

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

309143

***THE BURLINGTON NORTHERN AND SANTA FE RY. CO.—
ABANDONMENT EXEMPTION—IN KING COUNTY, WA***

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January 28, 2025
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Public Record

STB DOCKET NO. AB-6 (Sub-No. 380X)

WAVERLY HILLS CLUB, INCORPORATED

**PETITION TO REOPEN NITU DECISION
OR, IN THE ALTERNATIVE,
PETITION FOR DECLARATORY ORDERS**

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I. Introduction and summary of petition.

Plaintiff Waverly Hills Club, Incorporated (“Waverly Hills Club” or “the Club”), brings this Petition to obtain relief regarding usage of a railbanked corridor—the Redmond-Issaquah Line, along the eastern shore of Lake Sammamish in King County, Washington. The Surface Transportation Board (Board) railbanked the corridor and authorized King County as the trail manager pursuant to an interim trail use agreement and the Board’s 1998 Notice of Interim Trail Use (NITU) (amended 2000). The Club owns the fee underlying the right of way subject to the railroad and trail easements. The Club seeks approval from the Board to maintain existing minor improvements within the railroad right of way for the Club’s community beach to use for a grass picnic area and tables, a chain-link security fence with gate, and a gravel surface parking lot. The Club has controlled the area within the right of way for almost 60 years and these minor improvements have been in place since before the 1998 NITU.

The fundamental problem is that King County is misusing the railroad and the trail easements by seeking to preclude the Club’s noninterfering use of the right of way. King County is going beyond the authority of the railroad easement (limited to railroad purposes) and the trail easement (limited to trail purposes) and seeks to exercise a general power as an easement holder to control usage of the land owned by the Club. The Club requests that the Board correct this misuse.

At the specific area of the Waverly Beach, the railroad right of way is 100 feet on each side of the track centerline having been created pursuant to the General

Railroad Right of Way Act of 1875, 43 U.S.C. §§ 934 et seq. (the 1875 Act). King County's interim gravel trail and recently completed permanent paved trail have been located on a raised berm or embankment—the same berm utilized by the historic railroad. The tracks/trail and berm have never occupied anywhere near 100 feet from the centerline on the Waverly Beach side of the tracks; rather, the tracks/trail and berm occupy only about 30-40 feet from the track centerline on the Waverly Beach side. The Club uses 21,688 square feet within the right of way, but most of that area is grass (12,213 square feet) and used for picnicking with a gravel surface parking area using the remaining area (9,475 square feet). A 2023 aerial photo provides a good look at the Waverly Beach site. Exhibit 7A.¹ A diagram of the site depicts the area used by the Club within the right of way and also adds a dashed line to depict 50 feet from the centerline. Ex. 7B. The Club's use and improvements are almost entirely in the area from 50-100 feet from the centerline with a small area within 50 feet of the centerline. Ex. 7B. Exhibits 1-30 are filed separately while the just referenced Exhibits 7A and 7B are also attached to this Petition as Appendices A and B for easy reference.

The location of the Club's improvements at the bottom of the berm has resulted in no conflicts with previous rail, or current trail, improvements or operations. Future railroad operations will also not be impacted by the grass picnic area and gravel parking area because they are so minor, would be easily removed, and

¹ In the Exhibit 7A aerial photo, the permanent trail was in the final stages of construction which explains the trucks alongside the paved trail. A construction staging area is just to the southeast as shown in Exhibit 3.

historically never interfered with railroad operations during the decades the right of way was used by the railroad. Additionally, future railroad operations at the Waverly site would use no more than 100 feet of total right of way to match the immediately adjacent right of way to the northwest. For that immediately adjacent area, King County argued in Court that only a 100-foot total right of way width was needed and the Court agreed. *See discussion of Hornish v. King County, infra at Section III.E.*

The Club owns fee title to the right of way as successor to the original patent holder and also owns the waterfront land outside of the 200-foot right of way. Thus, the Club holds the fee interest subject to the 1875 Act granted right of way. King County finally conceded that it has only an easement for right of way granted under the 1875 Act in a case before the Washington Supreme Court involving a separate area of the Redmond-Issaquah Corridor. *King County v. Abernathy*, 2 Wn.3d 697, 702 (2024) (“The parties [including King County] do not dispute that the 1875 Right-of-Way Act granted only an easement over the Corridor.”). Yet, King County contends that the railroad and/or trail easements grant the County ***complete control of the right of way*** empowering the County to preclude the Club’s improvements, whether or not the minor improvements interfere with trail use or future railroad use. The County also contends that it may grant permission for the Club’s use and improvements on the condition that the Club pay rent, cleverly called “land use fees,” even though it is the Club that owns the fee interest, not the County. Essentially, the County is improperly seeking to exercise land rights which

the 1875 Act did not grant. These are the harms that the Club is seeking to have the Board correct by this Petition.

Generally, the Club asks the Board to authorize the Club's use of the right of way with minor improvements at Waverly Beach and to declare that the County cannot charge the Club rent. Specifically, the Club seeks to reopen the original proceeding to remove the area used by the Club from the area subject to railbanking, *i.e.* allow complete abandonment. The area is 21,688 square feet which is only half an acre and is not needed for future railroad operations or the trail which is finished. Ex. 7B, Appendix B. It has been established that potential future railroad operations would only need a 100-foot right of way, not a 200-foot width. This approach would mean that the removed area owned by the Club would no longer be encumbered by the railroad and trail easements, and thus, would eliminate King County's assumption of authority over the land.

As an alternative to reopening, the Club seeks a declaration that King County cannot rely upon the railroad or trail easements as authority to preclude the Club's minor improvements and beach activities or to charge rent. First, railroad operations have been discontinued (though legally not abandoned), so there is no active "railroad company" to pursue any "railroad purposes" on this easement. King County ***holds the railroad easement in abeyance*** subject to future transfer to a railroad company and reactivation of a railroad after approval by this Board. Similarly, the County holds a trail easement to build and operate a trail, *i.e.*, for "trail purposes." King County recently completed the permanent trail and the

Club's use and minor improvements do not conflict with the paved trail. King County cannot assert non-trail reasons to preclude the Club's minor improvements and activities. The County's easement rights also provide no authority to charge rent. In this alternative, the Club accepts that its property would be subject to being used for potential future railroad purposes, *i.e.* railroad activation approved by this Board. The Club suggests that the Board could impose a condition on the Club assuring removal of the minor improvements if required by a railroad company.

In addition, the Club seeks a declaration that the Club's minor improvements and beach activities do not interfere with the trail or with potential future railroad reactivation. This third point relies on the same facts showing noninterference as discussed in the first point seeking reopening. The Club contends that reopening and removal is the best solution for the reasons noted. However, as an alternative, the Club requests that the Board authorize the minor improvements and beach activities to continue as noninterfering uses of the right of way consistent with prior decisions of the Board. As noted above, for this alternative, the Club does not seek to displace the railroad; rather, the Club accepts potential future railroad use and would accept a condition requiring the Club to remove the minor improvements if required by a railroad company. 49 C.F.R. § 1152.29(d)(1) (NITU issued "subject to appropriate conditions").

II. Board proceedings and historical background.

The Surface Transportation Board (Board) considered this 12.45-mile railroad corridor known as the Redmond-Issaquah Line along the eastern shore of Lake

Sammamish in King County, Washington, in *The Burlington Northern and Santa Fe Ry. Co.—Abandonment Exemption—in King County, WA*, STB Docket No. AB–6 (Sub–No. 380X). The Board granted the abandonment exemption and issued the Notice of Interim Trail Use (NITU) (served May 13, 1998, Sept. 18, 1998²). The NITU authorized King County and The Land Conservancy of Seattle and King County (TLC) to negotiate an interim trail use agreement.³ The interim use of the railroad corridor for trail use—"Rails to Trails"—is authorized pursuant to the National Trails System Act, 16 U.S.C. § 1247(d).

The historical background of this railroad corridor and the related Board proceedings were described in a decision of the United States Court of Federal Claims in Findings of Fact which were undisputed by the plaintiffs and the United States:

The right-of-way was granted to the Seattle, Lake Shore, and Eastern Railroad Company (the Seattle Railroad Company) under the General Railroad Right of Way Act of 1875, 18 Stat. 482, 43 U.S.C. §§ 934 *et seq.* (repealed [by the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, 2793]) (the 1875 Act). The 1875 Act granted railroad companies rights-of-way over public land to construct tracks and operate railways. The requirements for obtaining a right-of-way were set forth in the 1875 Act, and included filing a map of the intended railroad with the local district land office and receiving approval from the Secretary of the Interior. *See* General Railroad Right of Way Act of 1875, § 4 (codified at 43 U.S.C. § 937).

² 1998 WL 638432

³ STB Docket No. AB-6 (Sub-No. 380X) was consolidated with *The Land Conservancy of Seattle and King County—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Ry. Co.*, STB Finance Docket No. 33389 and *The Land Conservancy of Seattle and King County—Abandonment Exemption*, STB Docket No. AB-508X. *See also* *Redmond-Issaquah R.R. Pres. Ass'n v. Surface Transp. Bd.*, 223 F.3d 1057 (9th Cir. 2000) (upholding Board decision to reject Offer of Financial Assistance by Redmond-Issaquah Railroad Preservation Association (RIRPA)).

Pursuant to the 1875 Act, between 1887 and 1891, the Seattle Railroad Company took the necessary steps to establish a railroad right-of-way across public land along the eastern shore of Lake Sammamish in King County, Washington. On July 5, 1887, the Seattle Railroad Company secured approval from the Department of the Interior of their map identifying the location for proposed construction of a railroad running generally along the eastern shoreline of Lake Sammamish, Washington. Construction of the railroad was completed in 1888. On April 15, 1891, the Seattle Railroad Company filed, with the United States Land Office in Seattle, Washington, a Map of Location showing the final location of the constructed railroad. . . .

. . .

In 1997, Burlington Northern, a successor in interest to the Seattle Railroad Company's right-of-way, concluded that continued operation of the pertinent line was not economically viable. *See Redmond-Issaquah R.R. Pres. Ass'n v. Surface Transp. Bd.*, 223 F.3d 1057, 1058 (9th Cir.2000). Therefore, in 1998, Burlington Northern sought an exemption from the United States Department of Transportation, Surface Transportation Board (STB) to abandon a 12.45 mile line of railroad on the eastern shore of Lake Sammamish, a portion of which traverses the [plaintiff Beres'] property. *See Burlington Northern & Santa Fe Ry. Co.—Abandonment Exemption—in King County, WA*, STB Docket No. AB-6 (Sub. No. 380X), 1998 WL 638432 (S.T.B. Sept. 16, 1998 [service date 9/18/98]).

On May 13, 1998, the STB granted Burlington Northern an exemption to abandon a 12.45 mile length of railroad between milepost 7.3, near Redmond, and milepost 19.75, at Issaquah, in King County, Washington. *See id.* On September 16, 1998 [service date 9/18/98], the STB authorized The Land Conservancy (TLC) of Seattle and King County to assume financial responsibility for the right-of-way pursuant to the National Trails System Act Amendments of 1983 § 208, Pub.L. No. 98-11, 97 Stat. 42, 16 U.S.C. § 1247(d) (1994). *See id.* The STB also authorized the issuance of a NITU for the Burlington Northern right-of-way, permitting King County and TLC to establish a trail over the railroad right-of-way. The STB's ruling authorized the conversion of the railroad right-of-way into a recreational trail pursuant to 16 U.S.C. § 1247(d). King County, Washington subsequently reached an agreement with Burlington Northern for use of the right-of-way for trail purposes. Since the STB approved conversion of the railway to a trail, no railway carriers have used the railroad, and the tracks subsequently were removed from the right-of-way.

Beres v. United States, 64 Fed. Cl. 403, 404–06 (2005) (footnotes omitted).

In 2000, the Board reopened the Redmond-Issaquah Corridor proceeding and issued an amended NITU to allow the City of Issaquah to assume interim trail manager responsibility for the southerly 1.55 miles of the corridor. STB Docket No. AB-6 (Sub-No. 380X) (served Apr. 5, 2000). King County remained responsible for the remainder of the interim trail, including the Waverly Hills Club site.

III. Specific facts related to this Petition.

Waverly Hills Club sets forth the following facts and circumstances related to this Petition.

A. Railroad established and site location.

In the 1880s, the Seattle Lake Shore & Eastern Railway Company constructed the rail line along the east side of Lake Sammamish from Redmond to Issaquah in the Seattle area. A small unincorporated town historically known as Monohan was recognized. A County Road was constructed originally known as the Issaquah-Redmond Road, later East Lake Sammamish Road, and now East Lake Sammamish Parkway. Situated about four miles north of Issaquah, Monohan is the location of the current Waverly Hills neighborhood and Waverly Beach which is now within the City of Sammamish. Ex. 1 (regional vicinity map) and Ex. 2 (neighborhood map), attached as Appendices A and B.

By the late 1940s, new property owners looked to develop the area for housing in the suburban Seattle area. In 1948, the Plat of New Monohan Addition created 26 lots on the east side of Issaquah-Redmond Road (now East Lake Sammamish Parkway) accessed by what is now SE 33rd Street. Then, the Plat of Waverly Hills was created in

1959 followed by the Plat of Waverly Hills No. 2 in 1963 with 87 lots total in the two Waverly Plats. The Waverly Hills neighborhood was up the hill and east of “East Lake Sammamish Road” and accessed by what is now SE 32nd Street. Ex. 3. During the 1960s, the developer sold lots or homes in the Plat of New Monohan Addition and Plats of Waverly Hills No.1 and No. 2 with the homes granted community beach rights on Lake Sammamish—at Waverly Beach, which the developer also owned. The home and lot owners had an undivided ownership interest in the beach in common with other owners.

Waverly Beach was and is on the Lake side of the historic rail line that ran along the east side of Lake Sammamish from the 1880s to the 1990s. In this area, the rail line was cut into the moderate slope adjacent to, and on the Lake side, of what is now East Lake Sammamish Parkway. The historic rail line was on a berm or embankment—a raised earthen structure—about ten feet above the Waverly Beach area. From Waverly Hills, the residents and their guests could walk across East Lake Sammamish Parkway at SE 32nd Street, then traverse over the rail line and down the embankment directly to Waverly Beach. Vehicles (and pedestrians) accessed Waverly Beach by crossing the rail line on SE 33rd Street and turning north onto an access road now known as East Lake Sammamish Shore Lane SE. These pedestrian and vehicle access points have remained in use since the 1960s. Ex. 3 (neighborhood aerial photo 2023), Ex. 4 (2002 aerial photo of beach area).

B. Waverly Hills Club was established and thrives for 50 years.

The Waverly Hills Club was incorporated in 1967 for nonprofit purposes to manage the community beach on Lake Sammamish known as Waverly Beach. Ex. 5 (Articles of Incorporation). The Club took steps to join all the property owners with beach rights into the homeowners' association. Specifically, the members were property owners with beach rights that owned lots in the Plat of New Monohan Addition and the Plats of Waverly Hills and Waverly Hills No. 2. In 1969, the developer deeded the beach land (uplands and lakebed) to Petitioner Waverly Hills Club, Incorporated, thus affording the homeowners' association full control of the beach for the benefit of the lot owners. Ex. 6 (deed). Homes continued to be built in the 1970s and beyond with a few vacant lots still existing today. There are currently about 105 homeowners in the Club.

Waverly Beach was, and is, the community focal point every summer. Beach activities include swimming at the swim beach, picnicking on the grass or at picnic tables, using the installed BBQs, and boating with a boat dock, boat ramp, and a few shared boat moorage slips. A gravel parking area is provided along with a storage shed. A security fence is in place to protect the moored boats and to mitigate other trespass activity. Appendix A, Ex. 7A (2023 aerial photo with new permanent paved trail and vehicle access gate labeled at southeast corner).⁴ Residents with their numerous guests flock to the beach for summer activities. Hundreds of kids and adults learned to swim, water ski or wakeboard at Waverly Beach and also enjoyed tubing

⁴ In the Exhibit 7A aerial photo, the trail was in the final stages of construction which explains the trucks along the paved trail. A construction staging areas is just to the southeast as shown in Exhibit 3.

and other boating activities. Over the decades, Waverly Hills community activities included annual opening day and beach cleanup parties, kids' campout/movie nights, taste of Waverly pot lucks, and annual closing day events. Members have also held parties at Waverly Beach for all occasions, including birthdays, graduations, and anniversaries. As homes were resold, new residents and their guests discovered Waverly Beach, joined the community activities, and made new friendships.

C. The Waverly Hills Club maintained a right of way lease with Burlington Northern, but asserted fee ownership of the railroad right of way.

After gaining full control of the beach area in 1969, the Waverly Hills Club managed Waverly Beach adjacent to the operating railroad. By the 1970s, the rail line was operated by Burlington Northern and Santa Fe Railway Company, also known as Burlington Northern or BNSF. The Redmond-Issaquah Line typically had a right of way of 50 feet on each side of the centerline, but in the Waverly Beach area the railroad originally had a right of way of 100 feet on each side of the centerline—a total 200-foot right of way. Nevertheless, the railroad used far less than 50 feet on each side of the centerline for railroad operations. On the Waverly Beach side, the railbed and embankment utilize only about 30-40 feet from the centerline. The Waverly Hills Club controlled and used a portion of the railroad right of way—the area on the Lake side of the embankment, for most of the parking area, a large part of the grass picnicking area at the north, and also the area of the access road. Ex. 7B (diagram). The Club was exercising its fee title rights while avoiding interference with the railroad's exercise of its easement rights. Ex. 8A (2023 aerial photo with right of way marked in

blue-green, red-orange lines are approximate parcel lines) and Ex. 8B (current Club waterfront property outside the right of way marked in blue-green).

Even though the railroad made no use of the right of way being used by the Club, Burlington Northern asked the Waverly Hills Club to sign an Indefinite Term Lease for use of a specifically mapped area of the right of way plus use of the joint access road. Burlington Northern sent a letter to the Club dated June 29, 1973, with the lease and map of the leased area attached. Exs. 9A (cover letter and lease) and 9B (map). Apparently, Burlington Northern previously had a lease with the Club's predecessor, Cougar Mountain Associates. Ex. 9A at Addendum paragraph 23. The lease included a colored map designating the area of the lease. Ex. 9B. The letter included a hand notation: "21,500 sq ft (Beach only, Private beach & Recreation." Ex. 9A. The Club's usage area today is essentially the same extent at 21,688 square feet and also at the same location shown in the lease map. *Compare* Ex. 7B *with* Ex. 9B. Importantly, Burlington Northern had no railroad use for the right of way area used by the Club—if it did, then it would not have leased out that area for decades.

The 1973 lease specified the rent as \$900 annually. Exs. 9A and 9B. It was easier for the Club to pay the rent than to argue. However, the action by Burlington Northern started a deeper review regarding the ownership rights of the right of way. In 1975, the Club approached King County Councilmember Thomas M. Forsythe indicating a concern about the origin of the beach, explaining that the Club is not interfering with the railroad, and suggesting that the Club could acquire the right of way from the County if the County acquired the right of way. Ex. 10 (4/20/75).

Councilmember Forsythe responded and gave his assurance that, if the County acquired the right of way, then the Club could acquire the land. Ex. 11 (4/23/75). Three years later, the Club obtained another assurance that the Club could get the land it occupied except the County indicated a desire to use the tracks area for a hiking trail—that assurance came from King County Councilmember Mike Lowry—later Governor of the State of Washington. Ex. 12 (6/26/78, Georgia Hare’s letter to Lowry that is referenced in Ex. 12 has not been found). The Club then sought help from Chicago Title Insurance Company which confirmed that the right of way at the Club location was granted pursuant to the 1875 Act. Ex. 13.

Then, Burlington Northern notified the Club in 1982 that the rent was being increased from \$900 annually to \$1500 annually. Ex. 14 (4/8/82). That caused the Club to hire an attorney. The Club’s attorney wrote to inform Burlington Northern that the railroad only had an easement, that the Club as the adjoining owner could use the easement area as long there was no material interference with the railroad—citing and attaching the State Supreme Court’s *Veach v. Culp* case (95 Wn.2d 570, 599 P.2d 526 (1979)), and pointing out that the Club’s use did not interfere with the railroad uses. Ex. 15 (2/28/83). The attorney’s letter included a letter from the United States Department of Interior (5/15/69) indicating that an 1875 Act grant, “is a mere easement, a right to use for railroad purposes only, and is not a grant of fee simple title.” *Id.* Burlington Northern responded with a terse reply stating that the “charter right-of-way is more than an easement.” Ex. 16 (3/16/83). The Club’s attorney responded again stating the position that the Club could make non-interfering use of

the right of way and citing *Great Northern R. Co. v. United States*, 315 U.S. 262 (1942) and other cases. Ex. 17 (9/7/83). The records include a letter from the Club's attorney to the Club's Board reflecting essentially a handshake deal with Burlington Northern that the rent would not increase above \$1500 annually due to the Club's claim of title, and since nothing would be in writing the Club was not waiving any rights to pursue legal action in the future. Ex. 18 (12/8/83).⁵ The deal with Burlington Northern held until 1996 when apparently Catellus Management Corporation managing the rail line on behalf of Burlington Northern sought a substantial increase in rent. The Club sent a letter to Catellus which explained that rent could not be increased due to the earlier "mutual remedy," that the Club was using its property without interfering with the railroad as it was allowed to do, and that the Club intended to pay only \$1500 annual rent per the previously agreed compromise. Ex. 19 (8/25/96). Specifically, the Club's letter said that the 1875 Act granted the railroad only a right of way easement, and thus, "retained for the fee owner the right to use the property in a manner that does not interfere with railroad usage." *Id.* The letter then stated: "Clearly, our use of the property does not interfere with the operation of the railroad." *Id.* Burlington Northern did not suggest in any correspondence that the Club's use was interfering with the railroad, and of course the existence of the lease is directly contrary to any such assertion. A year later Burlington Northern was seeking to abandon the Redmond-Issaquah Line.

⁵ The Club waives attorney client privilege only as to this document.

Waverly Hills Club holds fee title to the right of way. The Waverly Beach is located in Section 8, Township 24 North, Range 6 East, Willamette Meridian, specifically in Government Lot 1 of Section 8. The Club's traces its title back to John Anderson who obtained a United States Government land patent in 1892 (Rec. No. 92788, 2/19/1892).⁶ The land described in the patent included all of Government Lot 1—the location of the Waverly Beach uplands, and other land. Though not expressly stated in the patent, the land grant was subject to the railroad right of way easement. Through a series of conveyances, the Club was granted the uplands and shorelands at Waverly Beach.⁷

Later, after King County took over management of the Corridor, the Club reviewed the status of the Club's claim to fee ownership of the right of way and determined that the Club clearly held fee ownership of the right of way. However, the Club assessed whether any other party could possibly have a potential claim to fee ownership of the right of way. The Club retained a title researcher who determined that, if for any

⁶ "Rec. No." herein refers to the official recording number assigned by the King County Recorder's Office or predecessor agency.

