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Chief of Case Administration
Office of Chief Counsel
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 Finance Docket No. AB-6 (Sub-No. 380X)

Dear Chief:

I write to inform the Board of two decisions issued by the United States District Court for the Western District of Washington (the “Court”) relevant to two overlapping petitions in this docket by the Waverly Hills Club, Inc. (“Waverly”) and Raymond and Lael Spencer (the “Spencers”) filed, respectively, on January 28, 2025 (“Waverly Petition”) and January 30, 2025 (“Spencers Petition”). In those petitions, Waverly and the Spencers claim, in short, the right to encroach on and use the railbanked line that is the subject of these proceedings (the “Line”). The Court’s two decisions, attached, support King County, Washington’s (the “County”) reply seeking denial of the Petitions because the Court has determined that Waverly and the Spencers have no right over the railbanked Line, resolving the fundamental property issue raised in these proceedings.

First, on March 31, 2026, the Court granted in part the County’s motion for partial summary judgment with respect to Waverly’s claims, holding that the County has a right to exclude Waverly’s encroaching structures from the Line pursuant to the Line’s railbanked status under 16 U.S.C. § 1247(d) (the “Trails Act”). *Waverly Hills Club Inc. v. King Cnty.*, Case 2:25-cv-00204-TMC, slip op. at 14–15 (D. Wash. Mar. 31, 2026) (*Waverly*), attached as **Attachment A**. The Court also dismissed Waverly’s declaratory judgment claim seeking a declaration that Waverly may use the Line in an allegedly non-interfering manner, a claim at the heart of the Waverly Petition, *see* Waverly Petition at 4, because the County’s easement over the Line is exclusive. *Waverly*, slip op. at 15. Other claims, including the County’s trespass counterclaim against Waverly, are still to be decided. *Id.* slip op. at 15.

Second, also on March 31, 2026, the Court granted in part the County’s motion for summary judgment regarding the Spencers’ claims relevant to these proceedings. There the Court held that the County owns the disputed portion of the Line in fee simple and is entitled to quiet title. *Spencer*

v. King Cnty., Case 2:25-cv-00204-TMC, slip op. at 22–23 (D. Wash. Mar. 31, 2026), attached as **Attachment B**. The only claims by the Spencers that now survive the Court’s decision are claims under the Fourteenth Amendment and 42 U.S.C. § 1983 regarding the County’s enforcement actions against the Spencers. *See id.* at 2, 22–23. The County’s trespass claim against the Spencers must also be decided. *Id.* at 23.

The Court’s decisions determine the central issue in this proceeding: that the County can exclude Waverly’s and the Spencers’ encroachments and prevent their use of the Line for their own purposes. *See* Waverly Petition at 4, 23, 31, 36, 38, 44; Spencers Petition at 1, 4, 11–12, 19. This conclusion alone warrants denial of the Waverly and Spencers Petitions. The remaining issues to be resolved by the Court will not change that outcome and are not issues within the Board’s jurisdiction. Moreover, the Court’s decisions reflect the wisdom in permitting a court, rather than the Board, to consider the questions of state law that are enmeshed in these controversies. To the extent that the Court proceedings are not entirely concluded or may be appealed, the Court’s decisions at minimum support the County’s earlier motion filed March 3, 2025, to hold these proceedings in abeyance, pending finality of the Court’s proceedings.

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

Sincerely,



Charles A. Spitulnik

Counsel for King County, Washington

Attachments

CERTIFICATE OF SERVICE

I certify that on this 21st day of April 2026, I have served copies of KING COUNTY, WASHINGTON'S SUPPLEMENTAL AUTHORITY LETTER upon all parties of record in this proceeding, via e-mail or first-class mail, postage prepaid.



Charles A. Spitulnik

April 21, 2026

ATTACHMENT A

Waverly Hills Club Inc. v. King Cnty.

Case 2:25-cv-00204-TMC, slip op. at 14–15 (D. Wash. Mar. 31, 2026)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RAYMOND SPENCER, et al.,

Plaintiffs,

v.

KING COUNTY,

Defendant.

Case No. 2:25-cv-00204-TMC

ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
PARTIAL SUMMARY JUDGMENT
AGAINST WAVERLY HILLS CLUB

WAVERLY HILLS CLUB

INCORPORATED,

Plaintiff,

v.

KING COUNTY,

Defendant.

1 KING COUNTY,
2
3 Counter-Plaintiff,
4
5 v.
6 RAYMOND SPENCER, et al.,
7
8 Counter-Defendants.
9

10 KING COUNTY,
11
12 Counter-Plaintiff,
13
14 v.
15 WAVERLY HILLS CLUB
16
17 INCORPORATED,
18
19 Counter-Defendant.
20

21 I. INTRODUCTION

22 Plaintiff Waverly Hills Club (the “Club”) is a nonprofit corporation that operates a beach
23 club for its member homeowners along Lake Sammamish in Washington state. Defendant King
24 County possesses an easement that runs past the Club’s beachfront building and which King
County uses to maintain the East Lake Sammamish Trail (“ELST”) for the public. On the land
underlying the easement, the Club has built a fenced parking lot and other structures. The parties
dispute whether the Club’s activities on this land are legally authorized.

King County now seeks partial summary judgment on one of the Club’s claims for
declaratory relief and on its own counterclaims for quiet title, ejectment, and trespass. Dkt. 43.

1 For the reasons set forth below, the Court GRANTS IN PART and DENIES IN PART King
2 County's motion for partial summary judgment.

3 II. BACKGROUND

4 A. Facts

5 The disputed property in this action is a portion of a former rail corridor on which King
6 County operates the ELST. *See* Dkt. 44-24 at 2. Two distinct property interests are relevant:
7 King County's easement in the disputed property and the Club's interest, if any, in the same. The
8 Court discusses each below.

9 1. *History of King County's easement*

10 In the late 1800s, the Seattle, Lake Shore & Eastern Railway Company ("SLS&E")
11 obtained rights of way under the General Railroad Right of Way Act of 1875, 18 Stat. 482, 43
12 U.S.C. §§ 934–39 (the "1875 Act"), across public lands adjoining Lake Sammamish. *Beres v.*
13 *United States*, 104 Fed. Cl. 408, 412 (2012); *Hornish v. King County*, 899 F.3d 680 (9th Cir.
14 2018). Some of these rights of way were easements, and some were fee simple properties.
15 *Hornish*, 899 F.3d at 686. From 1887 to 1888, SLS&E constructed a railroad corridor (the
16 "Corridor") along the rights of way. *Beres*, 104 Fed. Cl. at 412–13; Dkt. 44-2 at 82–83. It is
17 undisputed that SLS&E was granted an easement in the section of the Corridor at issue here. *See*
18 Dkt. 43 at 18–22; Dkt. 49 at 3.

19 In 1889, SLS&E was purchased by Seattle and International Railroad, which was then
20 acquired by the Northern Pacific Railway Company ("Northern Pacific"). *Beres*, 104 Fed. Cl. at
21 416. In 1970, Northern Pacific became part of the Burlington Northern Railroad ("Burlington
22 Northern"), which subsequently became Burlington Northern & Santa Fe Railway Company
23 ("BNSF"). *Id.* Northern Pacific and BNSF are successors to SLS&E's property interests in the
24 Corridor.

1 In April 1997, BNSF quitclaimed its interest in the Corridor to the Land Conservancy of
 2 Seattle and King County (Dkt. 44-22), which then conveyed its interest to King County.
 3 Dkts. 44-23, 44-31. Then, on September 16, 1998, the Surface Transportation Board—the federal
 4 agency that regulates railways— authorized the issuance of a notice of interim trail use (“NITU”)
 5 under the National Trails System Act Amendments of 1983 (“Trails Act”), 16 U.S.C. § 1247(d),
 6 allowing BNSF to abandon its rail line along Lake Sammamish and permitting the construction
 7 of an interim public trail. *The Burlington N. & Santa Fe Ry. Co.-Abandonment Exemption-in*
 8 *King Cnty.*, No. AB-6 (SUB 380X), 1998 WL 638432 (Sept. 16, 1998). The NITU was issued
 9 two days later. *See Beres*, 104 Fed. Cl. at 416. As part of this process, King County was granted
 10 an easement for trail purposes under the Trails Act. *See Illig v. United States*, 58 Fed. Cl. 619,
 11 630–31 (2003). Over the next 25 years, King County constructed the ELST. *See* Dkt. 44-24.

12 2. History of the Club’s property interest

13 In 1891, John Anderson received a patent from the United States government conferring
 14 title to a plot of land (the “Anderson lot”) including the disputed portion of the Corridor. Dkt. 44-
 15 4.

