammamish Shore Lane NE and blend new
12 roadway surfacing to adjacent property contours and existing topographical
13 features.”
14

15 100. King County arranged to have the City change the Project to include
16 improvements related to the East Lake Sammamish Trail without notice to
17 Plaintiffs, but regardless, the TCE does not change the Project as described in the
18 easements.
19

20 101. The Spencers expect that King County does not give shifting and
21 ultimately false reasons for conducting work to others besides the Spencers.
22

23 102. King County colluded with the City of Sammamish to change the permit
24 for the Zackuse Creek Project without notice to the Spencers, the issuers of TCEs
25 to which the Zackuse Creek Project relates.

26 103. King County does not typically collude with other jurisdictions to change
27 the permits to which TCEs relate without notice to the issuers of the TCEs.
28

1 104. In response to King County's refusal to restore the area covered by the
2 TCE, the Spencers undertook such restoration, such as reconstruction of their
3 gravel parking area.
4

5 105. In response to the Spencers' work that King County was responsible for
6 doing, King County threatened the Spencers with charging them for the cost or
7 removing all of their restoration work
8

9 106. King County's treatment of Plaintiffs constitutes unequal treatment in
10 violation of the Fourteenth Amendment to the United States Constitution.

11 107. There is an actual controversy between Plaintiff and King County as to
12 King County's violation of the Fourteenth Amendment in not treating Plaintiffs
13 equally under the law.
14

15 108. Plaintiffs request the Court to declare the rights and other legal relations.

16 **Fifth Claim for Relief**

17 **(Violation of 42 U.S.C. Section 1983)**

18 109. Plaintiffs incorporate herein by reference each allegation contained in the
19 preceding paragraphs of this Complaint as though fully set forth herein.
20

21 110. King County is a person potentially liable under 42 U.S.C. Section 1983.

22 111. King County's actions alleged herein were undertaken pursuant to state
23 law.
24

25 112. King County's actions alleged herein were undertaken as a result of
26 municipal policy and not unintentional or merely negligent action.
27

1 113. Plaintiffs request the Court to declare the rights and other legal relations
2 of Plaintiffs regarding King County and its conduct under 42 U.S.C. Section 1983
3 and 42 U.S.C. Section 1988.
4

5 **Requested Relief**

6 WHEREFORE, Plaintiffs request that this Court:

7 1. In the event the Surface Transportation Board does not issue a ruling
8 on the merits of the Spencers' Petition for Declaratory Orders as to King
9 County's trail easement under the Trails Act, issue a declaratory judgment that
10 the Spencers have the right to use the right of way which exists on their
11 property in any way which does not interfere with King County's current trail
12 use or potential railroad use;
13
14

15 2. Issue a judgment quieting title between the Plaintiffs and King
16 County that confirms that Plaintiffs own the following described property in fee,
17 subject to King County's trail easement created under the Trails Act and a
18 dormant railroad easement subject to reactivation by a decision of the Surface
19 Transportation Board:
20

21 Government Lot 2, Section 32, Township 25 North, Range 6 East, of W.M.,
22 EXCEPT that portion lying east of the western edge of County road known
23 as East Lake Sammamish Parkway AND EXCEPT that portion lying west of
the railroad right-of-way;

24 3. Issue a declaratory judgment regarding the Plaintiffs' and King
25 County's rights and obligations under the Settlement Agreement;
26
27
28

1 4. Issue a declaratory judgment that King County has violated Plaintiffs'
2 right to equal protection of the laws under the Fourteenth Amendment of the
3 United States Constitution and that Plaintiffs are entitled to declaratory relief
4 under 42 U.S.C. Sections 1983 and 1988;

5
6 5. Issue injunctive relief prohibiting conduct inconsistent with the
7 declarations requested above;

8
9 6. Award Plaintiffs their costs and reasonable attorneys' fees incurred in
10 this action under any applicable law; and

11 7. Grant all other such relief to Plaintiffs as the Court may deem proper
12 and just.

13
14 Dated this 31st day of January 2025,

15 Stephens & Klinge LLP

16 /s/ Richard M. Stephens

17 Richard M. Stephens WSBA No. 21776

18 Stephens & Klinge LLP

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20 Bellevue, WA 98004

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22 425-453-6206

23 Attorneys for Plaintiffs
24
25
26
27
28

EXHIBIT 3

King County Answer to Complaint

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON AT SEATTLE

WAVERY HILLS CLUB INCORPORATED, a
Washington nonprofit corporation,

Plaintiff,

v.

KING COUNTY, a municipal corporation and
political subdivision of the State of Washington,

Defendant.

No. 2:25-cv-00315

**ANSWER TO COMPLAINT AND
COUNTERCLAIM FOR QUIET
TITLE, EJECTMENT, AND TRESPASS**

COMES NOW defendant King County (“King County” or “Defendant”), by and through its attorney of record, both to answer Plaintiffs’ Amended Complaint (“Complaint”) and to counterclaim as set forth below. In answer to Plaintiffs’ Complaint, Defendant admits, denies, and alleges as set forth below. Each and every allegation contained in Plaintiffs’ Complaint not expressly admitted in full below is denied. The paragraph numbers in the Answer below correspond to the paragraph numbers in Plaintiffs’ Complaint.