⁷ John Anderson and Addie E. Anderson, his wife, deeded the land to George W. Olts (Rec. No. 48531, 3/4/1890). George W. Olts and Bessie Olts deeded the land to Allen & Nelson Mill Company (Rec. No. 48532, 3/4/1890). The second class shorelands (lakebed) in front of Government Lot 1 were conveyed by the State of Washington to John E. Bratnober who was a President of Allen & Nelson Mill Company (Rec. No. 540375, 3/21/1908). Bratnober deeded the second class shorelands to the Company (Rec. No. 665209, 2/9/1910). The Allen and Nelson Mill Company was succeeded by the Bratnober Lumber Company and the land and shorelands were transferred to the new company. The Bratnober Company sold the area of the Waverly Beach—the uplands and second class shorelands—to Carl Pearson and Earl Pearson, doing business as Issaquah Lumber Company (Rec. No. 4070390, 10/20/1950). The Pearsons sold the land to Nyal W. Headley via a real estate contract (Rec. No. 4948038, 9/26/1958). Nyal Headley assigned his interest in the real estate contract to Factoria Development Corporation and Cougar Mountain Associates (a limited partnership) (Rec. No. 5353956, 11/16/1961; re-record Rec. No. 5378449 1/23/1962; fulfillment Rec. No. 550639). Factoria Development and Cougar Mountain Associates were the land developers with Cougar Mountain Associates owning the portion of the land at Waverly Beach. Cougar Mountain Associates deeded the land to Waverly Hills Club in 1969. Ex. 6 (Rec. No. 6604585, 12/31/1969).

reason the Club was not the fee owner of the right of way, then the Pearson family could be the only possible people who would still hold the fee interest. The Pearson heirs were contacted and they all agreed to sell any interest that they might hold in the right of way to the Waverly Hills Club. Thus, in 2003, the Club obtained four Quit Claim Deeds from Jennie Esther Pearson, Louise Pearson Henkin, Marilyn Pearson, and Thelma Dorothy Pearson deeding the right of way in Government Lot 1 to the Club.⁸ Defendant King County recognized the sale and transfer of ownership to Waverly Hills Club in the tax account records and the Club began paying property taxes and other fees. The common legal description in each of the Pearson deeds is set forth in Exhibit 20 and the area conveyed is shown in Exhibit 21 which is an area of the right of way extended well beyond the Waverly Beach.

D. Burlington Northern transferred the right of way and King County completed trail construction.

Burlington Northern formally was allowed to discontinue the rail line in 1998 with the rail line designated for trail use under the Rails to Trails program. Burlington Northern had conveyed the right of way by quit claim deed, *i.e.* whatever interests it held, to TLC, and the quit claim deed expressly stated that the deed was subject “to all existing interests.” Ex. 22 (Rec. No. 9704280575, 4/28/97). TLC then conveyed the right of way by quit claim deed to Defendant King County the next year, again subject “to all existing interests.” Ex. 23 (Rec. No. 9809181252, 9/18/98). Because Burlington Northern held only an easement under the 1875 Act, TLC and King County in turn

⁸ Recorded 7/8/03, King County Rec. Nos. 20030708002298, 20030708002299, 20030708002300, 20030708002301.

could only obtain an easement. The County was the designated trail manager, and the railroad tracks were removed. Ex. 4 (2002 aerial photo). King County constructed an interim trail that opened in 2006. Ex. 24 (2009 aerial photo). The interim trail followed the former railroad track centerline well separated from the Waverly Beach area of the right of way.

King County completed the permanent paved trail known as the East Lake Sammamish Trail (or ELST) at the Waverly Beach location in 2023. Appendix A, Ex. 7A (2023 Aerial Photo).⁹ Again, the permanent paved trail utilizes the same location, the same centerline, as the former railroad tracks and interim trail, and is well separated from the Waverly Beach. Defendant King County had never objected to the Waverly Beach use of the right of way from 1998 when King County obtained its rights until 2020. Since that time, the parties were seeking some type of resolution, but when that failed, this action followed.

E. Other litigation regarding this Corridor confirms that potential future railroad operations only necessitate a 100-foot right of way.

King County took the position in court that a 100-foot wide right of way was sufficient for the immediately adjacent portion of the right of way northwest of the Waverly Beach site. The width of the right of way was subject to serious dispute because the County was claiming the right of way via a prescriptive easement as no deeds conveyed that right of way section to the railroad. Those property owners argued that the railroad used 12 feet for actual railroad operations and the

⁹ In this Exhibit 7A aerial photo, the trail was in final stages of construction which explains the trucks along the paved trail. A construction staging areas is just to the southeast as shown in Exhibit 3.

prescriptive rights should be so limited, but the Court agreed with King County and ruled that a 100-foot railroad right of way was required for safety and operations.

The case was *Hornish v. King County*, 182 F.Supp. 3d 1124 (W.D. Wash., 2016). The *Hornish* case was litigated in the Federal District Court of Western Wahington in Seattle based on Plaintiffs' Amended Complaint. Ex. 25. The case had two sets of plaintiffs—Hornish and the remaining non-Hornish plaintiffs. The remaining non-Hornish plaintiffs were on the Corridor immediately northwest of the Waverly Beach and the County claimed a prescriptive railroad easement at that location.¹⁰ Two of the non-Hornish plaintiffs were Neighbors and Menezes (Ex. 25 at ¶¶ 14 and 15). The subject properties listed in the Amended Complaint by parcel number for Neighbors and Menezes are shown just three properties northwest of the Waverly Beach for Menezes and a short distance further for Neighbors. Ex. 26 (Neighbors), Ex. 27 (Menezes). The other non-Hornish plaintiffs were in this same area. Exhibit 27 in particular shows the total incongruity of the 100-foot Corridor against the 200-foot Corridor on the Waverly site. A large portion of the 200-foot right of way in the Waverly area, primarily the area more than 50 feet from the centerline, will not be needed to connect with the adjacent 100-foot Corridor.

At the trial court in *Hornish*, King County argued based on expert testimony that a 100-foot railroad right of way was necessary for safety and operation needs. Ex. 28 (Excerpt of King County Motion for Summary Judgment, 1/28/15). The expert

¹⁰ Thus, the *Hornish* case did not involve a grant under the 1875 Act for any of the plaintiffs; rather, the Court determined that the County held fee ownership to the right of way adjacent to the Hornish property and that the prescriptive easement affecting the remaining plaintiffs was a state law railroad easement.

evidence presented by the County took the position that the width needed was from 59 feet 8.5 inches to 96 feet 8.5 inches due to safety and operational needs, thus the County concluded that: “a one hundred foot width is necessary to serve the purpose of the Corridor.” *Id.* The trial court agreed: “the necessity of a 100 foot wide corridor for railroad operations entitles the County to summary judgment on this issue.” *Hornish*, 182 F.Supp.3d at 1131. However, the Court recognized that the right of way had been narrowed to 50 feet and 75 feet at specific parcels due to railroad conveyances to private property owners. *Id.* at 1130. The width of the railroad right of way was an issue on appeal and the Ninth Circuit upheld the right of way width as 100 feet. *Hornish v. King County*, 899 F.3d 680, 699-702 (9th Cir. 2018). The appellate Court recognized the same exceptions of 50 feet and 75 feet at specific parcels. *Id.* at 702.

F. Additional information regarding King County actions.

King County previously took a much different approach to private property owner installed minor improvements in this right of way. A group called the Sammamish Homeowners (SHO) and other individuals challenged the County’s permit applications for the trail and the result was the 2014 Settlement Agreement (SHO-KC Settlement Agreement). Ex. 29 (2/7/14).¹¹ The property owners wanted to obtain clarity about what was allowed or not allowed in the right of way. The SHO-KC Settlement Agreement was the result, and the County agreed that most landscaping improvements were allowed as follows:

Landscaping Improvements and Vegetation: The County agrees that owners of real property burdened by, or adjacent to, the County right of way for the ELST may

¹¹ Exhibit 2 to the SHO-KC Settlement Agreement is not included in Exhibit 29. Exhibit 2 provided numerous wall styles/designs to address only the Chapman Wall provision at Section 6 and is not applicable to other situations.

install landscaping improvements and vegetation within the County’s right of way in accordance with the criteria set forth in Exhibit 1.

Ex. 29 at 2, Section 1. The Club is a beneficiary of the SHO-KC Settlement Agreement as an owner of, “real property burdened by, or adjacent to, the County right of way.”

Id. Exhibit 1 to the Agreement set forth several reasonable conditions and then defined “plantings” to mean plants, shrubs, and trees, and defined “landscaping” to mean, “other manmade features, including, but not limited to, planting beds, fences, retaining walls, etc.” Ex. 29 at Exhibit 1, ¶¶ 11 and 12. Specifically, the SHO-KC Settlement Agreement provided that plantings/landscaping are to be allowed outside the trail footprint. Ex. 29 at Exhibit 1, ¶ 4.

The SHO-KC Settlement Agreement demonstrates two important points. First, the County implicitly found that “landscaping,” including “planting beds, fences, retaining walls,” posed no conflict with potential future railroad use. Second, the same improvements outside the trail footprint posed and pose no conflict with trail use. Therefore, King County cannot credibly assert that a grass picnic area with BBQs and movable picnic tables along with a gravel surface parking area, all far outside the trail footprint, would cause any conflict with rail or trail use.

As noted above, King County finally conceded that it has only an easement for right of way granted under the 1875 Act in a case before the Washington Supreme Court involving a separate area of the Redmond-Issaquah Corridor. *King County v. Abernathy*, 2 Wn.3d 697, 702 (2024) (“The parties [including King County] do not dispute that the 1875 Right-of-Way Act granted only an easement over the Corridor.”). Yet, King County stubbornly asserts that the railroad and trail easements

afford the County *exclusive* control of the right of way and authority to prohibit all uses—after previously allowing plantings/landscaping improvements, including fences and retaining walls, in the SHO-KC Settlement Agreement.¹²

Also, King County now asserts that it can, in the alternative to preclusion, charge rent, which it euphemistically calls “Land Use Fees,” but the County’s intent is clear. The County explains that a Land Use Fee is required when: “a landowner adjacent to one of King County’s regional trails or parks proposes to use public land for their own private, non-park purposes.”¹³ Of course, the Club’s position is that King County only has an easement, so the right of way at the Waverly Beach site is not “public land” subject to rental type charges. The website goes on to state: “The Land Use Fee represents the cost of the private use or ‘rental’ of public lands,” and that, “Land Use Fees reflect market rate value and the costs associated,” with administration.¹⁴ Thus, it is more than clear that the County is charging rent based on, “market rate land values.” In addition, King County has specifically threatened to charge the Club for back rent.

In early 2020, Waverly Hills Club sought negotiations with the County on these issues and numerous ideas were exchanged over many years with some delays due to the pandemic and other factors. Still, a substantial effort was made by the parties, but

¹² The County has not sought to prohibit use of the access road.

¹³ Website last visited 1/22/25:

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

¹⁴ See website cited in footnote 12.

those negotiations have not resulted in a resolution, thus necessitating this formal action.

IV. Petition to reopen and de-railbank small portion of right of way which is unnecessary for potential future railroad use.

The Petition to Reopen urges the Board to de-railbank a small portion of right of way used by the Club. The Board has authority to do this by first reopening the former proceeding. Then, the Board would need to vacate the existing NITU and issue a replacement NITU for the remaining right of way. Finally, the Board would order immediate abandonment of the subject right of way portion. The facts demonstrate that the small area of 21,700 square feet is not needed for the completed permanent trail or for potential future railroad operations. This approach is preferred because the railroad and trail easements would be terminated for this small area removing any and all King County authority.¹⁵

A. Legal authority.

The Waverly Hills Club submits this petition to reopen STB Docket No. AB-6 (Sub-No. 380X) due to new evidence and substantially changed conditions. 49 U.S.C. §1322(c)(1) (“interested party may petition to reopen”) and 49 C.F.R. §1115.4. The Club seeks reopening to vacate the NITU for only a 21,688 square foot portion of the right of way. Appendix B, Ex. 7B. The relief appears to be authorized by 49 C.F.R. §1152.29(d)(2) which states in part:

¹⁵ For clarification, the site is within the exclusive police power and land use jurisdiction of the City of Sammamish and will remain so. But King County’s authority over the land would end.

If a party requests that the NITU be vacated for only a portion of the right-of-way, the Board will issue an appropriate replacement covering the remaining portion of the right-of-way subject to the interim trail use agreement.

In the alternative, Waverly Hills Club seeks relief under any other provision of the STB Rules, including as an application proceeding for relief from the scope of the NITU. 49 C.F.R. §§1101.2(e)(2) and 1100.3.

The Board clearly has authority to reopen the NITU to abandon a portion of the railbanked right of way. For example, the Board reopened the abandonment proceeding, vacated the Certificate of Interim Trail Use, and issued a decision permitting immediate abandonment for the unneeded portion of the right of way in *Union Pac. R.R. Company—Abandonment between Echo & Park City & Between Keetley Junction & Phoston, in Summit & Wasatch Counties, UT*, No. AB-33 (Sub-No. 55), 2006 WL 280874, at *1 (Jan. 31, 2006).

Waverly Hills Club seeks reopening based on new evidence and substantially changed conditions, but does not rely upon material error which is the third alternative criterium. 49 C.F.R. §1115.4.

B. New evidence and substantially changed conditions

Waverly Hills Club points to three items constituting new evidence or substantially conditions: (1) the determination that only a 100-foot right of way is needed for potential future railroad operations; (2) no railroad company has sought to reactivate the line in the 27 years since the NITU was issued—more than a quarter century; and, (3) the permanent paved trail is now complete with no foreseeable conflicts with the Waverly Beach improvements.

An important consideration is the purpose of the grants to railroads under the 1875 Act. Discussed in more detail *infra* at Section V.A., the original Congressional policy was to grant massive land holdings to railroads to encourage transcontinental railroad building, but that policy changed in 1871 and the 1875 Act was intended to grant only a “right of passage” and not grants of land. *Great Northern R. Co. v. United States*, 315 U.S. 262, 275 (1942), *see also id.* at 271-277 (full discussion). Keeping excess land encumbered by right of way is inconsistent with the Congressional policy to limit land grants to railroads.

The facts and circumstances applicable here to the Waverly Hills Club situation are unique and support the limited reduction of the right of way by 21,688 square feet. The nature of the Redmond-Issaquah Corridor is that the line is a patchwork of 1875 Act federal government grants, privately granted rights to the railroad, and even prescriptive easement claims where no advance property interests were obtained. Substantial portions of the line are 100 feet in width, 50 feet on each side of the centerline, and there are small right of way portions that are only 50 feet or 75 feet in total width. It is only the 1875 Act grants that are 200 feet in total width.

King County acquired the trail manager duties in 1998 and began evaluating the Corridor for purposes of constructing first a temporary trail and then later a permanent paved trail. King County also had occasion to assess the potential for future railroad operations to defend the *Hornish* lawsuit. The County hired experts and made a comprehensive presentation of evidence to the Court. The County presented the evidence as supporting the need for a 100-foot railroad right of way

due to safety and operational reasons. The District Court and Ninth Circuit agreed that the Redmond-Issaquah Corridor required a 100-foot right of way for potential future railroad operations. *See discussion supra* at Section III.E. It took 15-20 years of County management to carefully study the current conditions and conclude that only a 100-foot right of way is needed. This information is new evidence as it did not exist in 1997-98. In addition, the information constitutes a substantially changed condition because it supports that a 200-foot width is not needed at Waverly Beach.

The second point is that no railroad company has sought to reopen the line, and it has been 27 years since the NITU was issued. Over a quarter century has gone by and there is no prospect of a railroad company wanting to reactivate the line. That supports the conclusion that reactivation will never occur which supports reconsidering the need for the expansive 200-foot wide right of way. The lack of interest after 27 years is new information and a substantially changed condition.

The third point is that King County has completed the permanent paved trail—still an interim trail in Rails to Trails language, but a permanent trail in King County language. The permanent trail was fully completed in 2023—a full quarter century since King County became trail manager. Mountains of studies were performed and years of public input occurred. The final result was the permanent paved trail, and the Club's use of Waverly Beach does not conflict with the permanent trail. At the Waverly Beach location, the permanent trail was constructed on the historic centerline on the berm and well away from the Waverly

Beach use and minor improvements. The location of the permanent trail is new evidence and a substantially changed condition.

The small portion of right of way at Waverly Beach, 21,688 square feet, is not needed for railroad operations or the permanent trail. The mere fact that a portion of right of way was not needed for the trail was sufficient to remove that area from the right of way in *Union Pac. R.R. Company—Abandonment between Echo & Park City & Between Keetley Junction & Phoston, in Summit & Wasatch Counties*, 2006 WL 280874, at *1. Thus, that precedent should be sufficient justification to reopen this proceeding to consider the Club's request to remove the identified area from the right of way.

C. The evidence supports removal of the small portion of right of way.

For the same reasons, the evidence presented supports removal of the small portion of right of way. In addition, removal is consistent with the 1875 Act which restricted land grants to railroads. Removal is the preferred relief because, with removal, the Waverly Beach area would be free of County meddling. However, we expect King County to resist this proposal. At a minimum, the evidence supports reopening in order to hold a hearing for the parties to make full presentations on all facts and arguments.

V. Declaratory relief ending King County's misuse of the railroad and trail easements—the County seeks to preclude the Club from using the right of way or would allow the use with payment of rent.

This petition for declaratory relief seeks to curb King County's misuse of the railroad and trail easements. This request is presented in the alternative to removal

described above. If the Waverly Beach portion of the right of way is de-railbanked, then the railroad and trail easements would no longer encumber the Club's land and this request for declaratory relief would be moot. The Board has authority to grant declaratory relief, "to terminate a controversy or remove uncertainty." 5 U.S.C. § 554(e); *see also* 49 U.S.C. § 1321. In particular, the Board has jurisdiction to review whether an underlying or neighboring landowner is taking action which conflicts with a railbanked railroad easement. *Jie Ao and Xin Zhou—Petition for Declaratory Order*, Surface Transp. Bd. Docket No. FD 35539, 2012 WL 2047726, at *3 (Service Date: June 6, 2012). That jurisdiction necessarily extends to consideration of the scope of the trail easement and potential interference with trail operations because the trail easement was created by federal law—the Trail Act (16 U.S.C. § 1247(d), and the Board's NITU in this matter. *See Trevarton v. South Dakota*, 817 F.3d 1081, 1085 (8th Cir. 2016) ("the STB retains jurisdiction over an unabandoned right-of-way," including whether the trail manager violated the servient owner's property rights).

It is undisputed that the railroad easement at the subject site was a grant from the United States under the 1875 Act. King County grudgingly accepts that it does not hold fee title, but argues that it does not matter because the railroad easement grants the County exclusive use and possession of the railroad right of way. Based on that power, the County contends that it can preclude all use of the right of way by the underlying fee owners, such as the Club. King County also contends that it has the authority to permit use of the right of way on condition of payment of rent.

The fundamental problem with King County’s position is that the County is not a railroad company, operating a railroad. Thus, the County cannot exercise a ***railroad company’s rights*** to use ***the railroad easement*** for ***railroad purposes***. Section 1 of the 1875 Act grants a right of way “to any railroad company.” 43 U.S.C. § 934. This basic understanding of the railroad easement does not mean the railroad easement is unimportant. King County could in the future transfer the railroad easement to a railroad company to reactivate service after approval by the Board. But King County cannot pretend the County is a railroad company utilizing the right of way for railroad purposes and seek to prohibit the fee owner from using its own property. The County should not be allowed to further the charade that the County has usable railroad easement rights when those rights can only be exercised by a railroad company. The Club seeks a declaration that King County holds the railroad easement in abeyance during this period that the railroad use has been discontinued such that the County cannot use the railroad easement as authority for controlling use of the right of way. As explained by the Supreme Court, the Trails Act deemed: “interim trail use to be like discontinuance rather than abandonment.” *Preseault v. I.C.C.*, 494 U.S. 1, 8 (1990).

King County also has a trail easement, but that is a trail easement for a trail, and does not authorize non-trail related restrictions on the fee property owners. The Club seeks a declaration that King County holds the trail easement to control the trail, and not as a basis to enforce non-trail related restrictions.¹⁶

¹⁶ For clarification, the site is within the exclusive police power and land use jurisdiction of the City of Sammamish, so King County does not otherwise have land use regulatory control.

A. The 1875 Act right of way was a federally granted easement to railroad companies for railroad purposes.

The *Brandt* case ended the renewed debate over the rights granted to railroads under the 1875 Act. The railroad obtained a mere easement, and not the fee. The next question is to consider the scope of that railroad easement. The authorities are equally clear that the 1875 Act easement is limited to railroad purposes exercised by a railroad company. King County holds the easement but cannot rely upon the railroad purposes easement as a basis for precluding uses of the right of way.

In 2014, the Supreme Court definitively held that the 1875 Act granted only a right of way easement, not the fee. *Marvin M. Brandt Revocable Trust v. U.S.*, 572 U.S. 93, 110 (2014) (*Brandt*). The *Brandt* Court said: “a right of way granted under the 1875 Act was a simple easement,” rejecting the argument that it was a limited fee or qualified fee. The underlying fee owner held the possessory interest subject to the easement. The *Brandt* case ended a renewed debate on the issue by upholding its own decision 70 years before in *Great Northern R. Co. v. United States*, 315 U.S. 262 (1942).

In *Great Northern*, the railroad sought to confirm that the 1875 Act conferred it a limited fee or other quasi fee in the right of way, and hence the right to the oil and mineral rights. The Court had no doubt and stated that the 1875 Act: “clearly grants only an easement, and not a fee.” *Id.* at 271. The Court carefully reviewed the statutory, legislative, and administrative history. The Court concluded that the wording of Section 1 of the Act (43 U.S.C. §934) stating the grant was a “right of way through public lands” was clear in granting only a “right of passage.” *Great*

Northern, 315 U.S. at 275. The Court was particularly convinced that Section 4 was clear in granting only an easement since it stated: “thereafter all such lands over which such right of way shall pass shall be disposed of **subject to such right of way**.” *Id.* at 271 (emphasis added). The Court distinguished numerous cases which had called railroad rights of way a limited, base, or qualified fee as being prior to Congress’ 1871 change in policy. *Id.* at 278-279. The Court explained the history of Congressional railroad grants and that starting in 1850, Congress, “embarked on a policy of subsidizing railroad construction by lavish grants from the public domain,” *i.e.* granting huge blocks of land to the railroads, but this policy, “incurred great public disfavor.” *Id.* at 273.