16 The Anderson lot changed hands several times from the 1890s to the 1940s. Dkts. 44-5,
 17 44-6, 44-9. In 1948, John Bratnober, the liquidating trustee of landowner Bratnober Company,
 18 conveyed a portion of the Anderson lot to Carl Pearson and Earl Pearson. Dkt. 44-10. The deed
 19 stated that the conveyance included “ALL in section eight (8), township twenty-four (24) north,
 20 range six (6) east, W.M., EXCEPT County roads and EXCEPT rights of way of Northern Pacific
 21 Railway Company; TOGETHER with first class shore lands in front of said portion of said
 22 Government lot one (1).” *Id.* at 2; *see also* Dkt. 44-12 (corrected deed dated October 19, 1950).

23 In 1969, Cougar Mountain Associates—successor in interest to the Pearsons, *see* Dkt. 44-
 24 16—conveyed a portion of the Anderson lot to the Club via statutory warranty deed. Dkt. 44-17.

1 The deed contained a metes and bounds description of the property, using “the southwesterly
2 limits of the Northern Pacific Railroad Right of Way” as a boundary. *Id.* at 2. The Club then
3 entered into a leasing agreement with Burlington Northern for use of the corridor to operate and
4 maintain a private beach. Dkt. 44-18.

5 In July 2003, the Club obtained deeds from the Pearsons’ heirs quitclaiming their
6 remaining interest in their family’s portion of the Anderson lot, purportedly including the
7 disputed portion of the Corridor. Dkts. 54-1, 54-2, 54-3, 54-4.

8 **B. Procedural history**

9 On January 29, 2025, the Club sued King County in Pierce County Superior Court,
10 seeking declaratory relief regarding its rights and interests in the disputed property, as well as a
11 declaration regarding land use fees that King County had imposed on it. No. 3:25-cv-05137-
12 TMC, Dkt. 1-1 at 16–18. Relevant here, the Club seeks

13 [a] declaratory order that the Club may use the right of way in any manner that does
14 not materially interfere with King County’s rights to use the right of way under its
15 easement rights; and further, that the Club’s current use of the right of way shown
in Exhibits 4 and 5 does not materially interfere with King County’s easement rights
and may continue.

16 *Id.* at 18.

17 On February 18, 2025, King County removed the case to this Court. No. 3:25-cv-05137-
18 TMC, Dkt. 1. This matter was then consolidated with *Spencer v. King County*, No. 2:25-cv-
19 00204-TMC. Dkt. 8. King County countersued the Club for quiet title, ejectment, and trespass.
20 Dkt. 9 at 17–18.

21 On August 29, 2025, King County moved for partial summary judgment on the Club’s
22 first request for declaratory relief and on each of King County’s counterclaims. Dkt. 43. The
23 Club responded on October 3 (Dkt. 49), and King County replied one week later (Dkt. 55).

III. LEGAL STANDARD

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A dispute as to a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The moving party has the initial burden of “‘showing’—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If the moving party meets its initial burden, the non-moving party must go beyond the pleadings and “set forth specific facts showing that there is a genuine issue for trial.” *Zellmer v. Meta Platforms, Inc.*, 104 F.4th 1117, 1122 (9th Cir. 2024) (quoting *Anderson*, 477 U.S. at 256).

The evidence relied upon by the nonmoving party must be able to be “presented in a form that would be admissible in evidence.” *See* Fed. R. Civ. P. 56(c)(2). “An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.” Fed. R. Civ. P. 56(c)(4); *see also* Fed. R. Ev. 602 (“A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness’s own testimony.”).

Conclusory, nonspecific statements in affidavits are not sufficient, and “missing facts” will not be “presume[d].” *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 889 (1990). However, “[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Tolan v. Cotton*, 572 U.S. 650, 651 (2014) (per curiam) (quoting *Anderson*, 477

U.S. at 255). Consequently, “a District Court must resolve any factual issues of controversy in favor of the non-moving party only in the sense that, where the facts specifically averred by that party contradict facts specifically averred by the movant, the motion must be denied.” *Lujan*, 497 U.S. at 888 (internal quotations omitted).

“In general, when construing a deed, the intent of the parties is of paramount importance and the court’s duty to ascertain and enforce.” *Brown v. State*, 130 Wn.2d 430, 437, 924 P.2d 908 (1996). Any “ambiguity in a deed is resolved against the grantor.” *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Ass’n*, 156 Wn.2d 253, 272, 126 P.3d 16 (2006).

IV. DISCUSSION

King County seeks summary judgment on its quiet title, ejectment, and trespass claims, as well as the Club’s first claim for declaratory relief, based on its contentions that the Club has no ownership interest in the disputed property and that King County’s easement provides for exclusive use. As explained below, there is a genuine factual question as to whether the Club holds an interest in the disputed property, precluding quiet title, but King County is correct that the Trails Act conferred it an exclusive easement in the Corridor. However, although King County has the right to exclude encroaching structures from the easement area, it has not shown that it is entitled to summary judgment on its trespass claim.

A. The Club has presented sufficient evidence to create a genuine factual dispute as to its ownership interest in the disputed property.

King County argues that the Club lacks standing to seek declaratory relief regarding the disputed property because the Club has no ownership interest therein. Dkt. 43 at 14–17. It focuses on two facts: (1) that the 1969 deed from Cougar Mountain Associates to the Club used a metes and bounds description and set the southwesterly limit of the Corridor as a boundary, and

1 (2) that the deed from Bratnobar to the Pearsons used the term “except,” which King County
2 argues was intended to exclude the disputed property from the conveyance. *Id.* at 15–16.

3 The Club responds that it has established standing in this action by claiming ownership
4 over the disputed property. Dkt. 49 at 9–11. Relying on *Kershaw Sunnyside Ranches, Inc. v.*
5 *Yakima Interurban Lines Association*, 156 Wn.2d 253, 126 P.3d 16 (2006), it argues that the
6 “except” language in the deed from Bratnobar to the Pearsons simply indicated an easement, as
7 there is no evidence that the Bratnobar Company, which was being liquidated, had any intent to
8 retain its interest in the Corridor. *Id.* at 13–15. It then asserts that it owns the land both if the
9 Pearsons retained their interest in the disputed property (because their heirs then conveyed that
10 interest directly to the Club in 2003) and if they did not (because the 1969 deed from Cougar
11 Mountain Associates to the Club conveyed that interest). *Id.* at 15–19.

12 As an initial matter, merely asserting ownership does not establish standing at this stage
13 of the litigation. Standing is “an indispensable part of the plaintiff’s case” and “must be
14 supported in the same way as any other matter on which the plaintiff bears the burden of proof,
15 *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.”
16 *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). Where standing depends on a showing of
17 interest in a specific property, a party responding to a motion for summary judgment must “set
18 forth specific facts showing that there is a genuine issue for trial” as to its property interest.
19 *Zellmer*, 104 F.4th at 1122. To determine whether King County is entitled to summary judgment
20 that the Club lacks standing, the Court considers whether the Club has presented sufficient
21 evidence to create a genuine dispute regarding its claim to ownership under either the 1969 deed
22
23
24

1 or the 2003 deeds. As explained below, the 2003 deeds provide sufficient evidence of standing to
 2 overcome summary judgment.¹

3 *1. The 1969 deed did not convey any interest in the disputed property.*

4 The 1969 deed from Cougar Mountain Associates to the Club describes the conveyance
 5 using metes and bounds, and it references the Northern Pacific Railroad Right of Way as a
 6 boundary. Based on these attributes of the deed, even if Cougar Mountain Associates had an
 7 interest in the disputed property, clear Washington precedent rebuts any presumption that it
 8 conveyed that interest to the Club.

9 The parties both rely on *Roeder Co. v. Burlington N., Inc.*, 105 Wn.2d 567, 716 P.2d 855
 10 (1986). Dkt. 43 at 16 n.7; Dkt. 49 at 17; Dkt. 55 at 12–13. There, the Washington Supreme Court
 11 held that “[w]hen metes and bounds provisions in a deed describe property that extends up to,
 12 but does not include, a railroad right of way, the presumption that abutting property owners take
 13 title to the center of the right of way is rebutted.” *Roeder*, 105 Wn.2d at 575. Absent the
 14 application of this “centerline presumption,” a party owning land adjacent to a railroad corridor
 15 lacks standing to challenge another party’s activities in that corridor. *Hornish*, 899 F.3d at 698;
 16 *Sammamish Homeowners v. County of King*, No. C15-284 MJP, 2015 WL 3561533, at *2–3
 17 (W.D. Wash. June 5, 2015).

18 The deed from Cougar Mountain Associates to the Club falls precisely within the
 19 centerline presumption exception described in *Roeder*. While the Club points to some extrinsic
 20 evidence of its own intent to acquire land up to the centerline of the easement, *see* Dkts. 53-3,
 21 53-11; Dkt. 53-17 at 5, and CMA’s intent to convey it, *see* Dkt. 53-18, this does not overcome
 22 the clear directive in Washington law that a deed using the specific language employed here does

23
 24 ¹ Because the Court so concludes, the Court does not address the Club’s claim that it acquired the
 disputed property through adverse possession. *See* Dkt. 49 at 19–21.