I. ANSWER TO PLAINTIFF’S COMPLAINT**INTRODUCTION**

1. King County admits that Plaintiff Waverly Hills Club owns certain property next to Lake Sammamish that adjoins a portion of the former railroad corridor, known as the East Lake Sammamish Railroad Corridor (“Corridor”). King County avers that on September 16, 1998, the Surface Transportation Board issued an order “railbanking” the Corridor under the 18 U.S.C. 1247 (the “Trials Act”) and that King County was deemed the Trial Sponsor for the Corridor. King County further admits and avers that on September 18, 1998, it obtained by quit claim deed all property interests in the Corridor that were formerly held by BNSF Railway Co. (“BNSF”). King County admits it constructed an interim trail in the mid-2000s and constructed a permanent pedestrian and biking trail (the East Lake Sammamish Trail or “ELST”) over the portion of the Corridor at issue, which was completed in 2023. King County denies Waverly Beach’s allegation that there have been no conflicts between Waverly Beach and the ELST. King County is presently without sufficient information to answer the remaining allegations contained in paragraph 1 and therefore denies them.

2. King County admits that it possesses property rights that grant King County exclusive control over the entire Corridor, including the right to terminate uses or charge a fee for Plaintiff’s use of the Corridor. Except as so admitted, King County denies each and every remaining allegation contained in paragraph 2.

3. King County admits that Plaintiff filed a lawsuit against King County on December 30, 2019 in Pierce County Superior Court, Case No. 19-2-12944-7. King County avers that the Tolling Agreement speaks for itself, and admits that negotiations between the

1 parties have been unsuccessful. Except as so admitted and averred, King County denies each
2 and every remaining allegation contained in paragraph 3.

3 **PARTIES, JURISDICTION AND VENUE**

4 4. King County admits Plaintiff is a Washington nonprofit corporation. Except as
5 so admitted, King County is presently without sufficient information to answer the remaining
6 allegations contained in paragraph 4 and therefore denies the same.

7 5. King County admits and avers it is a municipal corporation organized and
8 existing under the laws of the State of Washington as a home rule charter county.

9 6. King County avers that this Court has jurisdiction over this matter pursuant to
10 28 U.S.C. § 2201, 28 U.S.C. § 1331, and 28 U.S.C. § 1367 and that this Court is the proper
11 venue for this dispute pursuant to 28 U.S.C. § 1391. Except as so averred, King County denies
12 each and every remaining allegation contained in paragraph 6.

13 7. King County admits that the Tolling Agreement speaks for itself, and that
14 negotiations between the parties have been unsuccessful. Except as so admitted, King County
15 denies each and every remaining allegation contained in paragraph 7.

16 **BACKGROUND FACTS**

17 8. King County admits the allegations contained in sentences 1, 2 and 3 of
18 paragraph 8. Except as so admitted, King County is without sufficient information to answer
19 the remaining allegations contained in paragraph 8, and therefore denies them.

20 9. King County admits that several plats were created in the 1940s and 1950s, and
21 that the current Waverly Hills neighborhood is up the hill and east of East Lake Sammamish
22
23
24
25

1 Parkway. Except as so admitted, King County is presently without sufficient information to
2 answer the remaining allegations in paragraph 9 and therefore denies them.

3 10. King County admits the first sentence of paragraph 10 and further admits and
4 avers that the former railroad had railroad tracks on the Corridor between what is now East
5 Lake Sammamish Parkway and Lake Sammamish. Except as so admitted, King County is
6 presently without sufficient information to answer the remaining allegations contained in
7 paragraph 10 and therefore denies them.

8 11. King County is presently without sufficient information to answer the
9 allegations contained in paragraph 11 and therefore denies them.

10 12. King County is presently without sufficient information to answer the
11 allegations contained in paragraph 12 and therefore denies them.

12 13. King County admits that the portion of the Corridor at issue was originally 200
13 feet wide and avers that it was acquired under the General Railroad Right-of-Way Act of 1875,
14 43 U.S.C. §§ 934-939 (“1875 Act”). King County admits that the Plaintiff entered into leases
15 with the predecessor railroads and that Plaintiff used the leased land for picnicking and parking.
16 King County denies the predecessor railroads’ historical use was limited to 50 feet on either
17 side of the centerline of the Corridor. King County further denies that the Plaintiff controlled
18 the Corridor, except to the extent permitted under its leases with the railroads. Exhibits 4 and
19 5 to the Complaint speak for themselves. Except as so admitted and averred, King County is
20 presently without sufficient information to answer the remaining allegations contained in
21 paragraph 13 of the Complaint and therefore denies them.
22
23
24
25

1 14. King County admits that BNSF held an exclusive railroad easement under the
2 1875 Act on the portion of the Corridor at issue. King County denies the predecessor railroads'
3 historical use was limited to 50 feet on either side of the centerline of the Corridor. King County
4 admits that the Plaintiff entered into leases with the predecessor railroads. King County is
5 presently without sufficient information to answer the remaining allegations contained in
6 paragraph 14 of the Complaint and therefore denies them.