The Congressional policy changed and, after 1871, new grants to railroads did not include land grants. *Id.* at 274. The Court concluded that by stating:

That petitioner has only an easement in its rights of way acquired under the Act of 1875 is therefore clear from the language of the Act, its legislative history, its early administrative interpretation and the construction placed upon it by Congress in subsequent enactments.

Great Northern at 277. Thus, the Court ruled that the railroad had no right to use the right of way for oil and mineral exploration. Instead, the railroad company’s rights were limited to using the right of way for railroad purposes as explained by Congress, namely the 1875 Act, “simply grants an easement or use **for railroad purposes**.” *Id.* at 276-277.¹⁷ Similarly, the Supreme Court in *Brandt* affirmed that, “only an easement for railroad purposes was granted” by the 1875 Act. 572 U.S. at

¹⁷ Quoting H.Rept. No. 4777, 59th Cong., 1st Sess., p. 2 (Ser. No. 4908); *cf.* S.Rept. No. 1417, 59th Cong., 1st Sess., p. 2 (Ser. No. 4904).

104 (citing *United States v. Union Pacific R. Co.*, 353 U.S. 112, 119 (1957)); *see also* *Barahona v. Union Pac. R.R. Co.*, 881 F.3d 1122, 1133 (9th Cir. 2018) (“[E]ven though we have concluded that the pre–1871 Acts do not require a railroad purpose, we must still decide whether the pipeline served such a purpose for those rights of way acquired under the 1875 Act.”).

The *Beres* case was the Court of Federal Claims case involving the Redmond-Issaquah Corridor. The Court initially considered whether the 1875 Act granted the railroad an easement or the fee at the location of the Beres property. *Beres v. United States*, 64 Fed. Cl. 403 (2005). That decision was almost a decade before *Brandt* ended the debate, but the Claims Court came to the same conclusion as *Brandt* after extensive analysis. The Claims Court concluded that 1875 Act: “granted an easement to the railroad for railroad purposes.” *Beres*, 64 Fed. Cl. at 427 (emphasis added). A later decision by the Claims Court again provided extensive and concluded: “The 1875 Act easements by the 1875 Act's very terms, as validated by contextual history, were limited to railroad purposes.” *Beres v. United States*, 104 Fed. Cl. 408, 453 (2012).¹⁸ A Claims Court decision in a different case summarized:

Taken together, the language of the 1875 Act, the implementing regulations, and context in which the 1875 Act was passed indicate that ***the easements were granted to a “railroad company” for a “railroad purpose” and for “no other purpose”***

The Ellamae Phillips Co. v. United States, 99 Fed. Cl. 483, 486 (2011) (emphasis added).

¹⁸ The Club was a party to the *Beres* consolidated case and the Club later agreed to a compromise settlement with the United States in which there was no determination of property interests.

The Tenth Circuit Court of Appeals affirmed that a right of way granted under the 1875 Act, “must be used for railroad purposes.” *LKL Assocs., Inc. v. Union Pac. R.R. Co.*, 17 F.4th 1287, 1298 (10th Cir. 2021). The *LKL* case involved an operating railroad and not a Rails to Trails conversion. The Court found that operating railroads had the right to exclusive use of the right of way to further railroad purposes, but that a building materials business did not further railroad purposes and neither did a lease. The Court was clear that it was addressing an operating railroad stating that the issue was, “**whether a railroad** with an 1875 Act easement has the right to exclude” the fee owner. *Id.* at 1297 (emphasis added). The Court stated that this issue was not addressed in *Brandt*. *Id.* at 1295.¹⁹ The *LKL* Court had no occasion to address the situation here in which the railroad has been discontinued leaving the railroad easement in abeyance but held by the trail manager.²⁰ More on point, the Supreme Court ruled in a Trails Act case that the servient owner, here the Club, can conduct activities in the right of way that do not interfere with the trail use. *United States Forest Serv. v. Cowpasture River Pres. Ass’n*, 590 U.S. 604, 613–14 (2020).²¹

¹⁹ Arguably, the *Brandt* and *Great Northern* decisions, by describing the right of way as a mere easement without a land grant, call for allowance of noninterfering uses by the servient owner even **if the railroad is operating**, but the *LKL* Court held otherwise.

²⁰ The Ninth Circuit addressed a similar case in which an operating railroad—a line not subject to a Rails to Trails conversion, sought to enforce rights against the servient owner, and the Court followed the ruling in the *LKL* case. *Alaska R.R. Corp. v. Flying Crown Subdivision Addition No. 1 & Addition No. 2 Prop. Owners Ass’n*, 89 F.4th 792, 802 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 2579 (2024)

²¹ The *Hornish* appellate case, though not involving an 1875 Act grant, agreed that a railroad easement is for railroad purposes and the new trail easement is for recreational trail purposes, and then noted that King County must use these easements consistent with those purposes. *Hornish v. King County*, 899 F.3d 680, 696-697 (9th Cir. 2018).

King County's position is that the railroad easement grants the County exclusive use and possession of the railroad right of way. Controlling use of the right of way is relevant to a railroad company operating a railroad, but it is not relevant to a non-railroad company holding the railroad easement in abeyance because the railroad use is discontinued. A non-railroad company such as King County is not operating a railroad and has no railroad activities that could be conducted in the right of way. The County's action to seek exclusive use and possession conflicts with the *Brandt* and *Great Northern* conclusion that the fee owner retains possession and that land grants were not intended. The Club accepts that the railroad Corridor could be reactivated in the future and that could mean that Waverly Beach would lose its picnic and parking areas. But until that occurs, the County should not be allowed to misuse the railroad easement for non-existent railroad purposes.

B. The new trail easement is for an interim trail for trail purposes.

King County as the interim trail manager has authority under the trail easement to build and operate a trail. The trail easement provides authority to operate the trail for trail purposes. The trail easement does not provide the County authority to take non-trail actions.

The National Trails System Act provides that interim trail use of railroad rights of way shall not be deemed abandonment. 16 U.S.C § 1247(d). As explained by the Supreme Court, this statute: "is the culmination of congressional efforts to preserve shrinking rail trackage by converting unused rights-of-way to recreational trails." *Preseault v. I.C.C.*, 494 U.S. 1, 5 (1990). The statute limits the use of the railroad

right of way to recreational trails: “the interim operator may use the right-of-way **for trail purposes.**” *Trevarton v. South Dakota*, 817 F.3d 1081, 1085 (2016). In the *Trevarton* case, the State operated a non-motorized trail in a railbanked 1875 Act right of way. The plaintiffs alleged that trail use interfered with ranching activities—the State forbid motor vehicles on the trail. *Id.* at 1084. The Court concluded that the State was acting appropriately within its, “right to use the acquired right-of-way **for recreational trail purposes.**” *Id.* at 1087 (emphasis added).

However, “trail purposes” cannot be stretched to mean that King County has authority to preclude uses and minor improvements whether or not there is a conflict with trail use. King County has a trail easement, but that is a trail easement for a trail and does not authorize non-trail related restrictions on the fee property owners. The County knows how to do this which was demonstrated in the SHO-KC Settlement Agreement in which the County set forth conditions to manage trail use, such as protecting sight lines, no encroaching on the trail footprint, etc. Ex. 29 at Ex. 1. The Club accepts that the County has authority to manage the trail for trail purposes. But here the County has overstepped its trail manager authority in seeking to preclude use of the right of way by the fee owner.

C. The County cannot charge rent and declaratory relief summarized.

King County asserts that it can, in the alternative to preclusion, charge rent, which it calls “Land Use Fees.” The facts shows that the County clearly intends to charge rent describing the fees as “rental of public lands,” but at this location the Club

owns the land not the public, so there is no basis to charge rent. Charging rent to the owner of the land is not a railroad purpose under the railroad easement (which is in abeyance) and is not a trail purpose under the trail easement. See *LKL Assocs., Inc. v. Union Pac. R.R. Co.*, 17 F.4th at 1297-1301 (leasing 1875 Act right of way is not a railroad purpose).

The Club seeks a declaration that King County holds the railroad easement in abeyance during this period that the railroad use has been discontinued such that the County cannot use the railroad easement as authority for controlling use or possession of the right of way. The Club also seeks a declaration that King County holds the trail easement to control the trail, and not as a basis to enforce non-trail related restrictions, including preclusion of the Club's usage and minor improvements at Waverly Beach. Finally, the Club seeks a declaration that charging rent to the owner of the fee is improper because it is not a legitimate railroad purpose or trail purpose.

VI. Declaratory relief confirming that the Waverly Beach use and improvements do not interfere with potential future railroad operations or current trail use.

The evidence presented clearly demonstrates that the Waverly Beach use and minor improvements do not interfere with the trail, or future rail, operations. The Club seeks a declaration confirming that fact. As a reminder, most of the subject area is grass and the rest is gravel surface parking lot. Ex. 7B. Grass and gravel on the ground are not impediments to railroad operations and the only other item is

the chain link fence which is easy to remove in the event it is necessary for future rail operations.

This request for a declaratory order is presented in the alternative to removal described above. If the Waverly Beach portion of the right of way is removed, then the railroad and trail easements would no longer encumber the Club's land and this request for declaratory relief would be moot.

Importantly, the STB has recognized that pre-existing rights of third parties, such as the Club, should be respected when those activities do not interfere with potential future railroad use as follows:

[P]re-existing rights of a third party to use part of the rail corridor are not impacted by railbanking and interim trail use under the Trails Act. In other words, trail use under the Trails Act should not prevent a third party from continuing to use a portion of the rail right-of-way in the same manner it was used before the interim trail use on the line, so long as it does not interfere with the potential reactivation of rail service.

Ex. 30 (Letter from STB General Counsel to Department of Justice, 6/29/20). As described in the factual background, the Club's use and improvements in the right of way predate the 1998 NITU. The Club seeks a declaration that the Club's noninterfering uses and minor improvements can remain.

A. Noninterfering activities and improvements by the fee owner are allowed in the right of way.

The *Brandt* court concluded that the 1875 Act granted only a simple easement to the railroad. That means that typical rules apply, namely that the servient owner, here the Club, can conduct noninterfering activities in the right of way. The Supreme Court decided the *Cowpasture* case and stated exactly that. *United States*

Forest Serv. v. Cowpasture River Pres. Ass'n, 590 U.S. 604, 613–14 (2020). The case involved a trail under the Trails Act. The Court said that: “easements grant only nonpossessory rights of use limited to the purposes specified in the easement agreement.” *Id.* at 613 (citation omitted). The Court added: “because an easement does not dispossess the original owner, a possessor and an easement holder can simultaneously utilize the same parcel of land.” *Id.* (citation and quotation omitted). The Court ruled that the servient owner/agency could authorize a pipeline without interfering with the trail.

This Board considers this issue under preemption analysis which requires, “a factual assessment of whether that action would have the effect of preventing or unreasonably interfering with rail transportation.” *Jie Ao and Xin Zhou—Petition for Declaratory Order*, Surface Transp. Bd. Docket No. FD 35539, 2012 WL 2047726, at *3 (Service Date: June 6, 2012). Because the request required a transfer of ownership (adverse possession) impacting potential rail operations, the Board denied the request. However, the Board ruled on a separate issue that a prescriptive easement could be acceptable because it would “not take railroad property outright.” *Id.* at 7. The Board followed the same analysis in *14500 Limited LLC*, Surface Transp. Bd. Docket No. FD 35788, 2014 WL 2608812 (Service Date: June 5, 2014). But in that case, the Board found that the prescriptive easement claim was an exclusive use claim that would deprive the railroad of land.

The key in these cases is whether the private claim seeks to dispossess the railroad interest. In contrast, as summarized by the Board: “a property interest

permitting access to portions of a railroad ROW, unless exclusive, does not typically unreasonably interfere with the present or future use of the property for activities that are part of railroad transportation.” *Jie Ao and Xin Zhou*, 2012 WL 2047726, at *3); *see also* Ex. 30 (STB General Counsel letter stating that the intent of the Trails Act is to allow noninterfering pre-existing uses to continue). Here, the Club accepts potential future railroad use.

B. The Board should declare that the Club’s activities and improvements are noninterfering.

The 1875 Act grant is a federal grant, not a state-based property law claim. Thus, this matter is uniquely within the Board jurisdiction. Importantly, the Club is not attempting to displace the future railroad or the trail. Unless the Board grants removal, the Club accepts that its fee interest is subject to the railroad and trail easements. Thus, railroad operations could be reactivated in the future and displace the Waverly Beach improvements. The Club would accept a condition, potentially a covenant, requiring the Club to remove the fence and other improvements if required by the railroad operator. 49 C.F.R. § 1152.29(d)(1) (NITU is issued “subject to appropriate conditions”).

However, without disputing the existence of the railroad and trail easements, the Club contends that its activities and minor improvements will not interfere with potential future railroad operations or trail use. The County carefully studied the need for future operations and the County’s railroad experts concluded that the right of way needed to be only 100 feet in this area, not 200 feet. The Court agreed and the appellate court confirmed that conclusion—that only a 100-foot right of way

is needed in this area. The trail is complete and uses far less than 100 feet. The Club's use and minor improvements are all mostly outside the area within 50 feet of the centerline. Appendix B, Ex. 7B. And, if that was a concern, then the Club would concede the area within 50 feet of the centerline. The Specific Facts above provide substantial evidence of noninterference, for example:

- The railroad leased the subject area to the Club and its predecessor for 30 years demonstrating that the area was not needed for railroad purposes.
- There were no conflicts with King County from 1998 through 2020 which was during the period that the temporary trail was constructed and used.
- The permanent paved trail is being used with no conflicts with the Club improvements.
- The SHO-KC Settlement Agreement shows that the County was not concerned with conflicts due to minor improvements including fences.
- Grass and a gravel surface parking area do not create conflicts with railroad or trail uses.
- Importantly, King County took the position that a 100 foot right of way was sufficient at this location and the Court agreed.

The facts simply do not support an unreasonable conflict and the Board should issue a declaratory order accordingly.

C. Declaratory relief requested

The Club seeks a declaration that the Club's activities and improvements in the right of way do not interfere with trail use or potential future railroad use. Removal is the preferred relief because, with removal, the Waverly Beach area would be free of County meddling. However, if the County disputes these conclusions, then at a

minimum, the evidence supports holding a hearing for the parties to make full presentations on all facts and arguments.

VII. Conclusion.

Waverly Hills Club, Incorporated, brings this Petition to seek relief from the misuse of the railroad and trail easements by the trail manager King County. In this Rails to Trails conversion, the railroad has been discontinued. As explained by the Supreme Court, the Trails Act deemed: “interim trail use to be like discontinuance rather than abandonment.” *Preseault v. I.C.C.*, 494 U.S. 1, 8 (1990). Without an active railroad, the railroad easement is not available to be used for railroad purposes; rather, the railroad easement is in abeyance. The railroad easement was transferred to King County as the trail manager, but the easement can only be used if the railroad easement was transferred to a railroad company in the future after approval of railroad activation of this line by this Board.

Despite this situation, King County wants to use the railroad easement, or trail easement, as authority to claim exclusive use and possession rights to the right of way. The Club respectfully requests that the Board remove the 21,688 square feet being used by the Club from the railroad right of way, and hence remove any further railroad encumbrance that could be the basis of authority for railroad or trail purposes. The facts demonstrate with the Club’s use and minor improvements—grass and gravel parking—especially beyond 50 feet of the centerline, will not interfere with any potential future railroad use, especially because the Court have confirmed a 100-foot width for the adjacent right of way.

And, as noted, the Club will, if necessary, concede any Club use within 50 feet of the centerline. Those facts support de-railbanking of the Waverly Beach area.

In the alternative, the Club seeks a declaratory order regarding the County's misuse of the railroad easement and/or trail easement due to the County's contention that it can preclude the Club's use of the right of way or charge rent. The *Brandt* and *Great Northern* decisions hold that the 1875 Act grants only a mere easement, that the fee owner retains possession, and that the grant was not intended as a land grant program. In trying to preclude uses devoid of any railroad or trail easement basis ***and claim possession***, King County is effectively making a land grab in the character of the land grants prohibited by the *Brandt* and *Great Northern* decisions. The Club seeks declarations as follows or in such other form that the Board deems just:

- That King County holds the railroad easement in abeyance during this period that the railroad use has been discontinued such that the County cannot use the railroad easement as authority for controlling use of the right of way.
- That King County holds the trail easement to control the trail, and not as a basis to enforce non-trail related restrictions, including preclusion of the Club's usage and minor improvements at Waverly Beach.
- That charging rent to the owner of the fee is improper because it is not a legitimate railroad purpose or trail purpose.

Finally, in the alternative, the Club seeks a declaration 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.

Respectfully submitted this 28th day of January 2025.

STEPHENS & KLINGE LLP

/s/ Charles A. Klinge

Charles A. Klinge, WSBA #26093
Richard M. Stephens, WSBA #21776
10900 NE 4th Street, Suite 2300
Bellevue, WA 98004
(425) 453-6206
Email: klinge@sklegal.pro
Email: stephens@sklegal.pro

*Attorneys for Petitioner
Waverly Hills Club, Incorporated
a Washington nonprofit corporation*

Consent to Email Service: Petitioner Waverly Hills Club, Incorporated, consents to accept service in this matter via email to counsel at the two email addresses provided in the above signature block.

Waverly Beach 2023



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Date: 1/20/2025

Notes:

APPENDIX A



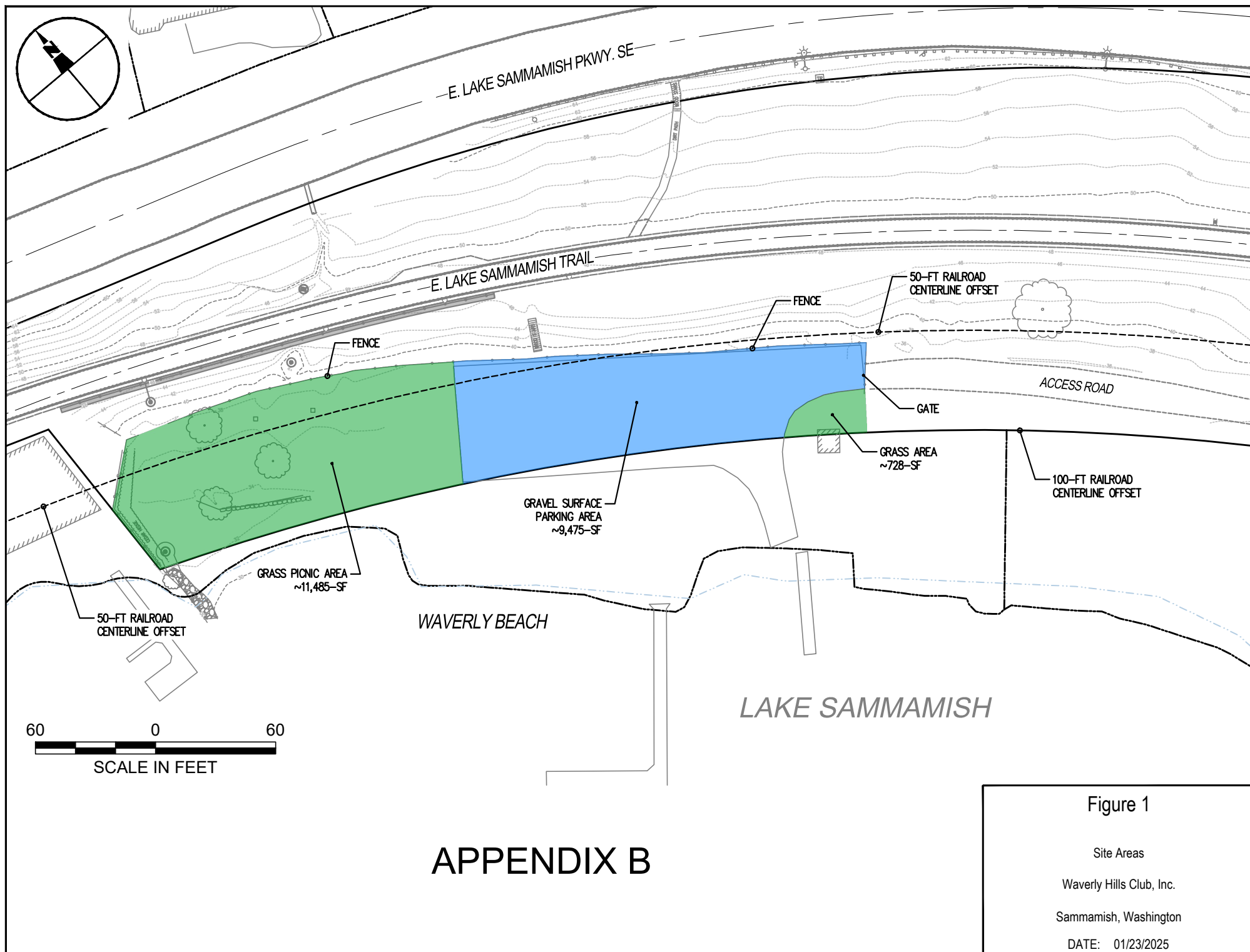


Figure 1

Site Areas
Waverly Hills Club, Inc.
Sammamish, Washington
DATE: 01/23/2025

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

***THE BURLINGTON NORTHERN AND SANTA FE RY. CO.—
ABANDONMENT EXEMPTION—IN KING COUNTY, WA***

STB DOCKET NO. AB-6 (Sub-No. 380X)