1 not convey the centerline. The 1969 deed thus did not convey any interest in the disputed
2 property and does not provide a basis for the Club to assert standing.

3 2. *There is a genuine factual issue as to whether the Pearsons' heirs*
4 *conveyed the disputed property to the Club in 2003.*

5 The 2003 deeds from the Pearsons' heirs to the Club could only have conveyed an
6 interest in the disputed property if the Pearsons had acquired and retained this interest
7 themselves. As the parties correctly identify, the scope of the Pearsons' ownership rights in the
8 disputed property depends on the 1948 Bratnober conveyance, specifically whether the phrase
9 "except rights of way of Northern Pacific Railway Company" was intended to reserve an interest
10 in that property or simply to indicate the existence of an easement.

11 The Washington Supreme Court's opinion in *Kershaw* guides the Court's analysis of this
12 question. In *Kershaw*, the court considered a "1960 deed passing title from Ora Kershaw to her
13 son, Ronald Kershaw . . . [that] excepted the 'right-of-way of the Northern Pacific Railway.'" 156 Wn.2d at 271. Noting that the exception was ambiguous and that "there is no evidence in the
14 record that Ora Kershaw intended to reserve any interest in the property nor that she later
15 attempted to convey that interest," the court held that the exception was only an indication of the
16 railroad's easement and not of the grantor reserving any interest in the railroad's right of way. *Id.*
17 at 272–73.

18 Here as in *Kershaw*, King County has not pointed to any evidence that Bratnober
19 intended to retain any interest in the disputed property. *See* Dkt. 43 at 16; Dkt. 55 at 12. Reading
20 the deed's ambiguous language against the grantor, *see Kershaw*, 156 Wn.2d at 272, there is at
21 least a genuine factual dispute as to whether the 1948 deed conveyed an interest in the disputed
22 property to the Pearsons. King County suggests that *Kershaw* should apply only to conveyances
23 involving close family members or analogous factual circumstances. *See* Dkt. 43 at 16. But this
24

reads *Kershaw* too narrowly: the more important question is whether there is extrinsic evidence of intent to reserve. *See King County v. Abernathy*, No. C20-0060-RAJ-SKV, 2021 WL 3472379, at *14 (W.D. Wash. July 26, 2021) (concluding that *Kershaw* applied to a deed that “did not convey property between family members”). Here, at least in the summary judgment record, there is none.

If the Bratnobar deed conveyed an interest in the disputed property to the Pearsons, the question remains whether the Pearsons conveyed that interest in a subsequent deed before the 2003 deeds. *See* Dkt. 44-13. While the Club discusses this possibility, *see* Dkt. 49 at 17–19, this question has not been adequately briefed by King County. *See* Dkt. 43 at 14–17; Dkt. 55 at 11–13. There is thus a genuine dispute of material fact as to whether the Club acquired an interest in the disputed property through the 2003 deeds, and King County is not entitled to summary judgment based on the Club’s lack of standing to seek related declaratory relief.²

B. King County’s easement is exclusive under the 1875 Act and the Trails Act.

King County argues that even if the Club has an ownership interest in the disputed property, King County’s easement is exclusive, both because it inherited the railroad’s exclusive 1875 Act easement and because it is a trail sponsor under the Trails Act. Dkt. 43 at 18–25. The Club responds that the railroad easement must be used for railroad purposes, Dkt. 49 at 23–29,

² King County also argues that the Club should be estopped from relying on the 2003 deeds because it failed to disclose the deeds during takings litigation in the Court of Federal Claims. Dkt. 43 at 17; *see* Dkt. 44-25. But as King County itself acknowledges, the relevant question in that litigation was whether Waverly Hills had an ownership interest in the Corridor in September 1998, when the NITU was issued. Dkt. 43 at 12, 17; *see Caldwell v. United States*, 391 F.3d 1226, 1235 (Fed. Cir. 2004) (“We therefore hold that the appropriate triggering event for any takings claim under the Trails Act occurs when the NITU is issued.”), *holding modified by Hardy v. United States*, 965 F.3d 1338 (Fed. Cir. 2020). King County does not explain how the 2003 deeds have any bearing on the status of the Club’s ownership rights in 1998, and judicial estoppel is not warranted here.

1 and that the Trails Act easement does not allow King County to exclude non-interfering uses by
2 the fee owner of the underlying land. *Id.* at 29–34.

3 Under the Trails Act, “a railroad easement no longer desired by the rail
4 company/easement holder for freight service may be ‘railbanked’ while such easement is kept
5 open for recreational trail use.” *Kaseburg v. Port of Seattle*, No. C14-0784 JCC, 2015 WL
6 6449305, at *1 (W.D. Wash. Oct. 23, 2015). This allows a rail corridor to function as a public
7 trail on an interim basis without precluding “restoration or reconstruction for railroad purposes”
8 in the future. 16 U.S.C. § 1247(d). During this time, a state or local government entity—known
9 as the “trail sponsor”—“assume[s] full responsibility for management” of the rail corridor and
10 interim trail. 16 U.S.C. § 1247(d); *Hornish v. King County*, 182 F. Supp. 3d 1124, 1127 (W.D.
11 Wash. 2016), *aff’d*, 899 F.3d 680 (9th Cir. 2018). Following the issuance of a NITU, the trail
12 sponsor possesses an easement for trail purposes. *See Illig*, 58 Fed. Cl. at 630–31.

13 Two courts in this district have previously considered the scope of an easement granted to
14 a trail sponsor under the Trails Act. In *Kaseburg v. Port of Seattle* and *Hornish v. King County*,
15 these courts concluded that the Trails Act creates an easement with rights, including exclusivity,
16 that are coextensive with the rights held by the railroad under its preexisting easement. *See*
17 *Kaseburg*, 2015 WL 6449305 at *4–5; *Hornish*, 182 F. Supp. 3d at 1130. Neither of these cases
18 arose in the context of an 1875 Act railroad easement. However, the Ninth Circuit has also
19 determined that “[a]n 1875 Act easement allows the grantee to exclude everyone—including the
20 grantor and fee owner.” *Alaska R.R. Corp. v. Flying Crown Subdivision Addition No. 1 &*
21 *Addition No. 2 Prop. Owners Ass’n*, 89 F.4th 792, 802 (9th Cir. 2023) (quoting *LKL Assocs., Inc.*
22 *v. Union Pac. R.R. Co.*, 17 F.4th 1287, 1295 (10th Cir. 2021)). This Court is bound by the Ninth
23 Circuit’s holding, and it finds the rationale of the *Kaseburg* and *Hornish* decisions equally
24

1 persuasive here. The Court therefore concludes that King County possesses an exclusive Trails
2 Act easement that is coextensive with the railroad's 1875 Act easement.

3 The Club relies extensively on the United States Supreme Court's opinion in *United*
4 *States Forest Service v. Cowpasture River Preservation Ass'n*, 590 U.S. 604 (2020), arguing that
5 it limits the scope of an easement under the Trails Act. Dkt. 49 at 29–30, 39. But that case
6 considered the authority of the United States Forest Service to grant rights-of-way through
7 national forests under the Mineral Leasing Act and thus has limited application to this matter,
8 which concerns railbanked land subject to a railroad easement. *See Cowpasture*, 590 U.S. at
9 607–08. Although *Cowpasture*'s discussion of rights-of-way generally provides some support for
10 the Club's argument, *see id.* at 613–14, it is not the type of intervening authority that would
11 allow this Court to disregard *Alaska Railroad Corp*'s express holding that “the 1875 Act grants
12 exclusive-use easements.” 89 F.4th at 802.

13 Because King County possesses an exclusive easement in the disputed property, it is
14 entitled to summary judgment on the Club's first claim for declaratory relief as well as a
15 declaratory judgment on the scope of its own property interest.³ *See* Dkt. 9 at 18.

16 **C. King County is not entitled to summary judgment on its trespass claim.**

17 Finally, King County argues that the Club has committed trespass by placing encroaching
18 structures within the easement area. Dkt. 43 at 26–27; Dkt. 55 at 13–17. The Club responds that
19 King County has not proven the elements of a trespass claim, and it argues that there is a factual
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21
22 ³ The Court does not address King County's argument that the Club's first request for
23 declaratory relief is barred by laches. Dkt. 43 at 25–26; Dkt. 55 at 9–10. To the extent that King
24 County raises a laches defense to the Club's second request for declaratory relief, regarding land
use fees, it has shown neither an unreasonable delay nor prejudice, both of which are required to
assert a laches defense. *See Evergreen Safety Council v. RSA Network Inc.*, 697 F.3d 1221, 1226
(9th Cir. 2012).

1 issue as to whether it is entitled to a property interest under the equitable factors outlined in
2 *Arnold v. Melani*, 75 Wn.2d 143, 449 P.2d 800, 449 P.2d 815 (1968). Dkt. 49 at 36–39.