7 15. King County is presently without sufficient information to answer the
8 allegations in paragraph 15 and therefore denies the same.

9 16. King County is presently without sufficient information to answer the
10 allegations in paragraph 16 and therefore denies the same.

11 17. Portions of paragraph 17 contain legal conclusions to which no response is
12 required. To the extent a response is required, King County admits that a railroad satisfying
13 the conditions of the 1875 Act, including the filing of a Map of Definite Location, could obtain
14 a 200-foot Corridor. King County is presently without sufficient information to answer the
15 remaining allegations contained in paragraph 17 and therefore denies them.

16 18. Portions of paragraph 18 contain legal conclusions to which no response is
17 required. To the extent a response is required, King County admits that *Great Northern Railway*
18 *Co. v. United States*, 315 U.S. 262 (1942); *Marvin M. Brandt Revocable Trust v. United States*,
19 572 U.S. 93 (2014); and *King County v. Abernathy*, 2 Wn.3d 697 (2024) speak for themselves.
20 King County admits that BNSF held an exclusive railroad easement under the 1875 Act on the
21 Corridor at issue. King County further admits that the Seattle Lake Shore & Eastern Railway
22 Company ("SLS&E") established its Corridor along Lake Sammamish in 1887, and that as a
23
24
25

1 part of that process SLS&E prepared and filed a Map of Definite Location, which was accepted
2 and approved by Secretary of Interior on July 5, 1887. King County admits that under the 1875
3 Act railroads received exclusive railroad easements, and that it currently possesses all property
4 interests in the Corridor that were formerly held by BNSF, in addition to the recreational trail
5 easement under the Trails Act. Except as so admitted, King County denies each and every
6 remaining allegation in paragraph 18.

7
8 19. King County admits that the property at issue is located in Lot 1 of Section 8,
9 Township 24 North, Range 6 East, Willamette Meridian. King County admits that the
10 Plaintiff's chain of title speaks for itself. Except as so admitted, King County is presently
11 without sufficient information to answer the remaining allegations contained in paragraph 19
12 and therefore denies them.

13 20. King County admits that the Plaintiff's chain of title speaks for itself. Except as
14 so admitted, King County is presently without sufficient information to answer the remaining
15 allegations contained in paragraph 20 and therefore denies them.

16
17 21. King County admits that Plaintiff has used the Corridor in the past pursuant to
18 leases with the railroads, and otherwise. King County is presently without sufficient
19 information to answer the remaining allegations contained in paragraph 21 and therefore denies
20 the same.

21 22. King County avers that on September 16, 1998, the Surface Transportation
22 Board issued an order "railbanking" the Corridor under the Trails Act and that King County
23 was deemed the Trial Sponsor for the Corridor. King County further admits and avers that on
24 September 18, 1998 it obtained by quit claim deed all property interests in the Corridor that
25

1 were formerly held by BNSF. King County admits it constructed an interim trail in the mid-
2 2000s and constructed a permanent pedestrian and biking trail, the ELST, over the portion of
3 the Corridor at issue, which was completed in 2023. Except as so admitted, King County denies
4 each and every remaining allegation in paragraph 22.

5 23. King County admits that the Quit Claim Deeds from Jennie Esther Pearson,
6 Louise Pearson Henkin, Marilyn Pearson, and Thelma Dorothy Pearson speak for themselves.
7 Except as so admitted, King County denies each and every remaining allegation in paragraph
8 23.
9

10 24. King County admits that the Quit Claim Deeds from Jennie Esther Pearson,
11 Louise Pearson Henkin, Marilyn Pearson, and Thelma Dorothy Pearson were recorded on July
12 8, 2003 and that the short form description of the Quit Claim deeds summarized the language
13 of the Quit Claim deeds. Except as so admitted, King County denies each and every remaining
14 allegation contained in paragraph 24.
15

16 25. King County admits that property taxes were assessed and paid for parcel
17 082406-9214 for a number of years and when the error was discovered, King County refunded
18 the amounts Plaintiff paid for the 2015 tax year and stopped sending tax statements. Except as
19 so admitted, King County is presently without sufficient information to answer the remaining
20 allegations contained in paragraph 25 and therefore denies the same.
21

22 26. King County admits that it has trail easement rights and railroad easement rights
23 to assert exclusive control of the entire Corridor, including the right to exclude Plaintiff's use
24 of the Corridor, as recognized by multiple courts including: *Kaseburg v. Port of Seattle*, No.
25 C14-0784 JCC, 2016 WL 4440959 (W.D. Wash. Aug. 23, 2016), *aff'd sub nom.*, 744 F. App'x

356 (9th Cir. 2018); *Hornish v. King County*, 182 F. Supp. 3d 1124, 1127 (W.D. Wash. 2016),
 aff'd, 899 F.3d 680 (9th Cir. 2018); *Neighbors v. King County*, 15 Wn. App. 2d 71, 479 P.3d
 724, 726 (2020); and *Ray v. King County*, 120 Wn. App. 564, 86 P.3d 183 (2004), review
 denied, 152 Wn.2d 1027, 101 P.3d 421 (2004). King County admits that it is not a railroad
 company. King County specifically denies that the Waverly Beach “improvements” and
 activities in the Corridor do not interfere with King County’s operation of the trail or future
 reactivation of the railroad. King County denies each and every remaining allegation contained
 in paragraph 26.