WAVERLY HILLS CLUB, INCORPORATED

EXHIBITS 1-30 FOR

**PETITION TO REOPEN NITU DECISION
OR, IN THE ALTERNATIVE,
PETITION FOR DECLARATORY ORDERS**

STEPHENS & KLINGE LLP

Charles A. Klinge, WSBA #26093

Richard M. Stephens, WSBA #21776

10900 NE 4th Street, Suite 2300

Bellevue, WA 98004

(425) 453-6206

Email: klinge@sklegal.pro

Email: stephens@sklegal.pro

Attorneys for Petitioner

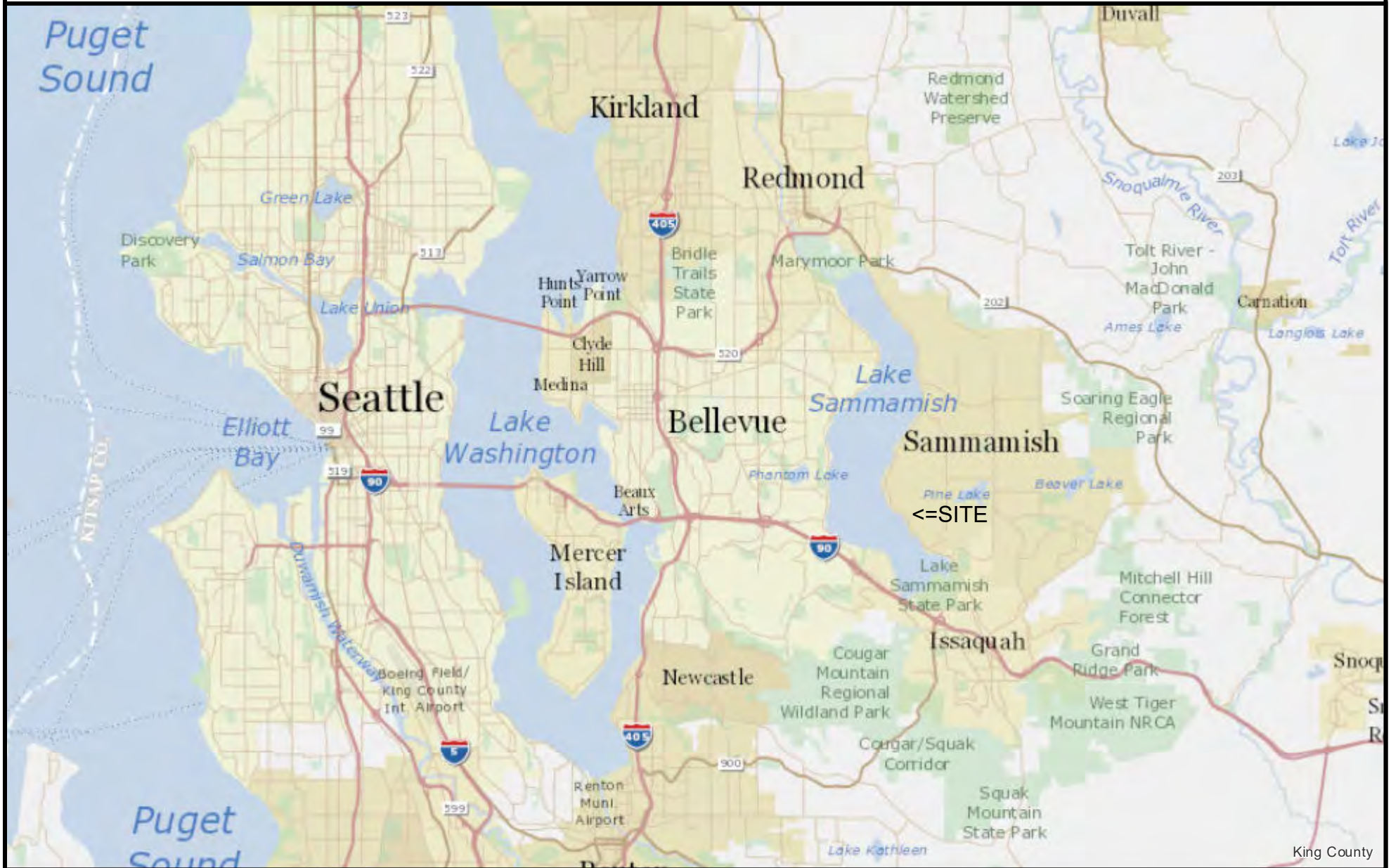
Waverly Hills Club, Incorporated

a Washington nonprofit corporation

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 1

Waverly Beach



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Date: 1/21/2025

Notes:

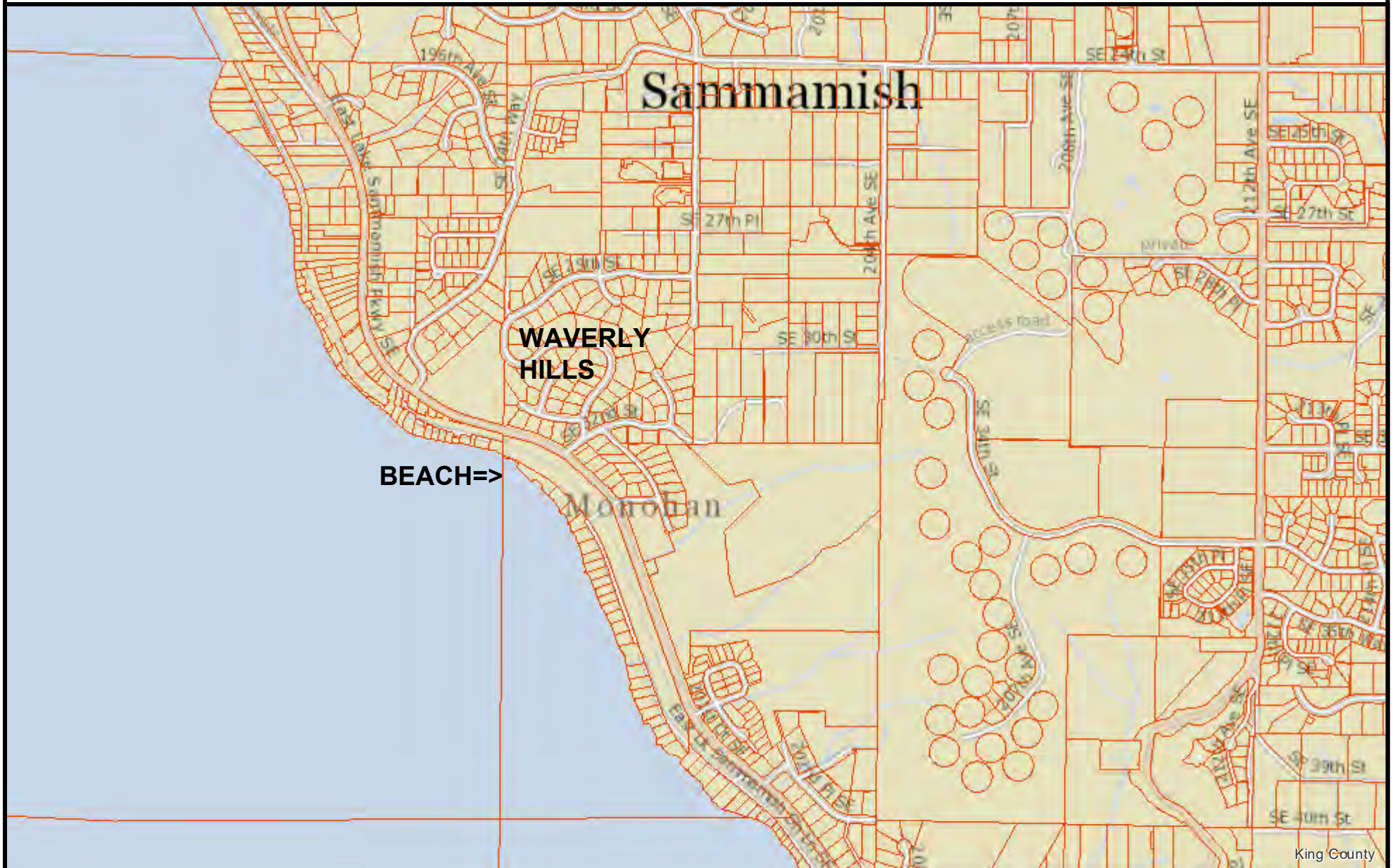


King County

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 2

Waverly Beach



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Date: 1/21/2025

Notes:



WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 3

Waverly Beach



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Date: 1/20/2025

Notes:



WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 4

Waverly Beach - 2002



King County, Space Imaging, Inc., Pacific Meridian Resources, King County

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Date: 1/21/2025

Notes:



WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 5



184731
FILE NUMBER

DOMESTIC



STATE OF WASHINGTON | DEPARTMENT OF STATE

I, **A. LUDLOW KRAMER**, Secretary of State of the State of Washington and custodian of its seal,
hereby certify that

ARTICLES OF INCORPORATION

184731
of WAVERLY HILLS CLUB, INCORPORATED
a domestic corporation of Issaquah, Washington,

were filed for record in this office at 8:00 o'clock A.m., on this date, and

I further certify that such Articles remain on file in this office.

Filed at request of Waverly Hills Club, Incorporated
19651 SE 29th Street
Issaquah, Wash.
Attn: Ronald L. Parypa

NON PROFIT
Filing and recording fee \$ 25.00
License to June 30, 19__ \$
Excess pages @ 25¢ \$

In witness whereof I have signed and have
affixed the seal of the State of Washington to
this certificate at Olympia, the State Capitol,

April 27, 1967

Microfilmed, Roll No. 1061

Page 861 - 864

A. LUDLOW KRAMER
SECRETARY OF STATE

861

APPROVED
AS TO FORM AND FILED

APR 27 1967

NONPROFIT, NONSTOCK CORPORATIONS

ARTICLES OF INCORPORATION OF

Waverly Hills Club, Incorporated

(Name of Corporation)

A. LUDLOW KRAMER

SECRETARY OF STATE

BY

Maria Cody
SUPERVISOR OF CORPORATIONS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, each being of lawful age and citizens of the United States and residents of the State of Washington, pursuant to authority granted by the statutes of said State, under Title 24, Chapter 24.04 RCW for the purposes herein specified, do hereby make and subscribe to the following Articles of Incorporation.

ARTICLE I

The name of the corporation shall be Waverly Hills Club, Incorporated

ARTICLE II

The principal place of business of the corporation shall be

19651 SE 29th Street Issaquah, Washington.
(Street and No. or Route and No.) (City or Town)

ARTICLE III

The duration of this corporation shall be perpetual.

ARTICLE IV

The number of trustees of the corporation shall be not less than five nor more than nine
The names of the trustees who shall manage the affairs of the corporation for not less than two months nor more than six months from date of incorporation are as follows: Wm. S. Aulerich, Douglas D. Decker, Ronald L. Parypa,
Robert A. Nova, Herbert E. Christiansen

ARTICLE V

*The purposes for which this corporation is formed are as follows:
The purpose of the corporation is to provide its members with an organized program for the development of the waterfront property held in common; to represent its members in community projects and problems which may occur from time to time; to act as a legal representative for its members in community affairs, and it shall conduct all business pertaining to community endeavors which the corporate membership may initiate.

The corporation shall operate in such a manner that the various avocational interests of the members, in regards to community activities, will be protected and encouraged.

(See attached sheet.)

ARTICLE VI

The corporation is organized for nonprofit purposes and shall not have capital stock. No part of any net earnings shall inure to the benefit of any member or other individual. The interest of each incorporator or member shall be equal to that of any other and no incorporator or member can acquire any interest which will entitle him to any greater vote or interest than any other member. The private property of the members of this corporation shall not be liable for the debts of the corporation.

ARTICLE VII

Upon dissolution of the corporation the assets shall be distributed to _____ the members _____ in accordance with Section 501 (c) (3) of the Internal Revenue Code. This corporation shall not conduct any activities not permitted to be conducted by an organization exempt under above code.

IN WITNESS WHEREOF, we have hereunto set our hands this 30th day of March 1967.

Ronald L. Parypa
Douglas D. Decker
Wm. S. Aulerich
Robert A. Nova
Herbert E. Christiansen

STATE OF WASHINGTON)
) ss
COUNTY OF _____)

This is to certify that on the 30th day of March 1967 before me personally appeared Ronald L. Parypa, Douglas D. Decker, Wm. S. Aulerich, Robert A. Nova and Herbert E. Christiansen

to me known to be the individuals who executed the foregoing instrument, and who acknowledged to me that they signed and executed the same as their own free voluntary act and deed for the uses and purposes therein mentioned.

Harold D. Johnson
Notary Public in and for the State of
Washington residing at Spokane

Notary Seal

Article V (cont'd)

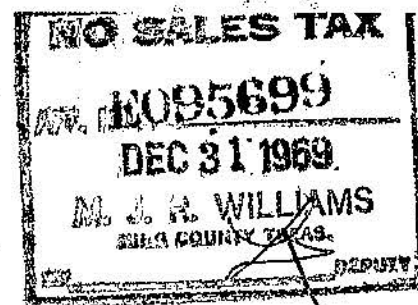
Members are limited to those families and/or persons owning property in Waverly Hills and New Monohan Addition, King County, Washington, and who hold

"An undivided interest in and to that portion of government lot 1 of Section 8, Township 24 North, Range 6 East", more particularly described under "Legal Description of Community Beach and Easement for Roadway and Utilities" contained in that instrument of public record under King County Auditor's Receiving No. 6033187.

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 6

STATUTORY WARRANTY DEED



THE GRANTOR, COUGAR MOUNTAIN ASSOCIATES, a limited partnership, conveys and warrants to WAVERLY HILLS CLUB, INC., the grantee, the following described real estate situated in the county of King, State of Washington; to wit:

6604585

That portion of Government Lot 1 of Section 8, Township 24 North, Range 6 East, W.M., described as follows:
Beginning at the Northwest corner of said Government Lot 1; thence south $01^{\circ}31'52''$ west a distance of 89.32 feet along the westerly limits of said Government Lot 1 to it's intersection with the southwesterly limits of the Northern Pacific Railroad Right of Way, said point being the true point of beginning; thence along a curve to the right the center of which bears south $20^{\circ}34'44''$ west having a radius of 1222.22 feet an arc distance of 351.44 feet along said southwesterly limits of the Northern Pacific Railroad Right of Way; (said point being known as Point "X" hereinafter); thence south $37^{\circ}03'14''$ west a distance of 105.00 feet; thence north $47^{\circ}45'32''$ west a distance of 330.14 feet to said westerly limits of Government Lot 1; thence north $01^{\circ}31'52''$ east along said westerly limits of Government Lot 1 a distance of 30.68 feet to the true point of beginning.

TOGETHER WITH the remaining second class shorelands adjoining, AND

TOGETHER WITH an easement for roadway and utilities described as follows:

Beginning at Point "X" as designated above; thence along said Railroad Right of Way along a curve to the right the center of which bears south $37^{\circ}03'14''$ west having a radius of 1222.22 feet an arc distance of 303.02 feet; thence south $51^{\circ}43'41''$ west a distance of 10 feet; thence south $38^{\circ}16'19''$ east a distance of 20 feet; thence north $51^{\circ}43'41''$ east a distance of 10 feet to a point on said Railroad Right of Way; thence along said right of Way along a curve to the right the center of which bears south $52^{\circ}11'49''$ west having a radius of 1222.22 feet an arc distance of 70.00 feet to 197th Place Southeast; thence south $56^{\circ}10'44''$ west along the northwesterly limits of said 197th Place Southeast a distance of 15.00 feet; thence along a curve to the left the center of which bears south $55^{\circ}28'10''$ west having a radius of 1207.22 feet an arc distance of 53.83 feet; thence south $51^{\circ}43'41''$ west a distance of 9.78 feet; thence north $38^{\circ}16'19''$ west a distance of 50 feet; thence north $51^{\circ}43'41''$ east a distance of 9.78 feet; thence along a curve to the left the center of which bears south $50^{\circ}32'29''$ west having a radius of 1207.22 feet an arc distance of 284.18 feet; thence north $37^{\circ}03'14''$ east a distance of 15 feet to point "X" and the true point of beginning.

This conveyance is subject to, and no warranties are made in respect to, any interests or rights, or asserted interests or rights, arising by virtue of deeds or other instruments executed by the grantor, or Factoria Development Corporation to owners of lots within the

DEC 31 1969

2 sheets

following named plats: New Monohan Addition, recorded in Vol. 46 of Plats, page 5, records of King County; Waverly Hills, recorded in Vol. 63 of Plats, page 68, records of King County; and Waverly Hills No. 2, recorded in Vol. 73 of Plats, page 43, records of King County.

DATED this 22nd day of December, 1969.

CMA CORPORATION, A WASHINGTON CORP.

By Robert W. Bratton
As its President

By Joseph T. Mijich
As its Secretary

For Cougar Mountain Associates, a
Limited Partnership of which it is
the General Partner

STATE OF WASHINGTON)

COUNTY OF KING) ss.

On this ^{22nd} day ^{December, 1969}, personally appeared before me ROBERT W. BRATTON and JOSEPH T. MIJICH, to me known to be the President and Secretary, respectively, of CMA Corporation, the corporation that executed the within and foregoing instrument, and acknowledged to me that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year first above written.

Stephen A. Peterson
Notary Public in and for the State
of Washington, residing at Bellevue

2 sheets

DEC 31 1969

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 7A

Waverly Beach 2023



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Date: 1/20/2025

Notes:



WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 7B

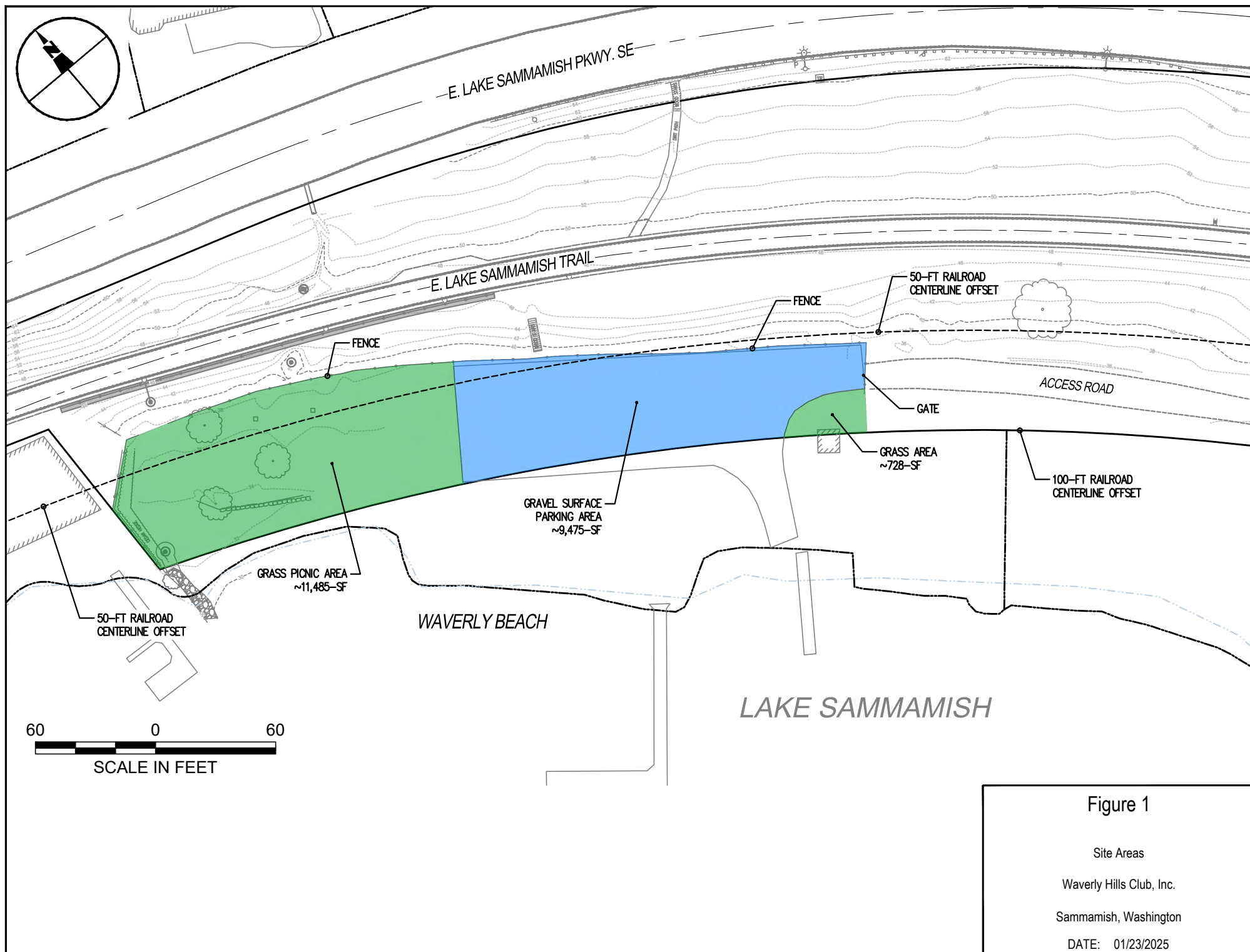


Figure 1

Site Areas
Waverly Hills Club, Inc.
Sammamish, Washington
DATE: 01/23/2025

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 8A

Waverly Beach



EagleView Technologies, Inc., King County, King County

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Date: 1/20/2025

Notes:



WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 8B

Waverly Beach



EagleView Technologies, Inc., King County, King County

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Date: 1/20/2025

Notes:



WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 9A



BURLINGTON NORTHERN

INDUSTRIAL AND REAL ESTATE
DEVELOPMENT DEPARTMENT

820 Central Building
Seattle, Washington 98104
Telephone (206) 624-1900

Waverly Hills Club, Inc.
P. O. Box 427
Issaquah, Washington 98027

June 29, 1973

ATTN: Mr. Robert A. Nova, Vice President

Gentlemen:

Enclosed herewith is your duplicate-original of the fully executed Lease No. 209,403 which covers your beach rights occupancy and joint-use access road upon our right of way at Monohon, Washington.

It is with a certain relief and mutual satisfaction that we see this matter finally drawn to a conclusion. It is now possible for all of you to peacefully enjoy your beach.

I would not want to close without saying that I feel your Mr. Bob Nova and Mr. Bert Post, and your Attorney, Mr. Sand, have certainly earned your favorable acclamation for their efforts and time spent in your behalf with the negotiation of this lease. I not only enjoyed meeting these gentlemen, but have been very impressed (and exhausted) by them.

Gentlemen, I appreciate having made your acquaintance, respect your perseverance and patience, and thank you for your hospitality.

Sincerely,

Don L. Hawkins
Real Estate Representative

DLH:cl

Enclosure

*21,500 sq ft (Beach only)
Private Beach & Recreation*

Indefinite Term Lease

Trfr: GMA Corporation
(NP) No. 100611, 1-2-69

No. 209,403

THIS LEASE made this 1st day of July 19 72,
between BURLINGTON NORTHERN INC., a Delaware corporation, hereinafter called "Lessor", and
WAVERLY HILLS CLUB, INC., a Washington corporation,

whose post office address is P. O. Box 427, Issaquah, Washington 98027

, hereinafter called "Lessee",

WITNESSETH:

In consideration of the covenants hereinafter contained to be kept and performed by Lessee, Lessor hereby
leases to Lessee upon the terms and conditions hereinafter set forth the following described premises situate ~~in the~~
~~near~~ **Monahan Station**, County of **King**, State of **Washington**:

All that part of the premises of said Lessor lying in Government Lot 1, Section 8, Township 24 North, Range 6 East, W.M. as shown outlined in RED color on the print, dated June 29, 1972, marked Exhibit "A", as attached hereto and made a part hereof.