3 In Washington, a claim of intentional trespass requires “(1) an invasion affecting an
4 interest in the exclusive possession of property; (2) an intentional doing of the act which results
5 in the invasion; (3) reasonable foreseeability that the act done could result in an invasion of
6 plaintiff’s possessory interest; and (4) substantial damages to the res.” *Jackass Mt. Ranch, Inc. v.*
7 *S. Columbia Basin Irr. Dist.*, 175 Wn. App. 374, 400–01, 305 P.3d 1108 (2013) (quoting *Seal v.*
8 *Naches-Selah Irr. Dist.*, 51 Wn. App. 1, 5, 751 P.2d 873 (1988)). The Club argues that there is a
9 factual dispute as to the second, third, and fourth elements. Dkt. 49 at 37–38.

10 The Court agrees with the Club that King County fails to present any evidence of actual
11 and substantial damages, and that there is at least a genuine dispute of material fact as to
12 reasonable foreseeability. The Club presents evidence that its perimeter fencing predated King
13 County’s interest in the disputed property, and it was thus not reasonably foreseeable that its
14 fence would result in an invasion of King County’s later-in-time possessory interest. Dkt. 52
15 ¶¶ 4–6; Dkt. 53-2 at 2. Moreover, to the extent that the *Arnold* factors apply in this case, the
16 Club’s claim that it is entitled to retain its structures on that basis requires further factual
17 development and is better considered by the Court at trial. Summary judgment is not warranted
18 on this claim.

19 V. CONCLUSION

20 For the foregoing reasons, the Court ORDERS:

- 21 1. Defendant King County’s motion for partial summary judgment (Dkt. 43) is
22 GRANTED IN PART and DENIED IN PART.
- 23 2. The Court DECLARES that King County possesses an exclusive easement in the
24 disputed property under the National Trails System Act Amendments of 1983

1 (“Trails Act”), 16 U.S.C. § 1247(d), and the General Railroad Right of Way Act
2 of 1875, 18 Stat. 482, 43 U.S.C. §§ 934–39.

- 3 3. Waverly Hills Club’s declaratory judgment claim seeking “a declaratory order
4 that the Club may use the right of way in any manner that does not materially
5 interfere with King County’s rights to use the right of way under its easement
6 rights” is DISMISSED with prejudice, because the County’s easement is
7 exclusive.
- 8 4. King County’s trespass claim, the Club’s declaratory judgment claim regarding
9 land use fees, and any further proceedings regarding remedies for King County’s
10 quiet title claim shall proceed according to the case schedule set forth at Dkt. 60.

11
12 Dated this 31st day of March, 2026.

13 
14 Tiffany M. Cartwright
15 United States District Judge
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ATTACHMENT B

Spencer v. King Cnty.

Case 2:25-cv-00204-TMC, slip op. at 22–23 (D. Wash. Mar. 31, 2026)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RAYMOND SPENCER, et al.,

Plaintiffs,

v.

KING COUNTY,

Defendant.

Case No. 2:25-cv-00204-TMC

ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
SUMMARY JUDGMENT AGAINST
SPENCER PLAINTIFFS

WAVERLY HILLS CLUB

INCORPORATED,

Plaintiff,

v.

KING COUNTY,

Defendant.

1 KING COUNTY,
2
3 Counter-Plaintiff,
4
5 v.
6 RAYMOND SPENCER, et al.,
7
8 Counter-Defendants.
9

10 KING COUNTY,
11
12 Counter-Plaintiff,
13
14 v.
15 WAVERLY HILLS CLUB,
16
17 INCORPORATED,
18
19 Counter-Defendant.
20

21 I. INTRODUCTION

22 Plaintiffs Raymond and Lael Spencer and Defendant King County dispute ownership
23 over a strip of land located along the East Lake Sammamish Trail (“ELST”). King County now
24 moves for summary judgment on both the Spencers’ claims and its own counterclaims. Dkt. 19.
For the reasons explained below, the Court concludes that King County owns the disputed land
in fee simple, and it is entitled to summary judgment on all claims except for: (1) the Spencers’
claims under the Fourteenth Amendment and 42 U.S.C. § 1983, which are not barred by the
statute of limitations and have not been adequately briefed on the merits; and (2) King County’s
counterclaim for trespass and waste in the disputed strip, which remains the subject of genuine

disputes of material fact. The Court therefore GRANTS IN PART and DENIES IN PART the motion for summary judgment.

II. BACKGROUND

A. Facts

This case centers on a strip of land (the “right of way” or “ROW”) that was formerly part of a railway line running alongside Lake Sammamish in Sammamish, Washington. *See* Dkts. 20-2, 20-19, 20-21. In 1887, private landowners Jim and Alice Yonderpump conveyed an interest in the ROW to the Seattle, Lake Shore and Eastern Railway Company (“SLS&E”) via a right of way deed. Dkt. 20-2. Through subsequent conveyances, the Spencers now possess a portion of the Yonderpumps’ land adjacent to the ROW, and King County now possesses SLS&E’s interest in the ROW. The parties dispute whether the Yonderpump deed conveyed an easement or a fee interest. Dkt. 24 ¶ 11; Dkt. 19 at 20–25. If the former, then the Spencers now own the ROW subject to King County’s easement; if the latter, then King County now owns the ROW in fee.

1. *Yonderpump deed and subsequent conveyances*

In 1884, homesteader Jim Yonderpump obtained title to a tract of land (the “Yonderpump lot”), which included the land now constituting the ROW and the land now owned by the Spencers. Dkts. 20-1, 20-25. In May 1887, the Yonderpumps executed a deed granting SLS&E an interest in the ROW. Dkt. 20-2. The granting clause of the deed read as follows:

In Consideration of the benefits and advantages to accrue to us from the location, construction and operation of the Seattle, Lake Shore and Eastern Railway in the County of King, in Washington Territory we do hereby donate, grant and convey unto said Seattle, Lake Shore and Eastern Railway Company a right of way one hundred (100) feet in width through our lands in said County.

Id. at 2. The deed described the conveyance as “[s]uch right of way strip to be fifty (50) feet in width on each side of the center line of the railway track as located across our said lands by the Engineer of [SLS&E].” *Id.* It concluded with a habendum clause: “To Have and to Hold the said

1 premises, with the appurtenances, unto the said party of the second part, and to its successors and
2 assigns forever.” *Id.*

3 Over the next century, portions of the Yonderpump lot changed hands several times.
4 Many of these deeds did not mention the ROW. *See* Dkts. 20-5, 20-7, 20-8, 20-10. Meanwhile,
5 SLS&E was acquired by the Northern Pacific Railway Company, which later became part of the
6 Burlington Northern & Santa Fe Railway Company (“BNSF”). *See Beres v. United States*, 104
7 Fed. Cl. 408, 416 (2012). In 1956, a deed conveying a portion of the Yonderpump lot to the
8 Spencers’ direct predecessor-in-interest mentioned “Norther[n] Pacific Railway Right of way”
9 when describing the boundary lines of the conveyance. Dkt. 20-16. It also mentioned a separate
10 roadway easement. *Id.*

11 In April 1997, BNSF conveyed its interest in the ROW to The Land Conservancy of
12 Seattle and King County by quit claim deed. Dkt. 20-19. Then, on September 16, 1998, the
13 Surface Transportation Board—the federal agency that regulates railways—authorized the
14 issuance of a notice of interim trail use (“NITU”) allowing BNSF to abandon its rail line along
15 Lake Sammamish and permitting the construction of an interim public trail. *The Burlington N. &*
16 *Santa Fe Ry. Co.-Abandonment Exemption-in King Cnty.*, No. AB-6 (SUB 380X), 1998 WL
17 638432 (Sept. 16, 1998). Two days later, the NITU was issued, and The Land Conservancy
18 conveyed its interest in the ROW to King County by quit claim deed. Dkt. 20-20; *see Beres*, 104
19 Fed. Cl. at 416. Over the next 25 years, King County constructed the ELST. Dkt. 20-21 at 2.

20 2. *The Spencers’ activities in the ROW*

21 In July 1992, the Spencers obtained title to a portion of the Yonderpump lot via a
22 statutory warranty deed. Dkt. 20-17. The deed provided that it was subject to a “[r]ailroad right
23 of way” and “[e]asements under recording numbers 2628804 and 4712061.” *Id.* at 2. The
24

1 property description in the deed referenced the “Northern Pacific Railway right-of-way” when
2 describing the property boundaries. *Id.* at 3.