27. King County admits that it has trail easement rights and railroad easement rights
 to assert exclusive control of the entire Corridor, including the right to charge Plaintiff a Land
 Use Fee for Plaintiff’s use of the Corridor, which is County property. King County further
 admits that King County’s website and King County Code Chapter 14.30 speak for themselves.
 To the extent paragraph 27 of the Complaint consists of legal conclusions, no answer is
 required. To the extent an answer is required, King County denies the remaining allegations
 contained in paragraph 27.

28. King County admits that Plaintiff has filed a Petition with the United States
 Surface Transportation Board, and that the Petition speaks for itself. Except as so admitted,
 King County denies each and every remaining allegation contained in paragraph 28.

FIRST CAUSE OF ACTION (Declaratory Judgment)

29. King County hereby incorporates by reference its responses to paragraphs 1-28
 of the Complaint.

30. This paragraph consists of legal conclusions, to which no answer is required. To the extent an answer is required, King County denies each and every allegation contained in paragraph 30.

31. King County admits that it has trail easement rights and railroad easement rights to assert exclusive control of the entire Corridor, as recognized by multiple courts including: *Kaseburg v. Port of Seattle*, No. C14-0784 JCC, 2016 WL 4440959 (W.D. Wash. Aug. 23, 2016), *aff'd sub nom.*, 744 F. App'x 356 (9th Cir. 2018); *Hornish v. King County*, 182 F. Supp. 3d 1124, 1127 (W.D. Wash. 2016), *aff'd*, 899 F.3d 680 (9th Cir. 2018); *Neighbors v. King County*, 15 Wn. App. 2d 71, 479 P.3d 724, 726 (2020); and *Ray v. King County*, 120 Wn. App. 564, 86 P.3d 183 (2004), review denied, 152 Wn.2d 1027, 101 P.3d 421 (2004). Except as so admitted, King County denies each and every remaining allegation contained in paragraph 31.

32. King County admits that it is not a railroad company. Except as so admitted, King County denies each and every remaining allegation contained in paragraph 32.

33. King County denies each and every allegation contained in paragraph 33.

PLAINTIFF'S REQUEST FOR RELIEF

In answer to Plaintiff's Request for Relief, King County denies that Plaintiff is entitled to any of the relief Plaintiff requests.

AFFIRMATIVE DEFENSES

1. Plaintiff, in whole or in part, has failed to state a claim upon which relief may be granted.

2. Plaintiff lacks standing.

1 3. Plaintiff, in whole or in part, has stated claims under Washington law that are
2 preempted by federal law.

3 4. Plaintiff, in whole or in part, has stated claims that are barred by the doctrine of
4 laches.

5 5. Plaintiff, in whole or in part, has stated claims that are barred by the doctrine of
6 waiver.

7 6. Plaintiff, in whole or in part, has stated claims that fail because plaintiff
8 acquiesced in the acts about which plaintiff now complains.

9 7. Plaintiff, in whole or in part, has stated claims that are barred by the doctrine of
10 estoppel.

11 8. Plaintiff, in whole or in part, has stated claims that it, or its predecessors in title,
12 has previously released.

13 9. Plaintiff, in whole or in part, is not a real party in interest.

14 King County reserves the right to amend this Answer and assert additional affirmative
15 defenses.
16

17 **II. KING COUNTY'S COUNTERCLAIMS**

18 **A. INTRODUCTION**

19 1. King County seeks to quiet title to that portion of the former railroad, known as
20 the East Lake Sammamish Railroad Corridor ("Corridor"), located in Lot 1 of Section 8,
21 Township 24N, Range 6 East. King County seeks to proactively protect the public's right to
22 enjoyment of the Corridor land adjoining Lake Sammamish and encompassing the East Lake
23 Sammamish Trail, which is an essential part of the vibrant regional recreational trail system.
24
25

1 2. Waverly Hills Club's use of public lands without permission and without cost
2 to enhance its private beach club near Lake Sammamish by building and maintaining a parking
3 lot, hardscaping, fences, and other structures constitutes trespass. Its encroachments and uses
4 should be ejected and payments made for remediation and restoration of the public lands, along
5 with the payment of back rents.

6 **B. PARTIES**

7 3. Counter-Plaintiff King County is a municipal corporation organized and existing
8 under the laws of the State of Washington as a home rule charter county. King County owns
9 the East Lake Sammamish Railroad Corridor ("Corridor"), which includes King County Tax
10 Parcel No. 082406-9214, adjoining Plaintiff's property.

11 4. Counter-Defendant Waverly Hills Club ("Club") is a Washington nonprofit
12 corporation that operates as a Homeowners' Association. Plaintiff has used the portion of the
13 Corridor at issue for its members including parking and picnicking. At times, these uses were
14 pursuant to express permission of the railroad that was King County's predecessor-in-interest,
15 but the Club's uses, which now include fencing off portions of the Corridor, have been made
16 without permission for many years.