Together with an access road, to be used jointly with other permittees of the Lessor, as shown outlined in GREEN color on said print marked Exhibit "A".

SAVING AND RESERVING to Lessor the right to construct, maintain and operate a railroad track or tracks; to construct, maintain and use buildings or other structures for railroad purposes located or to be located upon any part of the above described premises not occupied by the buildings and structures hereinafter mentioned; to construct, maintain and use or to permit to be constructed, maintained and used by others any existing or additional pipe, telegraph, telephone or power transmission line upon, over or beneath the said premises; to make any changes in grade or location of its railroad or any of its tracks, or to rearrange its station facilities, or to use the said premises or any part thereof for railroad purposes; and further saving and reserving to Lessor the right to enter thereon for any one or more of such purposes without payment to Lessee of any sum for damage of any nature which may be caused thereby.

Lessee hereby leases said premises from Lessor for the term hereof subject to the covenants and promises following, which Lessee agrees to observe and perform, to-wit:

1. Lessee shall use and occupy said premises for the sole and exclusive purpose of ~~constructing~~, maintaining, and operating thereon a **private community club beach and recreation facility together with an access road and together with facilities appurtenant thereto.**

No other buildings, structures, additions, alterations or improvements shall be erected or made on the premises by Lessee or at the direction of Lessee, save with the express permission of Lessor in writing and at the sole cost of Lessee.

2. Lessee shall pay annually, in advance, as rental for said premises the sum of ~~Nine Hundred and~~
No/100 Dollars (\$200.00).

3. Lessor reserves the right to change the rental stipulated herein at any time while this lease remains in effect.

4. Lessee shall pay all taxes, license fees or other charges which may become due or which may be assessed against said premises, against Lessee, against the business conducted on said premises or against any and all improvements placed thereon during the term hereof, except special assessments for public improvements. Lessee shall reimburse Lessor for any such taxes, license fees or other charges which may be paid by Lessor promptly upon the presentation by Lessor of bills for the amount thereof, and in default of such reimbursement, all sums so paid by Lessor shall be deemed to be and shall be treated as additional rental and recoverable as such hereunder.

In the event that the premises hereby demised, or any part thereof, shall be subject to any special assessment for any public improvement or improvements, the rental herein reserved and stipulated to be paid by Lessee shall be automatically increased by an amount equal to nine percent (9%) per annum on the total amount of the assessment.

5. Lessee shall not place or permit to be placed or to remain, any material, structure, pole or other obstruction within 8.5 feet laterally of the center line or within 23 feet vertically from the top of rail of any track located on or near said premises; provided that if by statute or order of competent public authority greater clearances shall be required than those provided for in this paragraph, then Lessee shall strictly comply with such statute or order.

No building or structure erected on said premises shall have a swinging door or window opening towards any railroad track which, when open, will restrict the clearance to less than 8.5 feet from the center line of such track.

Lessee shall not nor shall Lessee foster, sanction or permit others to operate any equipment, motor driven or otherwise, for the purpose of serving Lessee, upon or across any railroad track located on or adjacent to the demised premises except at established crossings.

Lessee agrees to indemnify and save harmless Lessor from all loss, damage, penalties, costs or judgments that may be assessed against or recovered from it on account of or in any manner arising or growing out of a violation of the provisions of this paragraph 5.

6. Lessee, at Lessee's sole costs and expense, shall install and maintain adequate facilities for fire protection in all buildings and structures upon said premises. Lessee also, at Lessee's sole cost and expense, shall observe and comply with all the rules, regulations and orders of any duly constituted authority and of any board of fire underwriters having jurisdiction of said premises and all provisions of any fire insurance policy covering said premises.

7. Lessee shall not permit the existence of any nuisance on said premises; shall maintain and keep the same in proper, clean, safe and sanitary condition and free and clear of any explosive, flammable or combustible material which would increase or tend to increase the risk of fire, except for such material as may be necessary to Lessee's business; and, further, Lessee shall keep, observe and comply with all federal, state and local regulations, ordinances and laws, and with the regulations of any duly constituted legal authority having jurisdiction of the premises, and at Lessee's sole cost shall make any and all improvements, alterations, repairs and additions and install all appliances required on said premises by or under any such regulations, ordinances or laws. Lessee shall not place or permit to be placed any advertising matter upon any part of said premises or upon any improvements thereon, except such as is necessary to advertise Lessee's own business.

8. Lessee, at Lessee's sole cost and expense, shall keep the premises hereby demised in good condition and shall make all repairs and renewals that from time to time may be necessary to keep any improvements which may be located thereon in good condition and repair and ready and fit for occupancy; and on termination of this lease, either by expiration of the term hereof or by cancellation, or otherwise, shall surrender said demised premises in a condition satisfactory to Lessor and shall fill and level all excavations and remove and level all obstructions above ground at Lessee's sole cost and expense. In the event of Lessee's failure to do so, Lessor may do said work and Lessee shall reimburse Lessor for the cost and expense thereof.

9. (a) It is understood by the parties that said premises are in dangerous proximity to the tracks of Lessor and that property on said premises will be in danger of injury or destruction by fire incident to the operation, maintenance or improvement of the railway, and Lessee accepts this lease subject to such dangers. It is therefore agreed, as one of the material considerations of this lease without which the same would not be granted, that Lessee assumes all risk of loss, damage or destruction by fire to buildings or contents or to any other property brought upon or in proximity to said premises by Lessee, or by any other person with the consent or knowledge of Lessee, without regard to whether such fire be the result of negligence or misconduct of any person in the employ or service of Lessor or of defective appliances, engines or machinery, except to the premises of Lessor and to rolling stock belonging to Lessor or to others, and to shipments of third parties in the course of transportation. Lessee hereby indemnifies and agrees to protect Lessor from all such loss, damage or destruction to property, including claims and causes of action asserted against Lessor by any insurer of said property.

(b) Lessee also agrees to indemnify and hold harmless Lessor for loss, damage, injury or death from any act or omission of Lessee, Lessee's invitees, licensees, employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation while on or near said premises; and if any claim or liability, other than from fire, shall arise from the joint or concurring negligence of both parties hereto, it shall be borne by them equally.

10. It is agreed that the provisions of paragraphs 5 and 9 are for the equal protection of any other railroad company or companies heretofore or hereafter granted the joint use of Lessor's property, of which said premises are a part.

11. (a) Without the written consent of Lessor, Lessee shall not assign this lease or any interest therein, or sublet, and no heir, executor, administrator, receiver, master, sheriff, trustee in bankruptcy, or other assignee by operation of law shall assign or sublet without such written consent.

(b) In the event of assignment of this lease, Lessor, having no advice to the contrary, shall at such time credit all unearned rental hereunder to the assignee. Any other disposition of unearned rental will be made by Lessor only upon the joint written request of both Lessee and Lessee's assignee at the time of submitting said assignment to Lessor for its consent.

12. Each and all of the covenants and promises made by Lessee herein are material considerations herefor, and upon the breach or non-performance by Lessee of any of the said covenants or promises, Lessor, at its option, may re-enter said premises, or any part thereof in the name of the whole, upon ten (10) days' written notice to Lessee, and may have, repossess and enjoy the same as of its former estate, and may terminate this lease and all rights hereby granted. A waiver by Lessor of a default shall not be deemed a waiver of any subsequent default of Lessee.

13. Notwithstanding any requirement herein for payment of rental in advance for a period in excess of one month, it is further agreed that either party may terminate this lease at any time upon giving the other party not less than ~~ninety (90)~~ **nine (9)** days' written notice of such termination; provided, however, that rent shall be paid by said Lessee to the date of termination fixed by said notice.

14. Upon the date of termination of this lease by notice as aforesaid, or otherwise, Lessee shall surrender said premises to Lessor, and, if not in default hereunder, shall prior to date of termination remove from said premises all structures and property not belonging to Lessor and restore said premises to substantially their former state, and in case of failure so to do, any such structures and property shall become the property of Lessor, or Lessor may dismantle and remove the same and restore said premises to their former state at the expense of Lessee without incurring any liability therefor.

15. All notices hereunder to be given by Lessor to Lessee may be effectually given by letter from Lessor or its agent or attorney forwarded by registered mail, postage prepaid, addressed to Lessee at Lessee's post office address above stated.

16. All notices hereunder to be given by Lessee to Lessor may be effectually given by letter from Lessee or Lessee's agent or attorney forwarded by registered mail, postage prepaid, addressed to Lessor's Industrial and Economic Development Department at 176 East Fifth Street, St. Paul, Minnesota 55101..

17. Nothing herein contained shall imply or import a covenant on the part of Lessor for quiet enjoyment.

18. Any sum which under the provisions of this lease Lessee has agreed to pay shall constitute, when due and unpaid, a lien enforceable at law by Lessor upon any building, improvements or other property of Lessee located on said premises.

19. Subject to the foregoing provisions, this lease and all of the covenants and promises thereof shall inure to the benefit of and be binding upon the parties hereto and their executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this lease, in duplicate, the day and year first hereinabove written.

NOTE: An ADDENDUM containing paragraphs 20 through 23 has been attached hereto and made a part hereof prior to execution.

In Presence of:

BURLINGTON NORTHERN INC.

By: Richard O. Brown
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
(Regional Manager - Real Estate)

WAVERLY HILLS CLUB, INC.

By: Robert Brown
Title: V.P. & REGISTERED
AGENT

ADDENDUM TO LEASE NO. 209,403

20. Lessee shall bear all cost of maintaining the road on said 15-foot strip of land.

21. Lessor reserves the right to grant to other parties permission to use jointly with lessee the aforementioned road provided it requires such other parties to share in the cost of maintenance thereof.

22. Lessor reserves the right to drain water and to divert drain water onto the subject lease site as may be hereafter deemed necessary by Lessor in order to properly drain and stabilize Lessor's abutting hillside and adjacent right of way property and Lessee agrees to provide for the further disposal of such waters.

23. This lease supercedes and terminates as of the date hereof any interest of the Lessee herein under that certain lease numbered (NP) 100,611, dated January 2, 1969, between Northern Pacific Railway Company, Lessor's predecessor in interest, and CMA Corporation as General Partner for Cougar Mountain Associates, a Limited partnership, Lessee's predecessor in interest with respect to property adjacent hereto, provided that such termination shall impair no right or obligation arising thereunder prior to the date hereof.

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 9B

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 10

Thomas M. Forsythe
Councilman, District 6
King County Council
King County Court House
Seattle Wash. 98104

4-20-75

Dear Tom:

To make a long story short, I'd like your advice on the best way to approach the County in order that Waverly Hills Club can acquire the railroad property presently leased from the Burlington Northern in the event that the County obtains the railroad right of way.

As you know, the developer of Waverly Hills, H.R. Watchie, bought 351 feet of waterfront and deeded undivided interests in the "community beach" to the purchasers of lots in Waverly Hills, Waverly Hills No. 2, and part of New Monohan. We later found out that the better part of the legally described community beach was under water and that most of the land between the fences that we had been using, together with the access road was leased from the railroad. Our "community beach" was a salesman's gimmick, dressed up to look good and to sell lots. Even the railroad was taken for a ride in that the entire lease was obtained as an access permit supposedly to allow access to his property. The cost of such an access permit being very very low and no taxes are passed down.

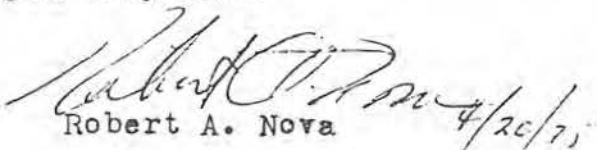
In the area of our community beach, the railroad right of way is 200 feet wide, since this was the location of the old Monohan saw mill with its railroad switch yard. In contrast, just next to us the right of way is 50 feet or less. The railroad property we wish to acquire would still leave 130 feet of right of way for any use the County might have in mind.

We feel that the County made a serious error in allowing the developer to set up the fraudulent scheme that he used to induce us all to purchase his lots. We feel that the County should help to correct this error by assisting us in acquiring the property that the developer led us to believe we had.

I know, Tom, that you were instrumental in helping us obtain the present lease we have with the railroad on this property. Many people know this and are very appreciative. At this point all we would like is to bring this matter to the attention of the proper people and departments in the County, so that in the event the County does obtain control over the right of way that we will be given due consideration and allowed to acquire this property that is such a major part of our beach.

Please advise me on the best course of action. I can put together a more complete story if that would help and some maps and legal descriptions of the property. We are also approaching Burlington Northern with a request to obtain the property if they make it available.

Thank you very much


Robert A. Nova 4/20/75

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 11

TRACY J. OWEN, Dist. No. 1
ROBERT B. DUNN, Dist. No. 2
BILL REAMS, Dist. No. 3
BERNICE STERN, Dist. No. 4
RUBY CHOW, Dist. No. 5
THOMAS M. FORSYTHE, Dist. No. 6
PAUL BARDEN, Dist. No. 7
ED HEAVEY, Dist. No. 8
DAVE MOONEY, Dist. No. 9



King County Council

Thomas M. Forsythe, ~~Chairman~~

Room 402, King County Court House
Seattle, Washington 98104
(206) 344-3457

April 23, 1975

Robert A. Nova
19604 SE 31st Place
Issaquah, WA 98027

Dear Bob:

Thank you for your letter received April 23, 1975 regarding the possibility of obtaining Burlington Northern right-of-way and mill yard property in case it becomes surplus to railroad needs.

First, I have advised King County Department of Parks that the Waverly Hills Association desires to purchase railroad property adjacent to their community beach.

In the event this line is abandoned, your desires have much latitude and will probably come to pass. Federal statutes require that governmental agencies be given first refusal for abandoned railroad right-of-ways. For example, King and Snohomish Counties are negotiating acquisition of "Milwaukee Road" right-of-way from Monroe to Snoqualmie-Tanner. In turn, King County will convey the switch yard area to the city of Carnation and similar property to Duvall. Certain side tracks will be conveyed to the railroad museum.

Bob, at the present time, the Burlington Northern does not consider surplus the East Sammamish right-of-way, but if they do, I assure you that the County will recognize your request. I can see little difficulty in your acquisition of desired property.

Who knows, the railroad may change its mind soon, otherwise its status quo.

Yours truly,

Thomas M. Forsythe
District No. 6
King County Council

TMF:lw

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 12



King County Council

Mike Lowry, *District No. 6*
Chairman, Finance, & Budget Committee

Room 402, King County Courthouse
Seattle, Washington 98104
(206) 344-3457

June 26, 1978

Waverly Hills Club, Inc.
P.O. Box 427
Issaquah, WA. 98027

Attn: Georgia Hare, Secretary

Dear Ms. Hare,

Thank you for your letter of June 5, regarding your club's desire to purchase land currently leased from the Burlington Northern Railroad, Inc.

Jack Lynch, Director of the Department of Planning and Community Development and Jim Webster, Manager of the Parks Division advised me that in the event the land becomes available for purchase from the railroad, the County would want to acquire a portion of the land for a hiking trail.

Other than that, the County would have no interest in acquiring all the land and would have no objections about the club attempting to purchase the property.

Please be advised that even though the County would have no objections, no guarantee can be made to your club assuring you the right to the property.

However, your letter of request will be kept as record and should the land become available, I will be happy to assist you in any way I can.

Very truly yours,

Mike Lowry
King County Councilman
District No. 6

ML:lg

cc: Jack Lynch
Jim Webster

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 13

CHICAGO TITLE INSURANCE COMPANY

METROPOLITAN PARK, 1100 OLIVE WAY, SUITE 1400, SEATTLE, WA 98101 (206) 628-5666



VERN L. ARNOLD
CHIEF TITLE OFFICER

December 23, 1981

Waverly Hills Club, Inc.
Post Office Box 427
Issaquah, Washington 98027
ATTN: J. W. Crotts

Dear Jim:

We have completed our study of the title to the Burlington Northern Railroad Right-of-way in Government Lot 1, Section 8, Township 24 North, Range 6 East, W.M., and can report the following findings.

The original right-of-way is 200 feet in width and was acquired pursuant to a Congressional Grant. This particular section of the railroad relies upon the Act of Congress passed March 3, 1875 (Chapter 152). In compliance with the requirements of the act, the predecessor in title, Seattle Lake Shore and Eastern Railway Company, filed their maps of the location with the Department of the Interior on June 22, 1887 and the maps were approved by the Department on July 5, 1887.

For your information I am setting out a quote of the significant portions of the 1875 Act.

The crucial matter of concern to your group is, no doubt, the nature of the title held by Burlington when the right-of-way is so acquired. Because we are not doing an actual title policy on the parcel, we are not attempting to answer that specific question for you. However, I am also including a quotation from a decision in the Supreme Court involving the nature of the title held by Northern Pacific Railway Co. under a similar Congressional Grant. The case appears to make it quite clear that a railroad company cannot convey the right-of-way acquired pursuant to such a Congressional Grant.

Act of Congress - March 3, 1875 (Chapter 152) (Excerpts).

"That the right-of-way through the public lands of the United States is hereby granted to any railroad company duly organized under the Laws of any State or Territory, except the District of Columbia, or by the Congress of the U.S., which shall have filed with the Secretary of the Interior a copy of its Articles of Incorporation, and due proofs of its organization under the same, to the extent of one hundred feet on each side of the central line of said road; . . ."

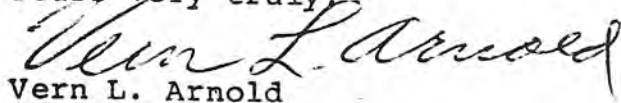
"That any railroad company desiring to secure the benefits of this act, shall, within 12 months after the location of any section of twenty miles of its road, of the same be upon surveyed lands, and if upon unsurveyed lands, within 12 months after the survey thereof by the U.S., file with the register of the land office for the district where such land is located a profile of its road; and upon approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office; and thereafter all such lands over which such right-of-way shall pass shall be subject to such right of way; . . ."

Northern Pacific Railway v Abner Townsend; May 4, 1903;
47 Law Ed. 1044; Supreme Court of the United States.

". . . Manifestly the land forming the right-of-way was not granted with the intent that it might be voluntarily disposed of at the volition of the Company. On the contrary, the grant was explicitly stated to be for a designated purpose -- one which negated the existence of the power to voluntarily alienate the right-of-way or any portion thereof.

I trust that this information helps you to deal with your problem. Our statement for research time is enclosed.

Yours very truly,


Vern L. Arnold

VLA:ceb

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 14



BURLINGTON NORTHERN RAILROAD

800 Central Building
Seattle, WA 98104
Phone 625-6682

Waverly Hills Club, Inc.
P. O. Box 427
Issaquah, WA 98027

April 8, 1982

Gentlemen:

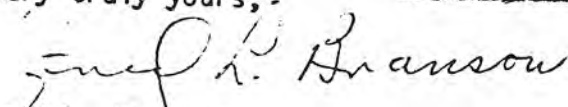
Your attention is directed to the rate of rental which you pay for premises occupied under Lease No. 209,403 at Monohon, Washington.

The rental no longer reflects a fair return on market value of the leased property and considering present day values, the rental must be increased to \$125 per month, payable annually.

Lease No. 209,403 is thus hereby supplemented to provide that effective July 1, 1982, the rental shall be \$125 per month, payable annually in advance and future billing will reflect this change. Specifying a rental rate on a monthly or annual basis and payment thereof in advance does not imply nor will it serve to convert said lease to a definite term.

This letter will serve as a supplement to Lease No. 209,403 which will continue in effect in accordance with its terms except as hereby supplemented and amended.

Very truly yours,


Fred L. Branson
Real Estate Representative

FLB:c

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 15

LAW OFFICES OF
HELSELL, FETTERMAN, MARTIN, TODD & HOKANSON
1500 WASHINGTON BUILDING
P. O. BOX 21846
SEATTLE, WASHINGTON 98111
(206) 292-1144

PAUL FETTERMAN
GEORGE W. MARTIN
RUSSELL V. HOKANSON
RICHARD S. WHITE
LIAM E. CLANCY, JR.
LIAM A. HELSELL
GARY F. LINDEN
HAROLD R. ROOKS
RONALD H. MENTELE, INC., P.S.
JOHN E. EDERER
THOMAS W. HUBER
PHILLIP D. NOBLE
NICK S. VERWOLF
DAVID F. JURCA
JAMES H. HICKEN III
LISH WHITSON
HARRY E. JENNINGS, JR.
LINDA J. COCHRAN
ERIC G. EASTERLY

BRADLEY H. BAGSHAW
EDWARD W. BASSETT
VIOLA BRADY
RALPH J. BRINDLEY
DANIEL S. GRAUSZ
DAVID GROSS
DANFERD W. HENKE
FREDRICK D. HUEBNER
ANDREW J. KINSTLER
R. BROH LANDSMAN
RAGAN L. POWERS
PAULINE V. SMETKA
KAREN A. SOUTHWORTH
KAREN J. VANDERLAAN

THOMAS TODD
LLOYD SHORETT
RICHARD A. HANSON
OF COUNSEL

FRANK R. HELSELL
(1922-1966)

CHARLES H. PAUL
(1942-1976)

February 28, 1983

Mr. Fred L. Branson
Real Estate Representative
Burlington Northern Railroad
800 Central Building
Seattle, Washington 98104

Re: Waverly Hills Club, Inc.
Lease No. 209,403

Dear Mr. Branson:

At the request of Waverly Hills, I have undertaken to ascertain the status of the above-referenced lease. My review of the history relating to the easement which your firm has indicates the railroad was granted a right-of-way pursuant to the provisions of the act of March 3, 1875. (43 U.S.C. § 934). This fact appears to be verified by the United States Department of Interior and their May 15, 1969 letter to Transamerica Title Insurance Company. A copy of this letter is attached hereto for your information. It is also interesting to note that the Department of Interior notes that this grant was "a mere easement, a right to use for railroad purposes only, and is not a grant of fee simple title."

I assume this is also your understanding as to the rights which the railroad has in this property. This appears to be confirmed by your June 29, 1973 letter to Waverly Hills Club, Inc. which authorizes the joint use of the "right-of-way at Monohon, Washington". A copy of this letter is also attached for your information.

A review of the recent Washington Supreme Court case of Veach v. Culp, 95 Wn.2d 570 (1979), raises some questions relating to this easement. The Veach case involves factual issues almost identical to the property which Waverly Hills is leasing from you at the current time. In Veach, the adjoining property owners were utilizing portions of the railroad's easement along Lake

Mr. Fred L. Branson
February 28, 1983
Page Two

Whatcom. The adjoining property owners' use included that of setting up picnic tables, and putting a bath house on the property. Unlike our situation, however, the adjoining property owner did not lease any portion of this property from the railroad. The railroad, in turn, erected a fence to preclude the use of this property by the adjoining land owner.