3 At the time of purchase, the Spencers believed that their land included the ROW and that
4 BNSF’s interest in the ROW was only an easement. Dkt. 29 ¶¶ 2–3. Consistent with that
5 understanding, the Spencers constructed a garden bed bordered by concrete blocks inside the
6 ROW. *Id.* ¶¶ 3, 5. But beginning in July 2000, King County contacted the Spencers and informed
7 them of its position that it owned the ROW in fee. Dkts. 20-26, 20-27, 20-28; Dkt. 29 ¶¶ 6–10.
8 King County representatives told the Spencers that their use of ROW land was unauthorized.
9 Dkt. 20-28 at 3. In December 2002, in an attempt to ensure that they owned the ROW in fee, the
10 Spencers obtained a quit claim deed from Agnes Moe—another successor-in-interest to the
11 Yonderpumps—conveying her interest in the ROW. Dkt. 20-18; Dkt. 29 ¶¶ 11–12.

12 In 2003, the Spencers obtained a 10-year special use permit (“SUP”) from King County
13 allowing them to maintain a garden in the ROW. Dkts. 20-29, 20-30, 20-31; Dkt. 29 ¶ 12. In
14 their SUP application, the Spencers maintained their position that they owned the ROW in fee.
15 Dkt. 20-30 at 3. After the SUP expired in 2013, the Spencers did not renew it, and they continued
16 to maintain their garden after the SUP had lapsed. *See* Dkt. 29 ¶¶ 13, 16, 32–33.

17 In 2004, the Spencers sued the United States in the Court of Federal Claims, alleging that
18 the 1998 NITU was a taking of their property without just compensation. *Beres v. United States*,
19 143 Fed. Cl. 27, 35 (2019); Dkt. 20-22 at 2. During this litigation, the Court of Federal Claims
20 determined that the Yonderpumps had conveyed only an easement to SLS&E, rather than
21 conveying the ROW in fee simple. *Beres v. United States*, 97 Fed. Cl. 757, 809 (2011). This
22 lawsuit resulted in a settlement agreement under which the United States agreed to compensate
23 the Spencers. Dkt. 20-22 at 2, 4.

1 Over the following years, communications between the Spencers and King County
2 continued. In November 2019, the Spencers sent a letter to King County requesting “assurances
3 from the City and County regarding the final permitted trail design and the immediate return of
4 several areas near Mr. Spencer’s property to their pre-construction conditions.” Dkt. 20-32 at 3.
5 They expressed an intent to sue King County if those requests were not met. *Id.* The Spencers
6 reiterated their concerns in a response the next month. Dkt. 20-35.

7 In January 2020, King County sent a letter to the Spencers informing them that any
8 landscaping and structures impeding construction of the ELST would need to be removed from
9 the ROW by September of that year, either by the Spencers themselves or by King County.
10 Dkt. 20-34. Between 2021 and 2024, the Spencers and the County continued to communicate
11 about the Spencers’ unauthorized activities in the ROW. Dkts. 20-36, 20-37, 20-38, 20-39, 20-
12 41. On September 17, 2024, a King County employee sent Mr. Spencer an email notifying him
13 that he would need to obtain an SUP to continue maintaining structures in the ROW. Dkt. 20-41.
14 A few weeks later, King County sent the Spencers a cease-and-desist letter seeking
15 reimbursement related to the removal and damage of county property. Dkt. 20-42. The letter
16 stated that King County would sue the Spencers if they failed to agree to a settlement of King
17 County’s claims against them. *Id.* at 3. On November 6, 2024, King County sent a follow-up
18 letter to the Spencers’ attorney. Dkt. 20-43.

19 3. *Settlement agreement between Sammamish Homeowners and King County*

20 Sammamish Homeowners (“SHO”) is a nonprofit corporation that advocates for property
21 owners in the City of Sammamish and along the ELST. Dkt. 20-24 at 2. The Spencers have been
22 members of Sammamish Homeowners, and Mr. Spencer “was familiar with their activities and
23 interest regarding the trail and spring lake flooding.” Dkt. 29 ¶ 14.

1 In July 2012, King County applied for a permit to make improvements to a portion of the
2 ELST. Dkt. 20-24 at 2. After the permit was conditionally approved by the city of Sammamish,
3 two local homeowners and SHO challenged the application before the Shorelines Hearings
4 Board. *Id.* These proceedings resulted in a settlement agreement between King County, the
5 named homeowners, and SHO. *Id.* Under the settlement, King County agreed that property
6 owners along the ELST would be permitted to “install landscaping improvements and vegetation
7 within the County’s right of way” subject to certain criteria. *Id.* at 3, 8. The agreement also
8 provided that property owners who had already obtained an SUP would “not be required to
9 obtain a new one for new landscaping improvements or vegetation necessitated or desired as a
10 result of the County’s forthcoming construction.” *Id.* at 3. Enforcement of the agreement could
11 be obtained by filing suit in King County Superior Court. *Id.* at 5–6.

12 The Spencers were not named in the agreement, and there is no evidence that they took
13 part in the proceedings. *See id.* at 2. However, Mr. Spencer attests that he was aware of the
14 negotiations between King County and SHO. Dkt. 29 ¶ 15.

15 **B. Procedural history**

16 In January 2025, the Spencers sued King County over its use of the ROW. Dkt. 1. The
17 Spencers allege that they own the ROW “subject to a trail easement owned by King County and
18 a dormant railroad easement.” Dkt. 24 ¶¶ 79–82. They claim that King County has violated
19 (1) the Trails Act, 16 U.S.C. § 1247(d), by using the ROW in a manner unauthorized by that law,
20 (2) the SHO settlement agreement, by threatening to sue the Spencers for their activities in the
21 ROW, and (3) the Fourteenth Amendment, by treating the Spencers differently from other
22 homeowners along the ELST. *Id.* ¶¶ 71–78, 83–112. Based on those allegations, the Spencers
23 seek quiet title, declaratory relief, and damages under 42 U.S.C. § 1983. *Id.* at 25–26. King
24

County contends that it owns the ROW in fee, and it countersues for quiet title, trespass, and waste. Dkt. 15 at 28–30.

On June 18, 2025, King County moved for summary judgment on the Spencers’ claims and King County’s counterclaims against the Spencers. Dkt. 19. On July 9, the Spencers filed a response. Dkt. 27. King County filed a reply one week later. Dkt. 31. The motion is now ripe for the Court’s review.

III. LEGAL STANDARD

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A dispute as to a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The moving party has the initial burden of “‘showing’—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If the moving party meets its initial burden, the non-moving party must go beyond the pleadings and “set forth specific facts showing that there is a genuine issue for trial.” *Zellmer v. Meta Platforms, Inc.*, 104 F.4th 1117, 1122 (9th Cir. 2024) (quoting *Anderson*, 477 U.S. at 256).

The evidence relied upon by the nonmoving party must be able to be “presented in a form that would be admissible in evidence.” *See* Fed. R. Civ. P. 56(c)(2). “An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.” Fed. R. Civ. P. 56(c)(4); *see also* Fed. R. Ev. 602 (“A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has

1 personal knowledge of the matter. Evidence to prove personal knowledge may consist of the
2 witness's own testimony.”).

3 Conclusory, nonspecific statements in affidavits are not sufficient, and “missing facts”
4 will not be “presume[d].” *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 889 (1990). However,
5 “[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn
6 in his favor.” *Tolan v. Cotton*, 572 U.S. 650, 651 (2014) (per curiam) (quoting *Anderson*, 477
7 U.S. at 255). Consequently, “a District Court must resolve any factual issues of controversy in
8 favor of the non-moving party only in the sense that, where the facts specifically averred by that
9 party contradict facts specifically averred by the movant, the motion must be denied.” *Lujan*, 497
10 U.S. at 888 (internal quotations omitted).

11 “In general, when construing a deed, the intent of the parties is of paramount importance
12 and the court’s duty to ascertain and enforce.” *Brown v. State*, 130 Wn.2d 430, 437, 924 P.2d
13 908 (1996). Any “ambiguity in a deed is resolved against the grantor.” *Kershaw Sunnyside*
14 *Ranches, Inc. v. Yakima Interurban Lines Ass’n*, 156 Wn.2d 253, 272, 126 P.3d 16 (2006).

15 IV. DISCUSSION

16 For the reasons explained below, King County owns the ROW in fee, and the Spencers
17 therefore lack standing to bring claims related to King County’s activities in the ROW. The
18 Spencers’ claim for declaratory relief under the SHO settlement agreement also fails as a matter
19 of law, as this Court is not the proper forum to seek relief under that document. But the Spencers
20 have presented sufficient evidence to overcome summary judgment on King County’s argument
21 that their Section 1983 claim is time-barred. Finally, King County is not entitled to summary
22 judgment on its trespass and waste claims.

1 **A. The Yonderpump deed conveyed a fee interest to SLS&E.**

2 The primary dispute in this case is whether the Yonderpump deed conveyed a fee interest
3 or an easement to SLS&E. Decades of case law inform the Court’s analysis of this question. The
4 Court discusses each relevant decision in turn.