17 **C. JURISDICTION & VENUE**

18 5. This Court has jurisdiction over this litigation pursuant to 28 U.S.C. § 2201, 28
19 U.S.C. § 1331, and 28 U.S.C. § 1367.

20 6. This Court is the proper venue for this dispute pursuant to 28 U.S.C. § 1391.

21 **D. FACTS**

1 7. The East Lake Sammamish Trail (“ELST”) is an 11-mile “missing link” in a 44-
2 mile-long regional trail corridor that will connect the Burke-Gilman Trail, the Sammamish
3 River Trail, the Marymoor Connector Trail, and the Issaquah-Preston Trail, linking Seattle to
4 the Eastside and the Cascade Foothills. The ELST is a County park that provides a multi-use
5 recreational trail and non-motorized transportation corridor to residents from the City of
6 Sammamish, King County, and throughout the region.

7 8. King County completed construction of an interim, gravel trail in 2006 and
8 completed construction of a permanent, paved trail in 2023 on the Corridor. The Club owns and
9 operates property that adjoins a segment of the trail located in Lot 1 of Section 8, Township
10 24N, Range 6 East.

11 9. The Seattle, Lake Shore & Eastern Railway Company (“SLS&E”), a
12 predecessor of BNSF Railway Co. (“BNSF”), originally assembled the Corridor that now
13 contains the ELST. The Corridor contains a mix of property interests acquired as railroad
14 easements or fee simple, depending on the terms of each acquisition. *See Hornish v. King Cnty.*,
15 No. 2:15-cv-00284-MJP, 182 F. Supp. 3d 1124 (W.D. Wash. 2016) (J. Pechman), affirmed 899
16 F.3d 680 (9th Cir. 2018).

17 10. On July 5, 1887, the Department of Interior approved a map of the SLS&E’s
18 proposed route along Lake Sammamish. The approved map included Corridor located in Lot
19 1 of Section 8, Township 24N, Range 6 East (“Lot 1”), which is now adjacent to the Club’s
20 property. The SLS&E acquired Lot 1 as a land grant from the United States through the General
21 Railway Right of Way Act of 1875, 18 Stat. 482, 43 U.S.C. §§ 934-939 (repealed 1976) (“1875
22
23
24
25

1 Act"). Pursuant to the 1875 Act, the SLS&E's title to Lot 1 dates back to the Department of
2 Interior's approval of the proposed route on July 5, 1887.

3 11. Under the 1875 Act, railroads were granted exclusive railroad easements that are
4 200 feet wide, 100 feet on either side of the centerline of the Corridor. Railroad easements
5 created by the 1875 Act are immune from adverse possession.

6 12. The SLS&E completed construction of its tracks on the Corridor in 1888.

7
8 13. The Trails Act preempts any extinguishment of any railroad easements and any
9 reversion to another owner that would normally occur under state law doctrines regarding
10 discontinuation of use. The Trails Act "takes" these interests, which entitled affected persons
11 to seek compensation from the United States. In this way, through the Trails Act, the Corridor
12 remains under STB jurisdiction so that it can be reactivated for rail use.

13 14. In early 1997, BNSF conveyed its ownership interest in the Corridor to The Land
14 Conservancy ("TLC") through a duly-recorded quit claim deed. On September 16, 1998, the
15 Surface Transportation Board issued an order "railbanking" the Corridor under the Trails Act
16 and authorizing interim use as a recreational trail. On September 18, 1998, TLC conveyed the
17 Corridor to King County through a duly-recorded quit claim deed.

18
19 15. Throughout the Corridor, including in Lot 1, King County either owns the
20 property it acquired through the duly-recorded quit claim deed in fee, or holds an exclusive
21 railroad easement, which grants King County exclusive use, possession, and control of the land.
22 The owner, if any, of an underlying fee interest has no right to use, occupy, or interfere with
23 the same the County's exclusive easement.
24
25

16. Because of the Trails Act, the Corridor remains a federally-regulated railroad corridor designated for interim use as a recreational trail. As stated in the Trails Act:

The Secretary of Transportation, the Chairman of the Surface Transportation Board, and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976 [45 U.S.C. 801 et seq.], shall encourage State and local agencies and private interests to establish appropriate trails using the provisions of such programs. Consistent with the purposes of that Act, and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this chapter, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes. If a State, political subdivision, or qualified private organization is prepared to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use, and for the payment of any and all taxes that may be levied or assessed against such rights-of-way, then the Board shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use in a manner consistent with this chapter, and shall not permit abandonment or discontinuance inconsistent or disruptive of such use.

18 U.S.C. § 1247(d). The Trails Act also states: “Such trails may be designated and suitably marked as parts of the nationwide system of trails by the States, their political subdivisions, or other appropriate administering agencies with the approval of the Secretary of the Interior.” § 1247(e).

20. The Club has built, maintained and used a number of encroachments within the Corridor. These encroachments include a parking lot, hardscaping, fences, and other structures. The Club’s encroachments and uses are without permission and trespass upon public lands owned by King County. Indeed, the Club has fenced off a portion of the Corridor for its own private uses, to the exclusion of the County and others. The entire width of the Corridor is part of the experience for trail users, whose enjoyment of public lands has been and is curtailed by

1 the Club's uses. As the Trail Sponsor, one of King County's roles is to preserve the entire width
 2 of the Corridor for reactivation of the railroad.