The Washington State Supreme Court, after thoroughly reviewing the rights the railroad had in the property, and determining that they held an easement, held that the adjoining property owner had the right to use the easement "so long as that use does not materially interfere with the use by the holder of the easement."

A review of our situation indicates facts almost identical to the Veach action. It seems obvious, in light of this decision, that the Waverly Hills Club, Inc., as owners of the adjoining property, have the right to use the easement "so long as that use does not materially interfere with the use by" Burlington Northern of the easement. As you may know, Burlington Northern's easement is extremely wide in the area where Waverly Hills leases a portion of this easement. A review of the relevant surveys indicates that the easement is approximately 200 feet wide at this location, and that Waverly Hills is leasing approximately the southwestern 50 feet of said easement. Obviously, this use in no way interferes with Burlington Northern's use of the easement for railroad purposes. For that reason, it would appear that Waverly Hills, Inc. has the absolute right to use this easement without having to lease it from Burlington Northern.

Because of Waverly Hills Club, Inc.'s long standing relationship with Burlington Northern, and because of Burlington Northern's cooperation with Waverly Hills Club, Inc. in the past, I have been advised that they do not intend to, at this time, make a claim against Burlington Northern for the past lease payments made to Burlington. It does seem evident, however, that Waverly Hills Club, Inc. was, in fact, leasing a property which was legally theirs to use to begin with.

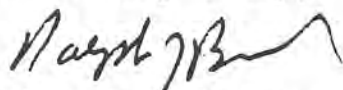
Mr. Fred L. Branson
February 28, 1983
Page Three

Waverly Hills Club, Inc. would request that you review this situation to determine whether the above evaluation is in accordance with your understanding. I am enclosing a copy of the Veach v. Culp case for your review.

In the event you believe this analysis is correct, we would appreciate your updating your property records so that Waverly Hills Club, Inc. will not be billed for any lease payments in the future.

If you feel this analysis is incorrect, please have someone from your legal department give me a call so that I can discuss this matter with them.

Yours very truly,



Ralph J. Brindley

RJB:dt
Enclosures

803



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

EASTERN STATES LAND OFFICE

7981 Eastern Avenue

Silver Spring, Maryland 20910

#1

Mr. William W. Edwards
Assistant Vice President, Northwest Division
Transamerica Title Insurance Company
705 Third Avenue
Seattle, Washington 98104

MAY 15 1969

Dear Mr. Edwards:

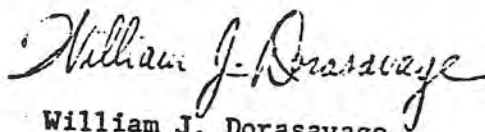
This responds to your letter of April 22, 1969, concerning the status of lot 4, sec. 6, T. 24 N., R. 6 E., Willamette Meridian, Washington.

The records in this office show that William H. Cowie's entry for the above tract was made on February 16, 1891, and that it was patented to him on January 11, 1892, under Seattle Cash Certificate No. 15260. Our records also show that a right-of-way through sec. 6, T. 24 N., R. 6 E., was granted to the Seattle, Lake Shore and Eastern Railway Company on March 29, 1887, pursuant to the provisions of the Act of March 3, 1875, 18 Stat. 482; and that the map of definite location, No. 32267, was filed March 10, 1887.

A grant to a railroad under the Act of March 3, 1875, is a mere easement, a right to use for railroad purposes only, and is not a grant of fee simple title.

The map of definite location is in the custody of the Cartographic Branch, National Archives and Records Service, Washington, D. C. 20408, and a copy thereof can be purchased from there. Accordingly, we are referring your letter to the Cartographic Branch for consideration and further reply.

Sincerely yours,



William J. Dorasavage
Assistant Manager

The cases of petitioners Sinka and Rowe are remanded to the Parole Board for proceedings that comply with this opinion.

UTTER, C.J., ROSELLINI, WRIGHT, HOROWITZ, DOLLIVER, HICKS, and WILLIAMS, JJ., and HUNTER, J. Pro Tem., concur.

[No. 46042. En Banc. September 6, 1979.]

RICHARD VEACH, ET AL, *Petitioners*, v. FRANK CULP, ET AL, *Respondents*.

- [1] **Easements — Right-of-Way — Nature of Estate — Determination.** Whether a deed conveying a railroad right-of-way grants a fee estate or a mere easement is a mixed question of law and fact. The intent of the parties is a factual question and the consequences of that intent are a question of law.
- [2] **Deeds — Construction — Intent of Parties — Description of Land.** The description of land in a deed is a part of the granting clause. The entire language of the deed, including such granting clause, must be considered along with the habendum clause in determining the intent of the parties as to the nature of the estate conveyed.
- [3] **Easements — Right-of-Way — Nature of Estate — In General.** When the granting clause of a deed indicates that the subject matter is a right-of-way for a railroad, the deed will be held to convey an easement rather than a fee estate.
- [4] **Easements — Right-of-Way — Joint Usage — Railroad Right-of-Way.** The owner of property subject to an easement for a railroad right-of-way may use the easement in such manner as does not materially interfere with the use by the holder of the easement.

STAFFORD, J., did not participate in the disposition of this case.

Nature of Action: Certain property owners sought removal of a fence along a right-of-way which crossed their property and damages for loss of a sale.

Superior Court: The Superior Court for Whatcom County, No. 51720, Byron L. Swedberg, J., on January 6, 1977, entered a judgment in favor of the defendants.

Court of Appeals: The court *affirmed* the judgment at 21 Wn. App. 454, finding that the right-of-way was a fee estate.

Supreme Court: Holding that the nature of the estate was a mixed question of law and fact and that the right-of-way was a mere easement, and finding that the plaintiff's proposed use was compatible with the use by the holders of the easement, the court *reverses* the judgment.

Sam Peach, for petitioners.

Lycette, Diamond & Sylvester, by *Lyle L. Iversen*, for respondents.

BRACHTENBACH, J.—Along the shore of Lake Whatcom there is a railroad. It is the source of this prolonged litigation. The defendant railroad currently operates an excursion train over 4 1/2 miles of track formerly owned by the Burlington Northern Railroad. In 1901, the railroad's predecessor in interest acquired a quitclaim deed from the fee owner; that deed is quoted later. The plaintiffs own 550 feet of Lake Whatcom lake front and 6 acres of upland property. The defendant railroad's tracks bisect plaintiffs' two parcels.

Plaintiffs and their lessees have used portions of the right-of-way for lake front-oriented purposes, such as picnic tables and a bathhouse. They have crossed the right-of-way to reach the lake and want to continue to do so. They draw water from the lake through a pipe running under the right-of-way. The railroad objects. After a series of skirmishes, the confrontations came to a head when the railroad removed portions of the plaintiffs' improvements

on the beach, within the right-of-way, and erected a chain link fence effectively preventing access to the lake. This lawsuit ensued.

Plaintiffs sought removal of the fence and damages from the loss of a sale of their property allegedly due to the railroad's assertion of exclusive rights to the right-of-way. Further they asked that the railroad be restrained from interfering with their littoral and riparian rights which had been reserved in the deed and that they be enjoined from restricting the unfettered use of plaintiffs' land. They also requested that the court declare the right-of-way had been abandoned.

Like most property disputes, the trial was lengthy. The trial court essentially held for the railroad, dismissing the plaintiffs' complaint and enjoining the plaintiffs from interfering with the railroad's operations except to cross the right-of-way to reach plaintiffs' land at a place and in a manner that would not interfere with defendants' operations or use of defendants' property or create any dangerous situation. The court held that the railroad owned the 100-foot strip in fee simple title. The Court of Appeals affirmed. *Veach v. Culp*, 21 Wn. App. 454, 585 P.2d 818 (1978). We reverse.

The controlling question is the nature of the interest conveyed by the 1901 deed. The pertinent portions of that quitclaim deed are:

[T]he said party of the first part, for and in consideration of the sum of Two Hundred and Twenty-five Dollars, . . . do by these presents remise, release and forever quit claim unto said party of the second part, and to its assigns, all that certain lot, piece, or parcel of land situate in Whatcom County . . . to-wit:

"A right-of-way one hundred feet wide, being fifty feet on each side of the center line of the B.B. & Eastern R.R. as now located through that portion of lot 6, Section 22, Township 37 North Range 4 East, lying east of Fir St. Blue Canyon and also Lot Seven (7) same Section excepting all rights for road purposes that may have

heretofore been conveyed to Whatcom County and particularly reserving all littoral and riparian rights to the said Fred and Mattie A. Zobrist [the grantors].

"Together with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appurtenant, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

"To have and to hold, all and singular, said premises, together with the appurtenances unto the said party of the second part, and to its assigns forever.

[1] A conveyance of a right-of-way to a railroad may be in fee simple or may be an easement only. *Morsbach v. Thurston County*, 152 Wash. 562, 568, 278 P. 686 (1929). The interpretation of such a deed to determine its effect is a mixed question of fact and law. It is a factual question to determine the intent of the parties. Then we must apply the rules of law to determine the legal consequences of that intent. *Vavrek v. Parks*, 6 Wn. App. 684, 690, 495 P.2d 1051 (1972); *Warren v. Atchison, T. & S.F. Ry.*, 19 Cal. App. 3d 24, 35, 96 Cal. Rptr. 317 (1971).

In affirming the trial court, the Court of Appeals stated that substantial evidence supported the trial court's finding that the intent of the parties was that the deed conveyed a fee simple title and "[w]e therefore will not disturb that ruling on appeal." *Veach v. Culp*, *supra* at 458. In fact, there was no such finding—or any finding—as to the intent of the parties. There was a conclusion, denominated a finding of fact, that the sale was a sale of land, not a mere easement. That is not a finding of fact about intent. It is a legal conclusion as to the effect of the deed. No party to the deed testified. Therefore, we must look to the entire document to ascertain intent.

[2] The railroad argues, first, that the granting and habendum clauses evidence intent to convey a fee since they are absolute and, second, that the reference in the description to a right-of-way is therefore without any significance. That is too narrow. We must look at the entire document. As we held in *Morsbach v. Thurston County*,

supra at 566, the description is in fact a part of the granting clause. The language of the habendum clause is but one element in examining the whole of the deed.

[3] The parties in fact describe what was being conveyed: a right-of-way 100 feet wide, being 50 feet on each side of the center line of the railroad. Language like this has been found to create an easement, not a fee simple estate. *Polk v. Ball*, 149 F.2d 263, 264 n.2 (5th Cir. 1945) ("A right of way over and across . . . the center line of said railway as now located"); *Daugherty v. Helena & N. Ry.*, 221 Ark. 101, 102-03, 252 S.W.2d 546 (1952) ("a strip of land . . . for a right of way . . . being fifty feet in width on each side of the center of the main track of said railroad as the same is now, or may hereafter be, located . . .").

In *Swan v. O'Leary*, 37 Wn.2d 533, 537, 225 P.2d 199 (1950), this court clarified the holding of *Morsbach* by stating:

[I]t is clear that we adopted the rule that when the granting clause of a deed declares the purpose of the grant to be a right of way for a railroad the deed passes an easement only, and not a fee with a restricted use, even though the deed is in the usual form to convey a fee title.

The majority of other jurisdictions follow the rule declared in *Swan v. O'Leary*. Annot., 6 A.L.R.3d 973, 1013-24 (1966).

Given the language of the deed explicitly describing the conveyance of a right-of-way and given the rule of *Swan v. O'Leary*, *supra*, and *Morsbach v. Thurston County*, *supra*, we conclude the deed conveyed an easement, not a fee title.

[4] The railroad contends, nonetheless, that it is immaterial whether it owns an easement or a fee simple title. Its premise for this contention is that a railroad right-of-way, whether in fee or an easement, is entitled to exclusive possession. It relies on dicta in *Morsbach v. Thurston County*, *supra* at 568, where the court commented that many courts

say that the right-of-way of a railroad company is more than a mere easement and that it is more than a mere right of passage. It further quotes dicta from a tax case, *New Mexico v. United States Trust Co.*, 172 U.S. 171, 43 L. Ed. 407, 19 S. Ct. 128 (1898). Certainly it is true that in most instances the very nature of a railroad will require it to enjoy a substantial right regardless of the nature of its title.

However, we must look to the actual use being made of this easement in light of the rule that the servient owner retains the use of an easement so long as that use does not materially interfere with the use by the holder of the easement. That principle is well established. *Seattle v. Nazarene*, 60 Wn.2d 657, 666, 374 P.2d 1014 (1962); *Broadacres, Inc. v. Nelsen*, 21 Wn. App. 11, 15-16, 583 P.2d 651 (1978).

Here this railroad had been reduced to operation as an excursion operation. It has never made any freight deliveries. It has no paid employees. It has a very limited amount of equipment. Its single locomotive is owned by approximately 30 persons. It makes three round trips on Saturdays and two on Sundays. It is at the disputed site approximately only 15 minutes each trip. This regular usage is only on weekends during the summer for approximately 3 months. The other 9 months of the year it operates only on charter, admitting that in some months it has no charters at all.

Thus the average use by the railroad of this disputed track area would be approximately 1 hour and 15 minutes during the weekends and then only during the summer.

As holders of the subservient estate, the plaintiffs are entitled to use the right-of-way in such a manner as does not materially interfere with the railroad's use thereof. Plaintiffs concede that their use is so restricted.

Having determined that the railroad's right-of-way is one of easement, we need not reach the theory of implied easement advanced by the plaintiffs.

The decision of the Court of Appeals and the judgment of the trial court are reversed.

UTTER, C.J., ROSELLINI, WRIGHT, HOROWITZ, DOLLIVER, HICKS, and WILLIAMS, JJ., and ELSTON, J. Pro Tem., concur.

Reconsideration denied October 31, 1979.

[No. 45766. En Banc. September 13, 1979.]

WALTER H. GRIGGS, ET AL, *Respondents*, v. AVERBECK REALTY, INC., ET AL, *Defendants*, ETHEL G. BRANCH, *Petitioner*.

- [1] **Judgment — Default — Vacation — In General.** Although courts need to ensure that persons comply with judicial process, default judgments are not favored in law. The courts will apply equitable principles in considering the vacation of a default judgment to the end of achieving justice, and a stronger showing of abuse of discretion is necessary to overturn the vacation of a default judgment than a ruling upholding it.
- [2] **Judgment — Default — Meritorious Defense — Requirements of Rule.** The purpose of the requirement of CR 60(e)(1), that a motion for vacation of a default judgment be supported by an affidavit stating the facts constituting a defense, is to avoid a useless subsequent trial. The absence of such an affidavit will not prevent the vacation of a default judgment when the court has before it sufficient evidence of a meritorious defense to justify the vacation. In such a determination the court may consider any matter in the court file.
- [3] **Community Property — Judgment Against Former Spouse — Effect.** A judgment entered against a former spouse after dissolution of the marital community cannot create community obligations, and when a former spouse has prevailed on the merits as to an alleged obligation, property distributed to that spouse which previously belonged to the community cannot be used to satisfy a judgment against the other former spouse based on the same claim.

STAFFORD, J., did not participate in the disposition of this case.

Nature of Action: After the sellers of an apartment house declared a forfeiture against a series of purchasers, the initial purchaser sought to recover a money judgment from subsequent purchasers, including the petitioner herein.

Superior Court: After defaults were taken against the petitioner and others, the judgment against the petitioner was vacated on December 17, 1974, by the Superior Court for King County, No. 719709, Frank D. Howard, J. On September 22, 1976, the Superior Court for King County, No. 719709, Frank D. Howard, J., restrained the plaintiffs from executing against the petitioner's property to enforce the default judgment against the petitioner's husband.

Court of Appeals: By separate unpublished opinions, the court *reversed* the vacation order and reinstated the default judgment, and *reversed* the restraining order.

Supreme Court: Holding that the default judgment was properly vacated and that the judgment against the husband could not be enforced against the property of the petitioner, the court *reverses* both decisions of the Court of Appeals.

Lee R. McNair (of *McNair & Henderson, Inc., P.S.*) and *Richard B. Sanders*, for respondents.

David Skellenger and *Jay V. White*, for petitioner.

BRACHTENBACH, J.—Before reciting the facts we set out a skeletal summary of these consolidated cases. A default judgment, taken against petitioner Ethel Branch, was set aside on her motion. The case was tried; petitioner prevailed. The Court of Appeals reinstated the default judgment.

After the judgment creditors attempted collection of the default judgment against her former husband, petitioner moved to restrain the judgment creditors from collecting the default judgment which had been entered against her former husband from former community assets awarded to



BURLINGTON NORTHERN RAILROAD

800 Central Building
Seattle, WA 98104

RECEIVED

MAR 18 1983

Ralph J. Brindley
Attorney at Law

Helsell, Fetterman, Martin, Todd,
and Hokanson

1500 Washington Building
P. O. Box 21846
Seattle, WA 98111

HELSELL, FETTERMAN, MARTIN March 16, 1983
TODD & HOKANSON

Dear Mr. Brindley:

Please refer to your February 28, 1983, letter concerning our Lease No. 209,403 to the Waverly Hills Club, Inc., and certain statements concerning interests in our properties.

We refer you to Section 934 of 43 U.S. Code. You will discover that the charter right-of-way is more than an easement and further that adjoining owners or encroachers cannot perfect a right by operation of law.

Your comparison with Veach v. Culp is questioned inasmuch as the Veach v. Culp easement resulted from an ordinary 1901 deed conveyance which in no way constituted federal charter right-of-way. Furthermore, we do not feel that you have established that your clients are the servient owners as was established in Veach v. Culp.

If, following review of the statute, you feel your position is still correct, we would be willing to pursue our position to litigation. If the rental payments are not kept current, we will consider taking steps to remove the tenants.

Very truly yours,

Fred L. Branson
Real Estate Representative

FLB/sawg,7

File: Lease 209,403 - Monohon, Washington

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 16



BURLINGTON NORTHERN RAILROAD

800 Central Building
Seattle, WA 98104

RECEIVED

MAR 18 1983

Ralph J. Brindley
Attorney at Law

Helsell, Fetterman, Martin, Todd,
and Hokanson

1500 Washington Building
P. O. Box 21846
Seattle, WA 98111

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Very truly yours,

Fred L. Branson
Real Estate Representative

FLB/sawg,7

File: Lease 209,403 - Monohon, Washington

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 17

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JOHN E. EDERER
THOMAS W. HUBER
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R. BROH LANDSMAN
RAGAN L. POWERS
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PAUL FETTERMAN
THOMAS TODD
LLOYD SHORETT
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OF COUNSEL

FRANK R. HELSELL
(1922-1966)

CHARLES H. PAUL
(1942-1976)

September 7, 1983

Mr. Larry D. Silvernale
Burlington Northern Railroad
800 Central Building
Seattle, Washington 98104

Re: Lease #209403, Monohan, Washington

Dear Mr. Silvernale:

In late February of this year, on behalf of Waverly Hills Club, Inc., our office sent Burlington Northern Railroad a letter relating to the above-referenced lease. Specifically, the letter suggested that the Washington Supreme Court holding in *Veach v. Culp*, 95 Wn.2d 570 (1979) suggests that the owner of the adjoining servient property to the railroad's easement, has an absolute right to use the easement in a way which does not interfere with the railroad's use of the right-of-way.

In March, our office received a letter from Mr. Fred Branson suggesting that *Veach v. Culp* was inapplicable because it related to an "easement" and that your company's right to utilize the property at issue comes by way of section 934 of 43 U.S. Code. The letter went on to suggest that this federal statute grants "more than an easement."

On March 31, 1983, I called your office, and we discussed this matter at some length. Per our discussion, I returned to the Waverly Hills Club, Inc. and advised them of Burlington Northern Railroad's position.

Since the spring, I have discussed this situation with other property owners along the East Lake Sammamish railroad line. I have learned that in other areas where your company acquired the right of way by way of the Act of March 3, 1875 (43 U.S.C. § 934), adjoining property owners are utilizing portions of the easement in a manner which does not interfere with the railroad's use of the property. I also learned that Waverly Hills Club, Inc., is apparently the only property owner that is paying for the right to utilize this property in a way which does not interfere with your use of the right-of-way which came via the Act of March 3, 1875.

Mr. Larry D. Silvernale
September 7, 1983
Page 2

I have also done some additional legal research relating to the actual rights which your company obtained through the Act of March 3, 1875. As you may be aware, United States Supreme Court in *Great Northern Railway Company v. United States of America*, 315 U.S. 262 (1941) resolved any questions as to what was granted under the Act of March 3, 1875. In that case, the court explained:

The act of March 3, 1875, from which petitioner's rights stem, clearly grants only an easement, and not a fee.

In *Himonas v. Denver & R.G.W.R. Company*, 179 F.2d 171 (10th Cir. 1949) the court addressed a claim in some ways similar to the one involving the East Lake Sammamish property. In *Himonas*, Utah state law authorized the state to obtain irrigation easements through its power of eminent domain. The railroad suggested that state law could not interfere with its federally granted rights under the Act of March 3, 1875. The railroad went on to suggest that the state law authorizing irrigation right-of-ways through the federally granted easements was contrary to federal law. The court in *Himonas* first examined what rights the railroad company had obtained under the act of March 3, 1875:

By the grant under the act of March 3, 1875, the Carbin County Railway Company acquired only an easement for railroad purposes and only that easement passed to the railroad company." 179 F.2d 172.

The court went on to hold that the irrigation ditch, in accordance with state law, could be "maintained and used so as not to interfere with the use of the right-of-way by the railroad company for railroad purposes."

More recently, in the case of *Energy Transportation Systems, Inc. v. Union Pacific Railroad Company*, 435 F. Supp. 313 (D.WY. 1977), the court addressed a situation where the plaintiff sought to mine coal beneath the railroad easement. There the court noted that the railroad had "acquired all rights necessarily incidental to the use of the railroad." However, the court went on to note that: "the defendant cannot prevent the owner of the servient estate from using the subsurface in a way that does not interfere with the operation of the railroad." 435 F. Supp. 318.

Because of the importance of the community beach to the property owners of Waverly Hills Club, Inc., the organization

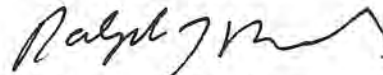
Mr. Larry D. Silvernale
September 7, 1983
Page 3

does not want to litigate this issue. Despite the fact they feel they are on strong legal grounds, Waverly Hills Club, Inc. wants to avoid the expense and risk associated with litigation. This factor, coupled with the fact that Waverly Hills Club, Inc. has had a longstanding amicable relationship with the railroad, has led Waverly Hills to hope there may be some way to compromise the situation. One factor that has led Waverly Hills to investigate this situation, is the rapidly increasing lease expenses which the railroad has charged for the use of the property. As you may be aware, Waverly Hills Club, Inc. is a nonprofit organization made up of local homeowners. These recent lease payment increases struck the organization particularly hard in these recent bad economic times.