5 In *Brown v. State*, 130 Wn.2d 430, 924 P.2d 908 (1996), the Washington Supreme Court
6 described factors that courts should consider in determining whether a railway deed conveys an
7 easement or fee simple title:

8 (1) whether the deed conveyed a strip of land, and did not contain additional
9 language relating to the use or purpose to which the land was to be put, or in other
10 ways limiting the estate conveyed; (2) whether the deed conveyed a strip of land
11 and limited its use to a specific purpose; (3) whether the deed conveyed a right of
12 way over a tract of land, rather than a strip thereof; (4) whether the deed granted
13 only the privilege of constructing, operating, or maintaining a railroad over the
14 land; (5) whether the deed contained a clause providing that if the railroad ceased
15 to operate, the land conveyed would revert to the grantor; (6) whether the
16 consideration expressed was substantial or nominal; and (7) whether the
17 conveyance did or did not contain a habendum clause, and many other
18 considerations suggested by the language of the particular deed.

19 *Id.* at 438. Other relevant considerations include “the circumstances surrounding the deed’s
20 execution and the subsequent conduct of the parties.” *Id.*

21 The *Brown* court recognized that the term “right of way” in a railroad deed may evince an
22 intent to convey an easement if there is a “specifically declared purpose that the grant was a right
23 of way for railroad purposes” and “no persuasive evidence of intent to the contrary.” *Id.* at 438–
24 39. The court explained that “the use of the term ‘right of way’ as a limitation or to specify the
purpose of the grant generally creates only an easement.” *Id.* at 439. But “where there is no
language in the deed relating to the purpose of the grant or limiting the estate conveyed, and it
conveys a definite strip of land, the deed will be construed to convey fee simple title.” *Id.* at 439–
40.

1 In *King County v. Rasmussen*, 299 F.3d 1077 (9th Cir. 2002), the Ninth Circuit
2 interpreted the “Hilchkanum deed,” a deed from an area landowner to SLS&E that was
3 identically worded to the Yonderpump deed. *Id.* at 1080. Relying on *Brown*, the court
4 determined that the Hilchkanum deed conveyed land in fee simple. *Id.* at 1084–88. Specifically,
5 the court determined that the use of the words “convey” and “strip” in the deed’s granting clause,
6 along with a metes-and-bounds description, indicated an intent to convey a fee interest. *Id.* at
7 1087. The court then considered subsequent deeds by the Hilchkanums, which “explicitly
8 excepted the strip of land belonging to the Railway,” and concluded that they were evidence that
9 the original deed had conveyed a strip to SLS&E in fee simple. *Id.* But it also concluded that a
10 failure to mention the strip in other subsequent deeds “is not significantly probative of whether
11 or not the parties intended to convey a fee simple estate.” *Id.* at 1087–88.

12 The Washington Court of Appeals interpreted the Hilchkanum deed two years later in
13 *Ray v. King County*, 120 Wn. App. 564, 86 P.3d 183 (2004), and reached the same conclusion as
14 the Ninth Circuit. After determining that the form of the deed and the use of the term “right of
15 way” did not create any presumption of a fee title conveyance, the court considered the
16 remaining *Brown* factors. *Id.* at 574–78. The court reasoned that the granting clause suggested a
17 fee simple conveyance because it “grant[ed] a right of way to the Railway without expressly
18 restricting how that right of way was to be used.” *Id.* at 578–80. The court noted that the deed
19 included a provision permitting SLS&E to cut trees as needed on adjacent property, and it
20 determined that “[t]he lack of any limitation in the use of the strip starkly contrasts with the more
21 limited right to cut trees only on the property adjacent to the strip.” *Id.* at 581. Finally, the court
22 rejected arguments that the deed should be construed against SLS&E based on allegations that
23 the notary was an agent of SLS&E and undisputed evidence that the Hilchkanums could not read
24 or write. *Id.* at 586–87.

Next, in *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Ass’n*, 156 Wn.2d 253, 126 P.3d 16 (2006), the Washington Supreme Court determined that a 1905 deed granting a right of way to BNSF’s predecessor in interest conveyed only an easement. *Id.* at 262–71. The court clarified that *Brown* did not overrule prior cases that had concluded that the use of the term “right of way” created the presumption of an easement. *Id.* at 265–66. Instead, *Brown* had “distinguished them on the limited basis that none of the deeds at issue in *Brown* possessed language relating to the *purpose* of the grant or limiting the estate conveyed.” *Id.* at 266. The court ultimately concluded that for the grant at issue, “the word ‘right of way’ is used to establish the purpose of the grant and thus presumptively conveys an easement interest.” *Id.*

In *Beres v. United States*, 97 Fed. Cl. 757 (2011), the Court of Federal Claims became the first to interpret the Yonderpump deed itself, concluding that it conveyed only an easement. *Id.* at 809. Before reaching a decision, the court certified questions to the Washington Supreme Court regarding whether the use of the phrase “right of way” in several disputed deeds—including the Yonderpump and Hilchkanum deeds—indicated an easement or fee simple conveyance. *Id.* at 765. The Washington Supreme Court declined the certification request:

The court is of the view that, in light of existing precedent such as *Brown v. State*, 130 Wash.2d 430, 924 P.2d 908 (1996) and *Ray v. King County*, 120 Wash.App. 564, 86 P.3d 183, *review denied*, 152 Wash.2d 1027, 101 P.3d 421 (2004), the questions posed by the federal court are not “question[s] of state law . . . which [have] not been clearly determined.”

Id.

In its decision, the *Beres* court applied the *Brown* factors and disagreed with prior case law interpreting the Hilchkanum deed, reasoning that it likely had a more developed record before it. *Id.* at 786–92. But in its interpretation of the Yonderpump deed, the court found no probative external evidence of the parties’ intent, concluding that subsequent conveyances by the

1 Yonderpumps that did not mention the ROW were not “helpful to explain the grantors’ intent.”
2 *Id.* at 794.

3 Finally, in *Hornish v. King County*, 899 F.3d 680 (9th Cir. 2018), the Ninth Circuit
4 revisited its analysis of the Hilchkanum deed and once again held that it conveyed a fee interest.
5 *Id.* at 692–94. The court concluded that it was bound by *Rasmussen* and *Ray*, and that *Kershaw*
6 did not change the analysis from those cases. *Id.* at 692–93. The court noted that in *Kershaw*, the
7 Washington Supreme Court had “affirmed the correctness of *Ray*.” *Id.* at 693. It also determined
8 that the Washington Supreme Court’s denial of the certification request from the Court of
9 Federal Claims was “persuasive evidence” that *Ray* remained applicable. *Id.* at 693–94.
10 Ultimately, the court held “that the ‘right of way’ language in the granting clause is not limiting,
11 and does not give rise to the *Kershaw* easement presumption.” *Id.* at 694.

12 Because the Yonderpump deed and the Hilchkanum deed are identically worded,
13 *Hornish*, *Rasmussen*, and *Ray* control this Court’s analysis of the deed’s text. *See Yong v. I.N.S.*,
14 208 F.3d 1116, 1119 n.2 (9th Cir. 2000) (“[O]nce a federal circuit court issues a decision, the
15 district courts within that circuit are bound to follow it.”); *In re Watts*, 298 F.3d 1077, 1083 (9th
16 Cir. 2002) (explaining that when considering state law issues, a federal court is bound by the
17 decision of an intermediate state appellate court absent persuasive evidence that the state’s
18 highest court would reach a different decision). Therefore, the Court may only conclude that the
19 Yonderpump deed conveyed an easement if “the circumstances surrounding the deed’s execution
20 and the subsequent conduct of the parties” can overcome the text of the deed, which weighs in
21 favor of a fee simple conveyance. *See Brown*, 130 Wn.2d at 438. No such circumstances have
22 been presented here.

23 The Spencers attempt to distinguish *Hornish*, *Rasmussen*, and *Ray* by supplying
24 additional evidence regarding the Yonderpump deed, including (1) identical language in other

1 deeds conveying land to SLS&E on the same day, which they argue indicates that SLS&E
2 drafted the deeds, Dkt. 27 at 24–25; (2) statements regarding Mr. Yonderpump’s alleged
3 illiteracy, *id.* at 25–26; and (3) subsequent conveyances by the Yonderpumps that did not
4 mention the ROW, *id.* at 26–27. But none of this evidence “clearly indicate[s]” the intent to
5 convey an easement. *See Rasmussen*, 299 F.3d at 1084. First, the Spencers’ arguments about
6 SLS&E’s role in drafting the deeds and Mr. Yonderpump’s illiteracy, even if true, would not
7 necessarily show that the Yonderpumps did not understand the nature of the conveyance. *See*
8 *Ray*, 120 Wn. App. at 586. The Spencers submit two affidavits stating that Mr. Yonderpump was
9 “unable to read and write the English language.” Dkts. 30-9, 30-10. Even assuming that these
10 affidavits could be presented in an admissible form at trial, they do not state that Mr.
11 Yonderpump could not communicate verbally in English. Second, as both the Ninth Circuit and
12 the Court of Federal Claims recognized, the failure of subsequent conveyances to mention the
13 ROW is not useful in ascertaining the parties’ intent. *Beres*, 97 Fed. Cl. at 794; *see also*
14 *Rasmussen*, 299 F.3d at 1087–88.