3 **FIRST CAUSE OF ACTION:**
 4 **Quiet Title and Ejectment**

5 21. King County re-alleges and incorporates by reference the allegations contained
 6 in the previous paragraphs.

7 22. King County owns an exclusive railroad easement in that portion of the
 8 Corridor, located in Lot 1 of Section 8, Township 24N, Range 6 East, King County Tax Parcel
 9 No. 082406-9214.

10 23. Under RCW 7.28, title to the Corridor at issue as an exclusive easement should
 11 be quieted to King County and the Club's unauthorized uses of public property should be
 12 ejected.
 13

14 **SECOND CAUSE OF ACTION**
 15 **Trespass**

16 24. King County re-alleges and incorporates by reference the allegations contained
 17 in the previous paragraphs.

18 25. King County has exclusive use, possession, and control of the Corridor in at
 19 issue, and the owner of any underlying fee interest, if any, in the Corridor has no right to use,
 20 occupy, or interfere with the same in any manner whatever.

21 26. The Club's entrance and use of King County's property in the Corridor at issue
 22 by erecting, maintaining and using various unauthorized improvements and encroachments was
 23 intentional and without authorization or invitation, express or implied. The Club knew or had
 24 reason to know that it did not have authorization continue with its encroachments.
 25

1 27. The Club interfered with King County's property rights and possessory interest
2 in the Corridor at issue by impeding King County's access to its property and preventing the
3 public enjoyment of the ELST and the Corridor as public lands.

4 28. The Club's trespass was, and continues to be, the proximate cause of damage to
5 King County's property.

6 29. King County is entitled to recover damages including for restoration and
7 remediation of the property and back rent for use of the public's lands.

8
9 **KING COUNTY'S PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff King County prays for the following relief:

11 A. A dismissal of plaintiffs' Amended Complaint with prejudice;

12 B. A grant of King County's Counterclaim by quieting title in King County and
13 declaring the full scope of King County's property interests in the Corridor at issue;

14 C. An order requiring the Club to vacate any unauthorized use of the Corridor and
15 to remove any unauthorized improvements erected, maintained, or used within the Corridor at
16 issue;

17 D. An order requiring the Club to restore and remediate the Corridor in issue or
18 pay for such restoration and remediation;

19 E. An order requiring Club to pay current and back rent for all unauthorized uses
20 of the Corridor at issue and all other damages, costs (including investigative costs) and
21 attorneys' fees available under RCW 4.24.630;

22 F. An award of attorney fees and costs to King County in accord with equity or
23 law;
24
25

1 G. An award of interest on any judgments granted to King County; and

2 H. For such other relief as the Court deems just and equitable.

3 DATED: February 18, 2025

4
5 CORR CRONIN LLP

6 s/ Emily J. Harris

7 Emily J. Harris, WSBA No. 35763

8 Kristin E. Bateman, WSBA No. 54681

9 1015 Second Ave., Floor 10

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14 Elisa J. Wood, WSBA No. 47421

15 Senior Deputy Prosecuting Attorney

16 King County Prosecuting Attorney's Office

17 701 Fifth Avenue, Suite 600

18 Seattle, WA 98104

19 elwood@kingcounty.gov

20 *Attorneys for Defendant King County*

CERTIFICATE OF SERVICE

The undersigned certifies as follows:

1. I am employed at Corr Cronin LLP, attorneys for Defendant King County

2. On February 18, 2025, I caused a true and correct copy of the foregoing document to be served on the following via email:

Charles A. Klinge, WSBA No. 26093
Richard M. Stephens, WSBA No. 21776
10900 NE, 4th Street, Suite 2300
Bellevue, WA 98004
klinge@sklegal.pro
stephens@sklegal.pro
Attorneys for Plaintiff

DATED at Seattle, Washington on February 18, 2025.

s/ Elizabeth F. Roth
Elizabeth F. Roth, Legal Secretary

EXHIBIT 4

Notice to Plaintiff of Removal

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WAVERY HILLS CLUB INCORPORATED, a
Washington nonprofit corporation,

Plaintiff,

v.

KING COUNTY, a municipal corporation and
political subdivision of the State of Washington,

Defendant.

No.

DEFENDANT'S NOTICE OF REMOVAL

TO: THE CLERK OF THE COURT;

AND TO: Plaintiff;

AND TO: Charles A. Klinge, attorney for Plaintiff.

PLEASE TAKE NOTICE that Defendant King County ("Defendant"), in accordance with 28 U.S.C. §§ 1331, 1367(a), 1441 and 1446, hereby removes to this Court the lawsuit captioned *Waverly Hills Club Incorporated v. King County*, No. 25-2-05817-0, filed in the Superior Court of the State of Washington in and for the County of Pierce (the "Action"). In support of this Notice of Removal, Defendant states:

I. COMPLAINT AND NATURE OF ACTION

On January 29, 2025, Plaintiffs filed this Action concerning the rights of King County, established by two federal statutes as set forth in the Complaint, to exclude Plaintiff's use or to charge fees for Plaintiff's use of a portion of former BNSF rail corridor in East Lake Sammamish where King County operates and maintains a recreational trail. *Waverly Hills Club* Complaint (attached hereto as Exhibit 1).