On behalf of Waverly Hills Club, Inc., I have been asked to suggest that we set up a meeting between yourself, and/or other Burlington Northern representative, and myself and representatives of Waverly Hills Club, Inc. At that time we could discuss the situation, and answer any questions you may have as to the manner in which Waverly Hills Club, Inc. obtained the adjoining property and servient estate, and also discuss a mutually acceptable resolution of the problem.

If such a meeting is acceptable to you, will you please advise me of a date which is convenient for you and your organization. I look forward to hearing from you in the near future.

Very truly yours,



Ralph J. Brindley

cc. ✓ Waverly Hills Club, Inc.

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 18

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OF COUNSEL

FRANK R. HELSELL
(1922-1966)

CHARLES H. PAUL
(1942-1976)

December 8, 1983

Board Members
Waverly Hills Club, Inc.
P.O. Box 427
Issaquah, Washington 98027

Dear Board Members:

I talked with Mr. Fred Branson from the Real Estate Division of Burlington Northern today. Mr. Branson apologized for the long delay in their responding to our request for some form of an adjustment to the lease rate we have been paying the railroad. He explained that the matter was sent from Mr. Larry Silvernale to the midwest offices for review by their legal counsel.

The bottom line from Burlington Northern is that they will agree not to increase the rental rate for Waverly Hills in the future. This agreement is subject to some review in the future, and if any change is to be made, we will be advised in advance so that we can submit our position to Burlington Northern. Mr. Branson informed me that because of the sensitive nature of this decision, it would not be reduced to written form. Obviously, if word got out that Burlington Northern will negotiate future increases based upon a claimed right to title, this could affect their position adversely in other areas.

Mr. Branson informed this "future review" was something that is not expected to occur in the foreseeable future.

In light of our reluctance to confront Burlington Northern directly and force a legal determination of the rights of the parties, I feel this result is acceptable. Please advise me as to whether or not you wish to pursue this matter further or if Burlington Northern's position is acceptable. Clearly, since nothing is reduced to writing, we are not waiving any rights which we may have against Burlington Northern now or in the future by not pursuing any further action at this time.

Waverly Hills Club, Inc.
December 8, 1983
Page Two

I hope you all have a happy holiday season.

Yours very truly,



Ralph J. Brindley

RJB:bb

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 19

Waverly Hills Club, Inc
P.O. Box 427
Issaquah, Wa 98027

Catellus Management Corporation
P.O. Box 34936
Dept #4166
Seattle, Wa 98124-1936

25 Aug 1996

Dear Administrator:

RE: Lease #40209403 ie. our record # 209403

I have discussed the large increase in our lease with the members of Waverly Hills Club, Inc (Waverly) and would like to place a few facts before you for consideration. First Waverly believes we have a contract that states the lease is \$1500 per year and that amount was a compromise dating back to 1983. The agreement was set in place as a mutual remedy over the actual title and the conditions under which the easement to B&N was granted. Waverly's belief is that the Act of March 3, 1875 (43 U.S.C. Section 934) granted an easement to B&N and not fee title and furthermore retained for the fee owner the right to use the property in a manner that does not interfere with railroad usage. Clearly, our use of the property does not interfere with the operation of the railroad. The multitude of court cases has consistently upheld that easement is all that was granted to B&N. As previously stated, the lease of \$1500 was a compromise and is best left in place. I have spoken to Mr Rod Peterson, Regional Property Manager, and have indicated that Waverly would like to pursue purchase of the excess easement to significantly diminish the potential for further squabbling over the lease. If, after you review the facts regarding this agreement, you still wish to pursue the increase in lease, please let me know. I welcome the chance for Waverly to present our case to B&N. Thank you for your consideration and I look forward to negotiating the purchase of the excess easement with B&N. As a document to the good relations and goodwill we have mutually experienced, I am enclosing a check for \$1500, the agreed upon payment for the lease for 1996.

John Wacławski

cc: Mr Rod Peterson
Mr Bob Nova
Mr Jim Browning

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 20

LEGAL DESCRIPTION IN 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 CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 21

Waverly - Extent of ROW Parcel



The information included on this map has been compiled by King County staff from a variety of sources and is subject to change without notice. King County makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or rights to the use of such information. This document is not intended for use as a survey product. King County shall not be liable for any general, special, indirect, incidental, or consequential damages including, but not limited to, lost revenues or lost profits resulting from the use or misuse of the information contained on this map. Any sale of this map or information on this map is prohibited except by written permission of King County.

Date: 1/21/2025

Notes:



WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 22

Name The Land Conservance of Seattle

Address 1150 19th St.

City, State, Zip Seattle, WA 98112

COMMONWEALTH
LAND TITLE INSURANCE COMPANY
OF PHILADELPHIA

CW C8021-2

21-

Document Title(s):

1. Quit Claim Deed
2. _____

Reference Number(s) of Documents assigned or released:

(Additional numbers on page _____ of document)

Grantor(s): (Last name first, then first name and initials)

1. The Burlington Northern and Santa Fe Railway Company
2. _____
3. Additional names on page _____ of document

Grantee(s): (Last name first, then first name and initials)

1. The Land Conservancy of Seattle and King County
2. _____
3. Additional names on page _____ of document

Legal Description: (abbreviated: i.e., lot, block, plat or section, township, range)

Portion of the Railway Company's 100 foot wide Branch line right of way, Section 12, Township 25, N. Range 5 East.

(Additional legal description on page _____ of document)

Assessor's Property Tax Parcel/Account Number:

172406-9007-01, 292506-9007-06, 292506-9008-005, 2925069036-01,

162406-9017-00

(Additional account numbers on page _____ of document)

9704280573

970428-0573 KING COUNTY RECORDS 014 JMR

WHEN RECORDED MAIL TO:

**THE LAND CONSERVANCY OF
SEATTLE AND KING COUNTY**
1150 19TH Street
Seattle, Washington 98112

RECORDED AT THE REQUEST OF:

QUITCLAIM DEED

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation, Grantor, of 2650 Lou Menk Drive, Fort Worth, Texas 76131-2830, hereinafter called "Grantor", for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, in hand paid, conveys and quitclaims, without any covenants of warranty whatsoever and without recourse to the Grantor, its successors and assigns, to **THE LAND CONSERVANCY OF SEATTLE AND KING COUNTY**, a non-profit tax exempt corporation organized and existing under the laws of the State of Washington, of 1150 19th Street, Seattle, Washington 98112, hereinafter called "Grantee", all its right, title and interest, if any, in the rail line and rail line corridor situate between Milepost 7.30 near Redmond and Milepost 19.75 near Issaquah, King County, State of Washington, hereinafter called "Property", together with all after acquired title of Grantor therein, described as follows:

Lot, Block, Plat, or Section, Township, and Range more particularly described in Exhibit "A", consisting of eight (8) page(s), attached hereto and made a part hereof.

SUBJECT, however, to all existing interests, including but not limited to all reservations, rights-of-way and easements of record or otherwise.

Assessor's Property Tax Parcel Account/Number(s): _____

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RESERVING, unto Grantor, its successors and assigns, a non-exclusive, permanent easement for construction, reconstruction, maintenance, use and/or operation of one or more underground pipelines or fiber optic communication lines, facilities and appurtenances in, under, across, along and through all or any portion of the Property herein to be conveyed, including the right for Grantor, or any of its licensee(s), to enter, disturb the surface, and occupy the Property herein to be conveyed for purposes of constructing, reconstructing, maintaining, using and/or operating one or more pipelines or fiber optics communication lines, facilities and appurtenances, in, under, across, along and through all or any portion of the Property herein to be conveyed; provided however, that Grantor shall notify Grantee in advance of any such entry, and shall enter and occupy such Property in a manner which does not materially interfere with Grantee's use of such Property. Any entity exercising a right under this reservation shall indemnify and hold harmless (including from court costs and attorney's fees) Grantee and its assigns for personal injury or damage to property, related to such exercise and caused by such user's sole negligence. Any right exercised under this reservation shall be compatible with, and not unduly burden the use of the right-of-way for its intended purposes.

GRANTEE has been allowed to make an inspection of the Property and has knowledge as to the past use of the Property. Based upon this inspection and knowledge, **GRANTEE** is aware of the condition of the Property and **GRANTEE ACKNOWLEDGES THAT GRANTEE IS PURCHASING THE PROPERTY IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS AND THAT GRANTEE IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM GRANTOR AS TO ANY MATTERS CONCERNING THE PROPERTY. GRANTEE SHALL BE RESPONSIBLE FOR ALL POST-CLOSING ENVIRONMENTAL CONDITIONS AND ANY PRE-EXISTING CONDITIONS THAT ARE MADE KNOWN TO GRANTEE OR THAT SHOULD HAVE BEEN DISCOVERABLE UPON CONDUCTING A PHASE I SURVEY. GRANTOR SHALL BE RESPONSIBLE FOR LATENT PRE-EXISTING CONDITIONS THAT (i) COULD NOT HAVE BEEN REASONABLY BEEN DISCOVERED UPON CONDUCTING A COMPETENT PHASE I SURVEY PRIOR TO CLOSING; OR (ii) WERE THE RESULT OF INTENTIONAL RELEASES KNOWN TO GRANTOR AND NOT DISCLOSED TO GRANTEE PRIOR TO CLOSING.**

The term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated.

By acceptance of this deed, Grantee agrees to and does hereby release Grantor from any claims for damages, costs, attorneys fees or other claims made by adjoining or underlying

landowners to the properties covered by this conveyance and indemnify Grantor pursuant to paragraph 7 of the Offer to Purchase Agreement, between Grantor and Grantee, dated April 15, 1997.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the said Grantor caused this instrument to be signed by its authorized representative, attested by its Assistant Secretary, and its corporate seal to be affixed hereto on the 23rd day of April, 1997.

**THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY**

By: James J. O'Neil
James J. O'Neil
Vice President Property & Facility
Management



ATTEST:

By: Margaret R. Aclin
Margaret R. Aclin
Assistant Secretary

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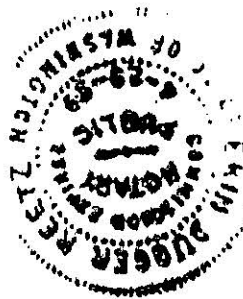
ACCEPTED:

THE LAND CONSERVANCY OF
SEATTLE AND KING COUNTY

By: Carol James / V.P.
Name: CAROL JAMES
Title: VICE PRESIDENT

ATTEST:

By: [Signature]
Name: Chris Hinkley
Title: LTO/ESCROW OFFICER



STATE OF WASHINGTON

§
§ ss.
§

COUNTY OF KING

On this 25 day of APRIL, 1997, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared

CAROL JAMES and [Signature]
to me known to be the VICE PRESIDENT and

respectively, of The Land Conservancy of Seattle and King County, a non-profit tax-exempt corporation organized and existing under the laws of the State of Washington that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

Erin Thompson
Notary Public in and for the

State of Washington

Residing at: Seattle

My appointment expires: 4-29-99

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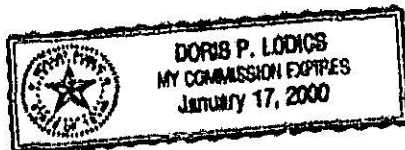
STATE OF TEXAS

COUNTY OF TARRANT

§
§ ss.
§

On this 23rd day of April, 1997, before me, the undersigned, a Notary Public in and for the State of Texas, duly commissioned and sworn, personally appeared James J. O'Neil and Margaret R. Aclin, to me known to be the Vice President, Property & Facility Management and Assistant Secretary, respectively, of The Burlington Northern and Santa Fe Railway Company, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.



Doris P. Lodges
Notary Public in and for the State of Texas

Residing at: Fort Worth, Texas

My appointment expires: 1-17-2000

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FORM APPROVED BY LAW

EXHIBIT "A"

Quitclaim Deed from The Burlington Northern and Santa Fe Railway Company to The Land Conservancy of Seattle and King County, dated April 23, 1997, Pages 1 through 8.

All that portion of The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway Company) Snoqualmie Branch Line right of way, varying in width on each side of said Railway Company's Main Track centerline, as now located and constructed between Redmond (Milepost 7.3) to Issaquah (Milepost 19.75), King County Washington, more particularly described as follows, to-wit:

All that portion of said Railway Company's 100.0 foot wide Branch line right of way, being 50.0 feet wide on each side of said Main Track centerline upon, over and across the S $\frac{1}{4}$ NE $\frac{1}{4}$ and the E $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, Township 25 North, Range 5 East, Government Lots 3 and 4 of Section 7, and Government Lots 1,2,3, and 4 of Section 18, all in Township 25 North, Range 6 East, bounded on the Northwest by the West line of said S $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, Township 25 North, Range 5 East, and bounded on the South by the South line of said Government Lot 4 of Section 18, Township 25 North, Range 6 East, also,

All that portion of said Railway Company's 50.0 foot wide Branch Line right of way, being 25.0 feet wide on each side of said Main Track centerline upon, over and across Government Lot 5 of said Section 18, and Government Lot 1 of Section 19, all in Township 25 North, Range 6 East, bounded on the North by the North line of said Government Lot 5 of Section 18, and bounded on the South by the South line of said Government Lot 1 of Section 19, also,

All that portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet wide on each side of said Main Track centerline upon, over and across Government Lot 2 of said Section 19, Government Lots 1, 2, 3, 4 of Section 20 and Government Lots 1 and 2 of Section 29, all in Township 25 North, Range 6 East, bounded on the North by the North line of said Government Lot 2 of Section 19, and bounded on the South by the South line of said Government Lot 2 of Section 29, **EXCEPTING THEREFROM**, that portion described in Quitclaim Deed from Burlington Northern Railroad Company to Donald and Eleanor Stahl dated April 19, 1994, being the Westerly 25.0 feet of said 100.0 foot wide right of way, lying between two lines drawn concentric with and distant, respectively, 25.0 feet and 50.0 feet Westerly, as measured radially from said Main Track centerline, bounded by two lines drawn parallel with and distant, respectively, 900.0 feet and 1,000.0 feet North, as measured at right angles from the South line of said Government Lot 2 of Section 29; also,

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All of Lots 1 through 68, inclusive, Block 9, according to the plat of the Town of Inglewood, as recorded in Volume 3 of Plat Books, page 169, records of King County, Washington, lying Westerly of a line drawn parallel with and 50.0 feet Easterly, as measured at right angles from said Main Track centerline, also,

Those portions of Lots 19, 20, 21, 22, 23 and 24, Block 6, according to the plat of the Town of Inglewood, as recorded in Volume 3 of Plat Books, page 169, records of King County, Washington, lying Westerly of a line drawn concentric with and distant 50.0 feet Easterly, as measured radially from said Main Track centerline; also,

Those portions of Lots 1 through 22, inclusive, Block 4, Lots 1 through 22, inclusive, Block 5, and Lots 11 through 22, inclusive, Block 3, all according to the plat of the Town of Inglewood, as recorded in Volume 3 of Plat Books, page 169, records of King County, Washington, lying Easterly of a line drawn parallel and concentric with and distant 50.0 feet Westerly, as measured at right angles and radially from said Main Track centerline; also,

Those portions of Lots 1, 2 and 8, Block 3, according to said plat of the Town of Inglewood, King County, Washington, lying Easterly of a line drawn parallel and concentric with and distant 50.0 feet Westerly, as measured at right angles and radially from said Main Track centerline; also,

Those portions of Lots 9, 10, 12, 13, 16, 17, 18, 19, 20, 21 and 22, Block 2, according to said plat of the Town of Inglewood, King County, Washington, lying Easterly of a line drawn parallel and concentric with and distant 50.0 feet Westerly, as measured at right angles and radially from said Main Track centerline; also,

All of Lots 1 through 41, Block 14, according to said plat of the Town of Inglewood, King County, Washington, EXCEPTING THEREFROM, those portions of said Lots 26 through 41 lying Easterly of a line drawn parallel and concentric with and distant 50.0 feet Easterly, as measured at right angles and radially from said Main Track centerline, ALSO, EXCEPTING THEREFROM, those portions of said Lots 9, 10 and 11, lying Westerly of a line drawn concentric with and distant 25.0 feet Westerly, as measured radially from said Main Track centerline, ALSO, EXCEPTING THEREFROM, those portions of Lots 18 through 27 lying Westerly of a line drawn concentric with and distant 25.0 feet Westerly, as measured radially from said Main Track centerline, ALSO, EXCEPTING THEREFROM, those portions of Lots 28 and 29 sold to John and Elizabeth Hayden by Quitclaim Deed filed for record as King County Recording No. 9212311137 in and for said County, ALSO, EXCEPTING THEREFROM, those portions of Lots 24 and 25, lying Easterly of a line drawn

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concentric with and distant 25.0 feet Easterly, as measured radially from said Main Track centerline; also,

Those portions of Lots 0 through 7, inclusive, and Lots 11 through 16, inclusive, Block 1, according to said plat of the Town of Inglewood, King County, Washington, lying Easterly of a line drawn parallel and concentric with and distant 50.0 feet Westerly, as measured at right angles and radially from said Main Track centerline; also,

That portion, if any, of said Railway Company's Branch Line right of way lying Westerly of Lots 1 through 68, Block 9, Lots 19 through 24, Block 6, and Lots 1 through 41, Block 14; and lying Easterly of Lots 1 through 22, Block 4, Lots 1 through 22, Block 5, Lots 1 through 22, Block 3, Lots 1 through 22, Block 2, and Lots 0 through 20, Block 1, Town of Inglewood, as recorded in Volume 3 of Plats, page 169, records of King County, Washington, bounded on the North and South by the North and South lines of said Town of Inglewood; also

All that portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet wide on each side of said Main Track centerline upon, over and across Government Lots 1, 2, 3 and 4 and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32, Government Lot 2 of Section 31, all in Township 25 North, Range 6 East, and Government Lots 1, 2 and 3 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, Township 24 North, Range 6 East, bounded on the North by the North line of said Section 32, Township 25 North, Range 6 East, and bounded on the South by the South line of said Government Lot 3 of Section 6, Township 24 North, Range 6 East, EXCEPTING THEREFROM, that portion sold to Arthur and Sallyann Holmboe by Quitclaim Deed dated August 17, 1994, described as follows:

Commencing at the Northeast corner of said Government Lot 1 of Section 32; thence West along the North line of said Government Lot 1 a distance of 91.75 feet to the Westerly line of said 100.0 foot wide Branch Line right of way; thence South 06° 23' 29" West along said Westerly line 932.07 feet to the True Point of Beginning; thence continuing South 06° 23' 29" West along said Westerly line 143.20 feet; thence South 89° 17' 01" East 25.12 feet to a point being 25.0 feet Westerly, as measured at right angles from said Main Track centerline, thence North 06° 23' 29" East 143.20 feet; thence North 89° 17' 01" West 25.12 feet to the True Point of Beginning.

ALSO, EXCEPTING THEREFROM, that portion of the hereinabove described 100.0 foot wide Branch Line right of way, situated in said Government Lot 3 of Section 6, Township 24 North, Range 6 East, sold to Patrick and Vicki Burns by Quitclaim Deed filed for record September 18, 1996, as King County Recording No. 9701221277 described as follows:

Commencing at an iron stake at the intersection of the centerline of a private road with the shoreline of Lake Sammamish as shown on blueprint filed with deed recorded under King County Recording No. 1748265, said iron stake marking the Northwest corner of a tract of land conveyed to W. C. Dahl by deed recorded under King County Recording No. 2808278; thence South 61° 02' East to the Northwesterly line of the hereinabove described 100.0 foot wide Branch Line right of way; thence Southwesterly along said Northwesterly line on a curve concave to the Southeast having a radius of 766.78 feet a distance of 51.27 feet to the True Point of Beginning; thence continuing Southwesterly along said Northwesterly line 50.59 feet; thence South 61° 02' East 25 feet, more or less, to a point being 25.0 feet Northwesterly, as measured radially from said Main Track centerline; thence Northeasterly along a curve concave to the Southeast having a radius of 741.78 feet and concentric with said Main Track centerline to a point which bears South 61° 02' East from the True Point of Beginning; thence North 61° 02' West 25 feet, more or less, to the True Point of Beginning.

ALSO,

All that portion of said Railway Company's 200.0 foot wide Branch Line right of way, being 100.0 feet wide on each side of said Main Track centerline upon, over and across Government Lot 4 of said Section 6, Township 24 North, Range 6 East, bounded on the North and South by the North and South lines of said Government Lot 4; also,

All that portion of said Railway Company's 50.0 foot wide Branch Line right of way, being 25.0 feet wide on each side of said Main Track centerline upon, over and across Government Lot 1 of Section 7, Township 24 North, Range 6 East, bounded on the North and South by the North and South lines of said Government Lot 1; also,

All that portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet wide on each side of said Main Track centerline upon, over and across Government Lot 2 of said Section 7, Township 24 North, Range 6 East, bounded on the North by the North line of said Government Lot 2, and bounded on the Southeast by the hereinafter described "Line A", **EXCEPTING THEREFROM**, the Westerly 30.0 feet of said 100.0 foot wide Branch Line right of way across Tract 6, Lake Sammamish Waterfront Tracts to Monohan, according to the plat thereof, lying between two lines drawn concentric with and distant, respectively, 20.0 feet and 50.0 feet Westerly, as measured radially from said Main Track centerline, **ALSO, EXCEPTING THEREFROM**, the Westerly 30.0 feet of said 100.0 foot wide Branch Line right of way across Tracts 9 and 10, Lake Sammamish Waterfront Tracts to Monohan, according to the plat thereof, lying between two lines drawn parallel with and distant, respectively, 20.0

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feet and 50.0 feet Westerly, as measured at right angles from said Main Track centerline, **ALSO, EXCEPTING THEREFROM**, the Southwesterly 25.0 feet and the Northeasterly 25.0 feet of said 100.0 foot wide Branch Line right of way, lying between lines drawn parallel and concentric with and distant, respectively, 25.0 feet and 50.0 feet from and on each side of said Main Track centerline, lying within the following described tract of land:

Commencing at the East quarter corner of said Section 7; thence South $00^{\circ} 10'$ East along the East line of said Section 7 a distance of 74.4 feet to the present meander post on the shore of Lake Sammamish; thence North $79^{\circ} 51'$ West 490.0 feet; thence North $68^{\circ} 30'$ West 177.4 feet; thence North $54^{\circ} 45'$ West 298.6 feet; thence North $52^{\circ} 23'$ West 208.4 feet to a post set on the shore of Lake Sammamish; thence North $43^{\circ} 33'$ West 187.68 feet; thence North $48^{\circ} 00'$ East 40.60 feet to a point on the Southwesterly line of the hereinabove described 100.0 foot wide Branch Line right of way and the True Point of Beginning; thence continuing North $48^{\circ} 00'$ East 102.10 feet to a point on the Northeasterly line of the hereinabove described 100.0 foot wide Branch Line right of way; thence Northwesterly along said Northeasterly right of way line on a curve concave to the Northeast having a radius of 744.27 feet, central angle of $02^{\circ} 45' 57''$ a distance of 35.93 feet; thence North $26^{\circ} 48' 39''$ West, tangent to said curve, 100.07 feet; thence South $48^{\circ} 00'$ West 103.62 feet to said Southwesterly right of way line; thence South $26^{\circ} 48' 39''$ East along said Southwesterly right of way line 72.92 feet to a point of curve; thence Southeasterly along a tangential curve concave to the Northeast having a radius of 844.27 feet a distance of 62.72 feet to the True Point of Beginning.