15 Based on the text and surrounding circumstances, the Court concludes that the
16 Yonderpump deed conveyed the ROW to SLS&E in fee simple.¹ King County, as SLS&E’s
17 successor in interest, is entitled to quiet title in the disputed property. And because the
18 Yonderpumps were predecessors in interest to both the Spencers and Agnes Moe, the 2002 quit
19 claim deed did not convey any interest in the ROW.

21 ¹ The parties dispute the applicability of (1) real estate contracts executed by the Yonderpumps’
22 successors in interest and (2) King County tax records, both of which expressly exclude the
23 ROW. *See* Dkt. 19 at 5–6, 18–19; Dkts. 20-9, 21-1, 21-2, 21-3, 21-4, 21-5; Dkt. 27 at 15–16;
24 Dkt. 28 (declaration of title examination expert Dwight Bickel). These documents are not
“subsequent conduct of the parties” to the original conveyance and thus have limited bearing on
the intent of those parties. However, they do show that later landowners treated the Yonderpump
deed as a fee title conveyance.

B. The Spencers did not obtain title to the ROW by adverse possession.

The Spencers next argue that even if the Yonderpump deed conveyed the ROW in fee, they have adversely possessed the ROW by building and using their garden in the ROW for over 30 years. Dkt. 27 at 30–32. King County responds that the Spencers have failed to meet the requirements for an adverse possession claim. Dkt. 31 at 3–4. The Court agrees with King County.

“In order to establish a claim of adverse possession, there must be possession that is: (1) open and notorious, (2) actual and uninterrupted, (3) exclusive, and (4) hostile.” *ITT Rayonier, Inc. v. Bell*, 112 Wn.2d 754, 757, 774 P.2d 6 (1989). “Possession of the property with each of the necessary concurrent elements must exist for the statutorily prescribed period of 10 years.” *Id.*; RCW 4.16.020(1).

Under RCW 7.28.090, a party may not bring an action for adverse possession of any “land[] held for any public purpose.” Washington courts have therefore held that “adverse possession does not run against a governmental body holding land for public purposes.” *Sisson v. Koelle*, 10 Wn. App. 746, 748, 520 P.2d 1380 (1974); *Neighbors v. King County*, 15 Wn. App. 2d 71, 74, 83, 479 P.3d 724 (2020) (analyzing the same railway corridor at issue here and concluding that “[t]he County is immune from adverse possession claims for its public lands under RCW 7.28.090”); *see also Town of W. Seattle v. W. Seattle Land & Improvement Co.*, 38 Wash. 359, 363, 80 P. 549 (1905) (“The general rule is that a party cannot acquire title by adverse possession to property held by a municipality in its governmental capacity for public purposes.”). But if a party adversely possesses a property before a state or local government obtains record title, “the adverse possessor is automatically vested with title to the subject property,” and “[t]he prior owner cannot extinguish this title by transferring record title to the government.” *Gorman v. City of Woodinville*, 175 Wn.2d 68, 74–75, 283 P.3d 1082 (2012).

Here, the Spencers obtained title to their property on July 22, 1992. Dkt. 20-17 at 2. King County obtained title to the ROW on September 18, 1998, just over six years later. Dkt. 20-20 at 2–3. There is no evidence in the record as to exactly when the Spencers built their garden in the ROW, *see* Dkt. 29 ¶ 3, and the Spencers argue in their brief that they constructed the garden bed “in 1992 or 1993.” Dkt. 27 at 31. Even assuming that the Spencers installed their garden bed the day they obtained title to their property, their “possession” of the ROW did not span for the statutorily mandated 10-year period before the land became publicly owned and dedicated to public use.² *See* Dkt. 20-26 (letter from King County employee to area residents describing its management of the ELST for public use).

Moreover, there is no evidence to suggest that the Spencers’ use of the ROW has ever been “exclusive” for the purposes of adverse possession. *See Michel v. City of Seattle*, 19 Wn. App. 2d 783, 790–91, 498 P.3d 522 (2021) (“[T]he exclusivity element means that an adverse possessor may not share possession of the area claimed with the true owner and, though less critical, not too much with third persons who are there without the adverse possessor’s consent.” (alteration in original) (quoting 17 WILLIAM B. STOEBUCK & JOHN W. WEAVER, WASHINGTON PRACTICE: REAL ESTATE: PROPERTY LAW § 8.19, at 541 (2d ed. 2004))). Instead, Mr. Spencer’s declaration, submitted alongside the Spencers’ opposition brief, describes a train running weekly through the ROW “[f]or years.” Dkt. 29 ¶ 4. Nor was their use seemingly “hostile” while the railroad company owned the land—Mr. Spencer’s declaration also states that a railroad employee knew he planned to build the garden beds and told him “that as long as [he] was more than 11 feet from the nearest rail, it would not interfere with railroad use.” *Id.* ¶ 3.

² Though neither party argues this, there is also authority suggesting that the Spencers could not adversely possess land owned by a railroad in fee. *Neighbors*, 15 Wn. App. 2d at 85 (holding that the Interstate Commerce Commission Termination Act “preempts operation of Washington adverse possession statutes against railroads”).

C. The Spencers lack standing to bring claims for quiet title and declaratory relief against King County’s interest in the ROW.

King County argues that the Spencers lack standing for their declaratory relief and quiet title claims related to the ROW because they have no ownership interest or possessory rights in that piece of property. Dkt. 19 at 16–20; Dkt. 31 at 2–5. The Spencers respond that they have standing to pursue declaratory relief related to the ROW because they “*assert* a concrete interest” in the ROW, and their alleged injury is “fairly traceable” to King County. Dkt. 27 at 12–14. Similarly, they argue that they have standing to pursue their quiet title claim because they “have alleged ownership and a right to possess, subject to the County’s trail easement.” *Id.* at 15–16.

Hornish governs the Court’s standing inquiry. In *Hornish*, the Ninth Circuit explained that a plaintiff who lacks any interest in a piece of property has no standing to challenge another party’s interest in that property. *Hornish*, 899 F.3d at 691–92 (discussing a claim for declaratory relief). There, the plaintiffs-appellants sought a declaratory judgment against King County related to its use of a strip of land along Lake Sammamish. *Id.* at 686, 691. The court concluded that to demonstrate “standing to challenge King County’s interest in the Corridor, Plaintiffs-Appellants must show that Defendants-Appellees’ possession or use of the Corridor injured Plaintiffs-Appellants’ interests therein.” *Id.* at 692. Based on its conclusion that King County owned the disputed property in fee, the Ninth Circuit held that the plaintiffs-appellants had no property interests therein and thus lacked standing to pursue declaratory relief. *Id.* This logic from *Hornish* also applies to quiet title claims: under Washington statutory law, a person seeking quiet title must “hav[e] a valid subsisting interest in real property, and a right to the possession thereof.” RCW 7.28.010; *see also Wash. Sec. & Inv. Corp. v. Horse Heaven Heights, Inc.*, 132 Wn. App. 188, 195, 130 P.3d 880 (2006) (“A party seeking to quiet title must succeed on the strength of its own title, and cannot prevail based on the weakness of the other party’s title.”).

1 Standing is “an indispensable part of the plaintiff’s case” and “must be supported in the
2 same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the
3 manner and degree of evidence required at the successive stages of the litigation.” *Lujan v. Defs.*
4 *of Wildlife*, 504 U.S. 555, 561 (1992). Where standing depends on a showing of interest in a
5 specific property, a party responding to a motion for summary judgment must “set forth specific
6 facts showing that there is a genuine issue for trial” as to the property interest. *Zellmer*, 104 F.4th
7 at 1122. As explained above, King County has established that it is entitled to judgment as a
8 matter of law regarding its ownership of the ROW. The Spencers have thus failed to set forth the
9 “manner and degree of evidence” required to demonstrate standing for their claims related to the
10 ROW at this stage of the litigation, even if their assertions of a property interest were sufficient
11 at the pleading stage. Although the Court recognizes that framing this question as one of standing
12 seems odd given its substantial overlap with the merits of the disputed ownership claims, that is
13 the framing set out by the Ninth Circuit that this Court is bound to follow. Summary judgment is
14 warranted on these claims.