Plaintiff's Complaint has one cause of action seeking a declaratory judgment that Plaintiff holds fee ownership to the land at issue in the rail corridor; that Plaintiff can exercise its fee ownership rights to use the land without interfering with King County's easement rights; that King County's easement does not give King County authority to charge Plaintiff fees for its use and improvements to the rail corridor; and that the "Land Use Fees" King County has charged Plaintiff equate to charging Plaintiff rent to use property Plaintiff owns in fee and are therefore an illegal property tax. Complaint ¶¶ 31-33.

As demonstrated below, this Action is removable pursuant to federal question jurisdiction, 28 U.S.C. § 1331 and supplemental jurisdiction, 28 U.S.C. § 1367(a).

This Action was originally filed in the Superior Court in and for the County of Pierce, and is therefore removable to this District. *See* 28 U.S.C. § 1441(a). Defendant reserves, and does not waive, any objection it may have to service, jurisdiction, or venue, and any and all other defenses or objections to the Action.

Pursuant to 28 U.S.C. § 1446(a) and LCR 101(b), Defendant has filed the Attorney Verification of State Court Record simultaneously with this Notice of Removal. Defendant will also file with the Superior Court a copy of this Notice of Removal.

II. TIMELINESS OF REMOVAL

Plaintiff filed the Action on January 29, 2025. This Notice of Removal is therefore timely. *See* 28 U.S.C. §§ 1446(b).

III. FEDERAL QUESTION JURISDICTION

Plaintiff's Complaint asserts claims arising under federal law. Specifically, Plaintiff's claims concern the scope of King County's rights with respect to the rail corridor at issue under the General Railroad Right-of-Way Act of 1875, 43 U.S.C. §§ 934-939 ("the 1875 Act") and the National Trails System Act, 16 U.S.C. § 1247(d) ("Trails Act").

This lawsuit is the latest in a long history of litigation concerning the former railroad Corridor along the eastern side of Lake Sammamish where King County has constructed a permanent recreational trail, called the East Lake Sammamish Trail ("ELST"). In 1887, the federal government granted the Seattle, Lake Shore and Eastern Railway Company (SLS&E) a "right-of-way" to build a railroad over the Corridor. SLS&E built the railroad under the 1875 Act, which provided a mechanism for railroad companies to obtain rights-of-way over land to build railroads to encourage development. SLS&E's successor in interest, Burlington Northern Santa Fe Railway Company ("BNSF"), deeded its rights in the Corridor to the Land Conservancy ("TLC").

In 1998, a federal agency "railbanked" the then out-of-service Corridor under the Trails Act, meaning the Corridor was authorized to be used as an interim trail until a railroad might need to reactivate it for rail service. As part of the railbanking, King County was designated the Trail Sponsor whose duties include "preserv[ing] established railroad rights-of-way for future reactivation of rail service, . . . protect[ing] rail transportation corridors, and . . . encourage[ing] energy efficient transportation use." 16 U.S.C.A. § 1247(d). Shortly after the Corridor was railbanked, TLC deeded its property rights in the Corridor to Defendant King County. Since then, King County has constructed a permanent, paved public recreational trail along the Corridor. Plaintiff Waverly Hills Club owns property along the Corridor.

In the present lawsuit, Plaintiff contends that King County's railroad easement over the Corridor does not allow King County to assert exclusive control of the entire right of way or to

preclude Plaintiff's use. Complaint ¶¶ 22, 26. Plaintiff claims that "[b]ecause BNSF held only an easement under the 1875 Act, TLC and King County in turn could only obtain an easement" (Complaint ¶ 22) and that this easement "can only be utilized by a railroad company for railroad purposes," (Complaint ¶ 26) which do not include King County's assertion of "exclusive control of the entire right of way, including the authority to preclude [Plaintiff's] use of the right of way." Complaint ¶ 26. These claims clearly require the Court to determine the scope of rights conveyed by the 1875 Act to the holder of an easement created by the 1875 Act. *See Nicodemus v. Union Pacific Corp.*, 440 F.3d 1227, 1234-37 (10th Cir. 2006) (holding that federal court has subject matter jurisdiction because interpretation of the scope of the 1875 Act involves "a substantial federal issue" involving "considerable federal interests"); *Drawhorn v. Qwest Commc'ns Int'l, Inc.*, 121 F. Supp. 2d 554, 561-62 (E.D. Tex. 2000) (holding removal of state complaint was proper and federal question jurisdiction existed for dispute over scope of railroad's land grant easement based on interpretation of the 1875 Act).

Plaintiff also claims that King County's trail easement rights under the Trails Act do not allow King County to assert exclusive control of the entire Corridor or to preclude Plaintiff's use. Complaint ¶ 26. This claim raises a question of federal law under the Trails Act. *Hornish v. King County*, 899 F.3d 680, 687-91 (9th Cir. 2018) (holding in case involving the ELST that federal jurisdiction existed for claims requiring interpretation of the easement created by the Trails Act); *King County v. Rasmussen*, 299 F.2d 1077, 1079-80 (9th Cir. 2002) (holding that action involving the ELST was properly removed because federal jurisdiction existed where scope of the County's property rights was the Trails Act); *Trevarton v. S. Dakota*, 817 F.3d 1081, 1086 (8th Cir. 2016) (recognizing that federal courts have jurisdiction over claims for a declaratory judgment regarding the scope of a railbanked easement under the Trails Act.).

The Trails Act provides that "in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this

chapter, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes.” 16 U.S.C. § 1247(d). Thus, the purpose of the Trails Act is to preserve the entire established rail corridor intact, including those portions established “otherwise” by a railroad. “Through railbanking, the Trails Act preempts extinguishment of the easement and reversion to the underlying owner, as would normally occur under state abandonment doctrines following a discontinuation of use.” *Kaseburg v. Port of Seattle*, 2015 WL 4508790, at *1 (W.D. WA July 24, 2015).

Plaintiff seeks a declaration establishing that King County’s trail easement rights and railroad easement rights are insufficient to exclude Plaintiff from the Corridor, particularly where Plaintiff alleges that it owns the underlying land in fee. Complaint ¶¶ 31-33. A party seeking to quiet title “must prevail upon the strength of their own title, and not upon the weakness of their adversaries.” *Rohrbach v. Sanstrom*, 172 Wash. 405, 406, 20 P.2d 28, 29 (1933); *Johnson v. U.S.*, 402 Fed.Appx. 298, 300 (9th Cir. 2010) (A plaintiff who cannot “establish that she possesses an interest in the property at issue” lacks standing to quiet title.); *Regan v. Qwest Communications Intern., Inc.*, 2010 WL 3941471, at *7 (E.D. Cal. 2010) (Standing for a declaratory judgment requires proof of ownership of the subject property.).

As such, Plaintiff will need to demonstrate that neither King County’s easement under the 1875 Act nor the rail-banking of the corridor under the Trails Act empower King County to exclude Plaintiff’s use of the Corridor. Plaintiffs’ claims necessarily raise a federal question that must be decided as part of plaintiffs’ affirmative case and federal question jurisdiction exists as part of plaintiffs’ well-plead complaint.

To the extent that not all claims are covered by federal question jurisdiction, the remainder of claims would be subject to this Court’s supplemental jurisdiction, 28 U.S.C. § 1367(a).

IV. INTRADISTRICT ASSIGNMENT

Pursuant to LCR 101(e), this action is properly assigned to the Seattle Division pursuant to the criteria listed in LCR 3(d)(1). The defendant is King County and the property at issue is located in King County. This case is properly assigned to the Seattle Division.

V. JURY DEMAND

No party has requested a jury in this action to date.

VI. NOTICE AND FILING

Notice of the filing of this Notice of Removal has been given to plaintiff and a true and correct copy of this Notice has been filed with the Pierce County Superior Court.

VII. RESERVATION

Defendants reserve the right to amend or supplement this Notice of Removal.

VIII. RULE 11

This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure.

IX. CERTIFICATE OF SERVICE

A Declaration of Filing and Service for this removal notice, which includes all counsel who have appeared in this action with their contact information (including email addresses), is attached to the last page of this pleading.

DATED: February 18, 2025

CORR CRONIN LLP

s/ Emily J. Harris
Emily J. Harris, WSBA No. 35763

s/ Kristin E. Bateman
Kristin E. Bateman, WSBA No. 54681

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5 *s/ Elisa J. Wood*

6 Elisa J. Wood, WSBA No. 47421
7 Senior Deputy Prosecuting Attorney
8 King County Prosecuting Attorney's Office
9 701 Fifth Avenue, Suite 600
Seattle, WA 98104
elwood@kingcounty.gov

10 *Attorneys for Defendant King County*

CERTIFICATE OF SERVICE

The undersigned certifies as follows:

1. I am employed at Corr Cronin LLP, attorneys for Defendant King County

2. On February 18, 2025, I caused a true and correct copy of the foregoing document to be served on the following via email and first class mail:

Charles A. Klinge, WSBA No. 26093
Richard M. Stephens, WSBA No. 21776
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klinge@sklegal.pro
stephens@sklegal.pro

Attorneys for Plaintiff

DATED at Seattle, Washington on February 18, 2025.

s/ Elizabeth F. Roth
Elizabeth F. Roth, Legal Secretary

EXHIBIT 5

Minute Order of Judge James L. Robart

1
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5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 RAYMOND SPENCER, et al.,

11 Plaintiffs,

12 v.

13 KING COUNTY,

14 Defendant.

CASE NO. C25-0204JLR

MINUTE ORDER

15 The following minute order is made by the direction of the court, the Honorable
16 James L. Robart:

17 This case is hereby transferred to the Honorable Tiffany M. Cartwright as related
18 to *Waverly Hills Club Inc. v. King Cnty.*, No. C25-5137-TMC.

19 //

20 //

21 //

22 //

1 All future documents filed in this case must bear case numbers ending in “TMC.”

2 Filed and entered this 28th day of February, 2025.

3 RAVI SUBRAMANIAN
4 Clerk of Court

5 s/ Ashleigh Drecktrah
6 Deputy Clerk
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