15 **D. This is not the proper forum to seek relief under the SHO settlement**
16 **agreement.**

17 The Spencers seek the following declaratory relief under the SHO settlement agreement:
18 (1) “[b]y threatening Plaintiffs with legal action for work done within the right of way which is
19 permissible under King County’s settlement with Sammamish Homeowners, King County is in
20 violation of the Settlement Agreement”; (2) “Plaintiffs are members of Sammamish
21 Homeowners and are entitled to the benefits of that Settlement Agreement”; (3) “[a]lternatively,
22 Plaintiffs are third party beneficiaries of the Settlement Agreement which was intended to
23 resolve uncertainties about what private property owners would be allowed to do on the right of
24

1 way adjacent to their property”; and (4) “King County has a duty imposed by the Settlement
2 Agreement to accept work authorized under the Settlement Agreement.” Dkt. 24 ¶¶ 84–87.

3 King County argues that the Spencers lack standing to enforce the SHO settlement
4 agreement because “[a]lthough the Spencers claim to be members of SHO, they bring this action
5 in their capacity as individuals.” Dkt. 19 at 30–31. This argument is unpersuasive: the Spencers
6 present undisputed evidence that they were members of the SHO at the time of the agreement
7 and thus have an interest in its enforcement. Dkt. 29 ¶ 14; *see* Dkt. 20-24 at 2. However, this
8 Court is not the proper forum for such an action.

9 Under Washington’s Uniform Declaratory Judgment Act, a court may enter a declaratory
10 judgment “in any proceeding . . . in which a judgment or decree will terminate the controversy or
11 remove an uncertainty.” RCW 7.24.050. The Washington Supreme Court “has limited the
12 operation of the uniform declaratory judgment act to cases where there is no satisfactory remedy
13 at law available.” *Hawk v. Mayer*, 36 Wn. 2d 858, 866, 220 P.2d 885 (1950); *Grandmaster*
14 *Sheng-Yen Lu v. King County*, 110 Wn. App. 92, 98–99, 38 P.3d 1040 (2002) (“One is not
15 entitled to relief by way of a declaratory judgment if there is available a completely adequate
16 alternative remedy.”).

17 King County maintains that the Spencers’ requests for declaratory relief related to the
18 SHO settlement agreement are not proper because they are duplicative of their Section 1983
19 claim; there is an adequate remedy at law; and a declaratory judgment would not be proper under
20 RCW 7.24.050. Dkt. 19 at 28–29; Dkt. 31 at 16–17. The Court agrees that the settlement
21 agreement itself provides “a completely adequate alternative remedy.” *Grandmaster*, 110 Wn.
22 App. at 98–99. The agreement provides that it “may be enforced by filing an action in King
23 County Superior Court,” and that a party alleging breach “may seek specific performance and/or
24 injunctive relief” and “recover its reasonable costs and attorney’s fees.” Dkt. 20-24 at 5. The

Spencers have not shown that this remedy is inadequate or unenforceable. They are therefore not able to obtain relief through Washington’s declaratory judgment act, and King County is entitled to summary judgment on this claim.

E. The Spencers have presented sufficient evidence of “discrete acts” occurring within the statute of limitations for the purposes of 42 U.S.C. § 1983.

The Spencers’ final claims seek relief under the Fourteenth Amendment and 42 U.S.C. § 1983, based on their allegation that King County treated the Spencers differently from similarly situated landowners along the ELST in its response to their activities in the ROW. Dkt. 24 ¶¶ 89–117.

In Washington, a Section 1983 action is subject to a three-year statute of limitations. *Rose v. Rinaldi*, 654 F.2d 546, 547 (9th Cir. 1981); RCW 4.16.080(2). A Section 1983 claim “accrues when the plaintiff knows or should know of the injury that is the basis of the cause of action.” *Hawkins v. City of Federal Way*, No. C26-5012-KKE, 2026 WL 689622, at *2 (W.D. Wash. Mar. 11, 2026) (quoting *Douglas v. Noelle*, 567 F.3d 1103, 1109 (9th Cir. 2009)). A claim may be timely if the plaintiff has “alleged ‘discrete acts’ that would violate the Constitution that occurred within the limitations period.” *RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1058 (9th Cir. 2002). For discrete acts, as opposed to continuing violations, only those acts that fall within the statute of limitations are actionable as part of a Section 1983 claim. *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 974 (9th Cir. 2004) (“Discrete acts are not actionable if time barred, even if related to acts alleged in timely filed charges.”); *see also Bird v. Dep’t of Hum. Servs.*, 935 F.3d 738, 746–48 (9th Cir. 2019) (discussing evolution of the continuing violation doctrine).

King County argues that the Spencers’ Section 1983 claim is untimely because “the Spencers knew the basis for their constitutional claims as early as 2002, when their conflict with King County over their landscaping and other activities in the [ROW] began.” Dkt. 19 at 32–33.

1 The Spencers contend that the claim is not time-barred because at least some of King County's
 2 allegedly discriminatory actions took place after January 31, 2022, three years before the
 3 Spencers initiated this case. Dkt. 27 at 48–49.

4 The Court agrees that the Spencers have presented evidence of at least some discrete
 5 acts—threats of enforcement actions from King County to the Spencers regarding their activities
 6 in the ROW—that occurred after that date. *See* Dkts. 20-41, 20-42, 20-43. To the extent that the
 7 Spencers' Section 1983 claim relies on those acts, it is not time-barred, and summary judgment
 8 is not warranted on that basis. In making this determination, the Court does not reach the merits,
 9 which have not been adequately briefed at this stage. And having limited this claim to discrete
 10 acts that occurred after January 31, 2022, the Court does not reach King County's argument that
 11 the claim is barred by laches. *See* Dkt. 19 at 33–34; Dkt. 31 at 18–19.

12 **F. King County is not entitled to summary judgment under RCW 4.24.630(1).**

13 Finally, King County seeks recovery for trespass and waste under RCW 4.24.630(1).³ Per
 14 that statute,

15 [e]very person who goes onto the land of another and who removes timber, crops,
 16 minerals, or other similar valuable property from the land, or wrongfully causes
 17 waste or injury to the land, or wrongfully injures personal property or
 improvements to real estate on the land, is liable to the injured party for treble the
 amount of the damages caused by the removal, waste, or injury.

18 Acting “wrongfully” means that “the person intentionally and unreasonably commits the act or
 19 acts while knowing, or having reason to know, that he or she lacks authorization to so act.” *Id.*

20 King County argues that the Spencers violated RCW 4.24.630(1) by knowingly entering
 21 county land, removing or relocating county property, and replacing that property with their own
 22 structures. Dkt. 19 at 26–27. It contends that the Spencers knew that they were not permitted to

23 ³ To the extent that King County raises a common law trespass claim against the Spencers, that
 24 issue has not been adequately briefed.

1 undertake those activities, based on the terms of their previous SUP. *Id.* The Spencers respond
2 that they did not act “wrongfully” under the statute because they had been in a “good faith
3 dispute over ownership.” Dkt. 27 at 42–43.

4 Summary judgment is not appropriate on this claim because there is a genuine dispute of
5 material fact as to whether the Spencers acted “wrongfully” as defined by the statute. The
6 Spencers were aware of King County’s position that their activities were unauthorized before
7 and after the term of their SUP. But it may have been reasonable for them to believe that King
8 County was incorrect about the nature of its interest in the ROW, as the only court to rule on the
9 Yonderpump deed had concluded that it conveyed only an easement. *See Beres*, 97 Fed. Cl. at
10 809. And before their SUP expired, their garden had been “tolerated—indeed, even authorized—
11 by [King County] and [the railroad] for numerous years.” *King County v. Abernathy*, No. C20-
12 0060-RAJ-SKV, 2021 WL 3472379, at *25 (W.D. Wash. July 26, 2021). The only action under
13 the statute that does not require “wrongful” conduct is “remov[ing] timber, crops, minerals, or
14 other similar valuable property from the land,” and King County does not argue that the
15 Spencers’ removal of “bollards, boulders, habitat logs, and landscaping plants belonging to the
16 County” equates to the removal of natural resources like timber or crops. Dkt. 19 at 26. Without
17 undisputed proof of wrongful conduct, King County has not shown that it is entitled to judgment
18 as a matter of law on its trespass and waste claims.

19 V. CONCLUSION

20 For the foregoing reasons, the Court ORDERS:

- 21 1. Defendant King County’s motion for summary judgment against the Spencer
22 Plaintiffs (Dkt. 19) is GRANTED IN PART and DENIED IN PART.
- 23 2. Quiet title is GRANTED to King County in the disputed property. King County
24 owns the fee title to that portion of the ELST Corridor adjoining the Spencers’

property, located in Government Lot 2 of Section 32, Township 25N, Range 6 East, King County Tax Parcel No. 322506-9015.

3. To the extent additional proceedings are required on remedies for King County's quiet title claim, the parties shall meet and confer and file a joint status report no later than April 30, 2026 proposing a schedule for those proceedings.
4. The Spencers' first, second, and third claims for relief are DISMISSED without prejudice.
5. The Spencers' Section 1983 claim, and the County's counterclaims for trespass and waste, will proceed on the case schedule set forth at Dkt. 60.

Dated this 31st day of March, 2026.


Tiffany M. Cartwright
United States District Judge