"Line A" Description

Commencing at the East quarter corner of said Section 7; thence South $00^{\circ} 10'$ East along the East line of said Section 7 a distance of 74.4 feet to the present meander post on the shore of Lake Sammamish; thence North $79^{\circ} 51'$ West 490.0 feet; thence North $68^{\circ} 30'$ West 177.4 feet; thence North $54^{\circ} 45'$ West 147.7 feet to the True Point of Beginning; thence North $10^{\circ} 35'$ East to the intersection with the Southerly line of the "Issaquah to Redmond" County Road and there terminating.

ALSO,

All of said Railway Company's Branch Line right of way, varying in width on each side of said Main Track centerline upon, over and across said Government Lot 2 of Section 7, Township 24 North, Range 6 East, described as follows:

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Beginning at the intersection with a line drawn concentric with and distant 50.0 feet Northeastly, as measured radially from said Main Track centerline with the hereinabove described "Line A"; thence Southeastly along the last described concentric line 72 feet, more or less, to the intersection with a line drawn parallel with and distant 70.0 feet Easterly, as measured at right angles from said "Line A"; thence South $10^{\circ} 35'$ West along the last described parallel line to a point being 25.0 feet Northeastly, as measured radially from said Main Track centerline; thence Southeastly along a line drawn concentric with and 25.0 feet Northeastly, as measured radially from said Main Track centerline 145 feet, more or less, to the intersection with the hereinafter described "Line B"; thence North $10^{\circ} 35'$ East along said hereinafter described "Line B" to a point being 50.0 feet Northeastly, as measured radially from said Main Track centerline; thence Southeastly along a line drawn concentric with and 50.0 feet Northeastly, as measured radially from said Main Track centerline 19 feet, more or less, to the intersection with a line drawn parallel with and distant 54.79 feet Westerly, as measured at right angles from the hereinafter described "Line C"; thence South $12^{\circ} 35' 40''$ West along the last described parallel line 18 feet, more or less, to a point being 36.0 feet Northeastly, as measured radially from said Main Track centerline; thence Southeastly along a line drawn concentric with and 36.0 feet Northeastly, as measured radially from said Main Track centerline 52 feet, more or less, to the intersection with the hereinafter described "Line C"; thence North $12^{\circ} 35' 40''$ East along said "Line C" to a point being 50.0 feet Northeastly, as measured radially from said Main Track centerline; thence Southeastly along a line drawn concentric and parallel with and 50.0 feet Northeastly, as measured radially and at right angles from said Main Track centerline 490 feet, more or less, to the East line of said Section 7; thence South $00^{\circ} 10'$ East along said East line 68 feet, more or less, to a point being 15.0 feet Southerly, as measured radially from said Main Track centerline; thence Westerly along a line drawn concentric and parallel with and 15.0 feet Southerly, as measured radially and at right angles from said Main Track centerline 221 feet, more or less, to the intersection with the hereinafter described "Line D"; thence South $10^{\circ} 35'$ West along the hereinafter described "Line D" to a point being 50.0 feet Southerly, as measured at right angles from said Main Track centerline; thence Westerly along a line drawn parallel and concentric with and distant 50.0 feet Southerly, as measured at right angles and radially from said Main Track centerline 280 feet, more or less, to the intersection with the hereinafter described "Line C"; thence North $12^{\circ} 35' 40''$ East along said hereinafter described "Line C" to a point being 18.0 feet Southerly, as measured radially from said Main Track centerline; thence Westerly along a line drawn concentric with said Main Track centerline 54 feet, more or less, to the intersection with a line drawn parallel with and distant 54.79 feet Westerly, as measured at right angles from the hereinafter described "Line C"; thence South $12^{\circ} 35' 40''$ West along the last described parallel line to a point being 50.0 feet Southwesterly, as measured radially from said Main Track centerline; thence Westerly along a line drawn concentric with said Main

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Track centerline 18 feet, more or less, to the intersection with the hereinafter described "Line B"; thence North 10° 35' East along the hereinafter described "Line B" to the intersection with a line drawn concentric with and distant 15.0 feet Southwesterly, as measured radially from said Main Track centerline; thence Northwesterly along the last described concentric line 220 feet, more or less, to the intersection with the hereinabove described "Line A"; thence North 10° 35' East along said "Line A" 68 feet, more or less, to the Point of Beginning.

"Line B" Description

Commencing at the East quarter corner of said Section 7; thence South 00° 10' East along the East line of said Section 7 a distance of 74.4 feet to the present meander post on the shore of Lake Sammamish; thence North 79° 51' West 490.0 feet; thence North 68° 30' West 97.1 feet to the True Point of Beginning; thence North 10° 35' East to the intersection with the Southerly line of the "Issaquah to Redmond" County Road and there terminating.

"Line C" Description

Commencing at the East quarter corner of said Section 7; thence South 00° 10' East along the East line of said Section 7 a distance of 74.4 feet to the present meander post on the shore of Lake Sammamish; thence North 79° 51' West 490.0 feet; thence North 68° 30' West 30.81 feet to the True Point of Beginning; thence North 12° 35' 40" East 189.7 feet to the intersection with the Southerly line of the "Issaquah to Redmond" County Road and there terminating.

"Line D" Description

Commencing at the East quarter corner of said Section 7; thence South 00° 10' East along the East line of said Section 7 a distance of 74.4 feet to the present meander post on the shore of Lake Sammamish; thence North 79° 51' West 237.1 feet to the True Point of Beginning; thence North 10° 35' East 100 feet, more or less, to the intersection with the Southerly line of the "Issaquah to Redmond" County Road and there terminating.

ALSO,

All that portion of said Railway Company's 200.0 foot wide Branch line right of way, being 100.0 feet wide on each side of said Main Track centerline upon, over and across Government Lot 1 and the SW¼SW¼NW¼ of Section 8, Township 24 North, Range 6 East, bounded on the Northwest by the West lines of said Government Lot 1 and the SW¼SW¼NW¼, and bounded on the Southeast by the East line of said Government Lot 1; also,

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All that portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet wide on each side of said Main Track centerline upon, over and across Government Lot 2 of said Section 8, Government Lots 1, 2 and 3 of Section 17, Government Lots 1 and 2 and the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 16, the E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the E $\frac{1}{2}$ of Section 21, the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 28, the W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 27, and the N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 34, all in Township 24 North, Range 6 East, bounded on the Northwest by the West line of said Government Lot 2 of Section 8, and bounded on the South by the South line of Mill Street in the City of Issaquah, Washington, said Main Track centerline being 404.1 feet East of the Southwest corner of said Section 27; also,

An additional parcel of land lying contiguous with and Westerly of the heretofore described 100.0 foot wide Branch Line right of way, situated in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 27, Township 24 North, Range 6 East, described as follows:

Beginning at the point of intersection of the North line of Mill Street with the East line of Front Street in the Town of Issaquah, Washington, said point being 30.0 feet North and 30.0 feet East of the Southwest corner of said SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 27; thence South 87° 40' 12" East along the North line of Mill Street 60 feet, more or less, to a point being 50.0 feet Southeasterly, as measured radially from said Railway Company's Old Mine Track centerline (now removed), as originally located and constructed; thence Northeasterly along a line drawn concentric with said Old Mine Track centerline, along a curve concave to the Northwest having a radius of 624 feet, more or less, a distance of 150 feet, more or less, to the intersection with a line drawn parallel with and distant 150.0 feet North of the South line of said Section 27; thence South 87° 40' 12" East along the last described parallel line 135 feet, more or less, to the Westerly line of the heretofore described 100.0 foot wide Branch Line right of way; thence North 14° 59' 12" West along said Westerly right of way line 580 feet, more or less, to a point being 50.0 feet Southwesterly, as measured at right angles from said Main Track centerline at a point being 756.4 feet Northwesterly, as measured along said Main Track centerline from the South line of said Section 27; thence Southeasterly, Southerly and Southwesterly along a line drawn concentric with and distant 50.0 feet Westerly, as measured radially from said Old Mine Track centerline, and along the Easterly lines of Lots 6 through 14, inclusive, Schmidt's 1st Addition to Issaquah, Washington, a distance of 525 feet, more or less, to the most Northerly corner of that certain parcel of land described in Quitclaim Deed from Burlington Northern Railroad Company to Nathan and Jean Thomas dated March 2, 1984; thence South 60° 15' 51" East along the Northeasterly line of said Thomas parcel 47.71 feet; thence South 32° 38' 18" West 74.0 feet; thence South 38° 03' 24" West 80 feet, more or less, to the East line of Front Street; thence South along said East line 16 feet, more or less, to the True Point of Beginning.

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 23



Recording Requested By And
When Recorded Mail To:

King County
Water and Lands Resources Division
Office of Open Space
506 Second Avenue, Suite 708
Seattle, WA 98104

QUITCLAIM DEED

Grantor [Seller]: The Land Conservancy of Seattle and King County, a non-profit corporation

Grantee [Buyer]: King County, a political subdivision of the State of Washington

Legal Description (abbreviated): Portions of Section 12, T.25N., R.5E.; Sections 7, 18, 19, 20, 29, 31 and 32, T.25N., R.6E.; blocks 1, 2, 3, 4, 5, 6, 9 and 14, Town of Inglewood, Vol. 3, Pg. 169; Sections 6, 7, 8, 16, 17, 21 and 28, T.24N., R.6E.; Tr. 15-19, Mason's Lakeside, Vol. 37, Pg. 55

Additional legal(s) on: Pages 5 through 12

Assessor's Tax Parcel ID#: 202506-9023-05, 122505-9265-03, 292506-9007-06, 072506-9126-08, 212406-9020-08, 082406-9021-04, 272406-9203-01, 172406-9007-01, 182506-9015-09, 062406-9013-06, 322506-9015-01, 162406-9017-00,

Project [Area]: East Lake Sammamish Trail

THE LAND CONSERVANCY OF SEATTLE AND KING COUNTY, a non-profit corporation organized and existing under the laws of the State of Washington, with its principal office at 615 Second Avenue, Suite 525, Seattle, Washington 98104, hereinafter called "Grantor," for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, in hand paid, conveys and quitclaims, without any covenants of warranty whatsoever and without recourse to the Grantor, its successors or assigns, to **KING COUNTY, WASHINGTON**, a political subdivision of the State of Washington with its principal office at 506 Second Avenue, Seattle, Washington 98104, hereinafter called "Grantee," all its right, title and interest, if any, in the rail line and rail line corridor situate between Milepost 7.30 near Redmond and Milepost 18.2 near Issaquah, King County, State of Washington, together with all after acquired title of Grantor therein, described more particularly in Exhibit "A", consisting of eight pages, attached hereto and made a part hereof.

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SUBJECT, however, to all existing interests, including but not limited to all reservations, rights-of-way and easements of record or otherwise.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the said Grantor caused this instrument to be signed by its authorized representative.



**THE LAND CONSERVANCY OF
SEATTLE AND KING COUNTY**

By: Carol James
Carol James
President

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 18th day of SEPTEMBER, 1998, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared CAROL JAMES, to me known to be the PRESIDENT of The Land Conservancy of Seattle and King County, a non-profit tax-exempt corporation organized and existing under the laws of the State of Washington that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

Carolyn L. Tipler
(Signature)
CAROLYN L. TIPLER
(Typed or printed name)
NOTARY PUBLIC in and for the State
of Washington, residing at SEATTLE
My appointment expires 06-09-2001

ACCEPTED:

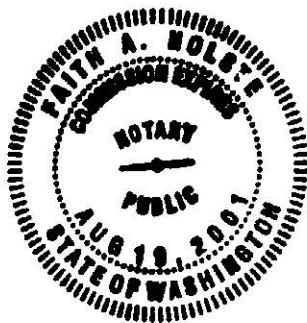
KING COUNTY, WASHINGTON

By: [Signature]
Name: RONALD C SIMS
Title: KING COUNTY EXECUTIVE

STATE OF WASHINGTON)
) ss.
COUNTY OF)

On this 18th day of , before me personally appeared , to me known to be the Ronald C. Sims of KING COUNTY, WASHINGTON, the political subdivision that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that _____ was authorized to execute said instrument.

In witness whereof I have hereunder set my hand and affixed my official seal the day and year first above written.



[Signature]
(Signature)
Faith A. Holste
(Typed or printed name)
NOTARY PUBLIC in and for the State
of Washington, residing at Bellewa WA
My appointment expires Aug 19 2001

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EXHIBIT "A"

Quitclaim Deed from The Land Conservancy of Seattle & King County to King County, Washington

All that portion of The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway Company) Snoqualmie Branch Line right of way, varying in width on each side of said Railway Company's Main Track centerline, as now located and constructed between Redmond (Milepost 7.3) to Issaquah (Milepost 18.2), King County, Washington, more particularly described as follows, to-wit:

All that portion of said Railway Company's 100.0 foot wide Branch line right of way, being 50.0 feet wide on each side of said Main Track centerline upon, over and across the S $\frac{1}{2}$ NE $\frac{1}{4}$ and the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 12, Township 25 North, Range 5 East, Government Lots 3 and 4 of Section 7, and Government Lots 1, 2, 3, and 4 of Section 18, all in Township 25 North, Range 6 East, bounded on the Northwest by the West line of said S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 12, Township 25 North, Range 5 East, and bounded on the South by the South line of said Government Lot 4 of Section 18, Township 25 North, Range 6 East, also,

All that portion of said Railway Company's 50.0 foot wide Branch Line right of way, being 25.0 feet wide on each side of said Main Track centerline upon, over and across Government Lot 5 of said Section 18, and Government Lot 1 of Section 19, all in Township 25 North, Range 6 East, bounded on the North by the North line of said Government Lot 5 of Section 18, and bounded on the South by the South line of said Government Lot 1 of Section 19, also,

All that portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet wide on each side of said Main Track centerline upon, over and across Government Lot 2 of said Section 19, Government Lots 1, 2, 3, 4 of Section 20 and Government Lots 1 and 2 of Section 29, all in Township 25 North, Range 6 East, bounded on the North by the North line of said Government Lot 2 of Section 19, and bounded on the South by the South line of said Government Lot 2 of Section 29, EXCEPTING THEREFROM, that portion described in Quitclaim Deed from Burlington Northern Railroad Company to Donald and Eleanor Stahl dated April 19, 1994, being the Westerly 25.0 feet of said 100.0 foot wide right of way, lying between two lines drawn concentric with and distant, respectively, 25.0 feet and 50.0 feet Westerly, as measured radially from said Main Track centerline, bounded by two lines drawn parallel with and distant, respectively, 900.0 feet and 1,000.0 feet North, as measured at right angles from the South line of said Government Lot 2 of Section 29; ALSO EXCEPTING THEREFROM, that portion of Government Lot 4 in Section 20, Township 25 North, Range 6 East, described as follows: beginning at the northeast corner of said Government Lot 4, thence North 89°18'33" West, along the north line of said Government Lot 4, a distance of 1200.34 feet to a point of intersection with the west margin of the Northern Pacific Railroad right of way; thence South 26°23'06" east, along

said west margin, 249.98 feet to the true point of beginning; thence continuing South 26°23'06" East, along said west margin 60 feet; thence North 63° 36' 54" east, 25 feet; thence North 26°23'06" West, 60 feet, to a point which bears North 63°36'54" east from the true point of beginning; thence South 63°36'54" west to the true point of beginning; ALSO EXCEPTING THEREFROM, that portion of Government Lot 4 in Section 20, Township 25 North, Range 6 East, described as follows: beginning at the northeast corner of said Government Lot 4, thence north 89° 18' 33" west, along the north line of said Government Lot 4, a distance of 1200.34 feet to a point of intersection with the west margin of the Northern Pacific Railroad right of way; thence South 26° 23' 06" east, along said west margin, 309.98 feet to the true point of beginning; thence continuing South 26°23'06" East, along said west margin 84.95 feet; thence North 63° 36' 54" east, 25 feet; thence North 26°23'06" West, 84.95 feet, to a point which bears North 63°36'54" east from the true point of beginning; thence South 63°36'54" west to the true point of beginning; also,

All of Lots 1 through 68, inclusive, Block 9, according to the plat of the Town of Inglewood, as recorded in Volume 3 of Plat Books, page 169, records of King County, Washington, lying Westerly of a line drawn parallel with and 50.0 feet Easterly, as measured at right angles from said Main Track centerline, also,

Those portions of Lots 19, 20, 21, 22, 23 and 24, Block 6, according to the plat of the Town of Inglewood, as recorded in Volume 3 of Plat Books, page 169, records of King County, Washington, lying Westerly of a line drawn concentric with and distant 50.0 feet Easterly, as measured radially from said Main Track centerline; also,

Those portions of Lots 1 through 22, inclusive, Block 4, Lots 1 through 22, inclusive, Block 5, and Lots 11 through 22, inclusive, Block 3, all according to the plat of the Town of Inglewood, as recorded in Volume 3 of Plat Books, page 169, records of King County, Washington, lying Easterly of a line drawn parallel and concentric with and distant 50.0 feet Westerly, as measured at right angles and radially from said Main Track centerline; also,

Those portions of Lots 1, 2 and 8, Block 3, according to said plat of the Town of Inglewood, King County, Washington, lying Easterly of a line drawn parallel and concentric with and distant 50.0 feet Westerly, as measured at right angles and radially from said Main Track centerline; also,

Those portions of Lots 9, 10, 12, 13, 16, 17, 18, 19, 20, 21 and 22, Block 2, according to said plat of the Town of Inglewood, King County, Washington, lying Easterly of a line drawn parallel and concentric with and distant 50.0 feet Westerly, as measured at right angles and radially from said Main Track centerline; also,

All of Lots 1 through 41, Block 14, according to said plat of the Town of Inglewood, King County, Washington, EXCEPTING THEREFROM, those portions of said Lots 26 through 41 lying Easterly of a line drawn parallel and concentric with and distant 50.0 feet Easterly, as measured at right angles and radially from said Main Track

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centerline, ALSO, EXCEPTING THEREFROM, those portions of said Lots 9, 10 and 11, lying Westerly of a line drawn concentric with and distant 25.0 feet Westerly, as measured radially from said Main Track centerline, ALSO, EXCEPTING THEREFROM, those portions of Lots 18 through 27 lying Westerly of a line drawn concentric with and distant 25.0 feet Westerly, as measured radially from said Main Track centerline, ALSO, EXCEPTING THEREFROM, those portions of Lots 28 and 29 sold to John and Elizabeth Hayden by Quitclaim Deed filed for record as King County Recording No. 9212311137 in and for said County, ALSO, EXCEPTING THEREFROM, those portions of Lots 24 and 25, lying Easterly of a line drawn concentric with and distant 25.0 feet Easterly, as measured radially from said Main Track centerline; also,

Those portions of Lots 0 through 7, inclusive, and Lots 11 through 16, inclusive, Block 1, according to said plat of the Town of Inglewood, King County, Washington, lying Easterly of a line drawn parallel and concentric with and distant 50.0 feet Westerly, as measured at right angles and radially from said Main Track centerline; also,

That portion, if any, of said Railway Company's Branch Line right of way lying Westerly of Lots 1 through 68, Block 9, Lots 19 through 24, Block 6, and Lots 1 through 41, Block 14; and lying Easterly of Lots 1 through 22, Block 4, Lots 1 through 22, Block 5, Lots 1 through 22, Block 3, Lots 1 through 22, Block 2, and Lots 0 through 20, Block 1, Town of Inglewood, as recorded in Volume 3 of Plats, page 169, records of King County, Washington, bounded on the North and South by the North and South lines of said Town of Inglewood; also

All that portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet wide on each side of said Main Track centerline upon, over and across Government Lots 1, 2, 3 and 4 of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32, Government Lot 2 of Section 31, all in Township 25 North, Range 6 East, and Government Lots 1, 2 and 3 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, Township 24 North, Range 6 East, bounded on the North by the North line of said Section 32, Township 25 North, Range 6 East, and bounded on the South by the South line of said Government Lot 3 of Section 6, Township 24 North, Range 6 East, EXCEPTING THEREFROM, that portion sold to Arthur and Sallyann Holmboe by Quitclaim Deed dated August 17, 1994, described as follows:

Commencing at the Northeast corner of said Government Lot 1 of Section 32; thence West along the North line of said Government Lot 1 a distance of 91.75 feet to the Westerly line of said 100.0 foot wide Branch Line right of way; thence South 06°23'29" West along said Westerly line 932.07 feet to the True Point of Beginning; thence continuing South 06°23'29" West along said Westerly line 143.20 feet; thence South 89°17'01" East 25.12 feet to a point being 25.0 feet Westerly, as measured at right angles from said Main Track centerline, thence North 06°23'29" East 143.20 feet; thence North 89°17'01" West 25.12 feet to the True Point of Beginning.

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ALSO EXCEPTING THEREFROM, that portion of Government Lot 1, in Section 32, township 25 North, Range 6 East, W.M., described as follows: beginning at the Northeast corner of that portion of the South 243 feet of said Government Lot 1 lying West of the Northern Pacific Railway right of way, as measured along said west right of way line (per survey recorded under A.F. # 9002228003 in volume 71 of surveys, page 72, records of King County, Washington); thence South $89^{\circ}17'01''$ East a distance of 25.12 feet to a point which lies 25.00 feet westerly from the centerline of said Northern Pacific Railway as measured at right angles; thence South $06^{\circ}23'29''$ West parallel with the centerline of said Northern Pacific Railway a distance of 142.03 feet to the beginning of a curve tangent to said line; thence continuing southerly, parallel with said Northern Pacific Railway, 106.66 feet along a curve to the right having a radius of 1327.69 feet and a central angle of $04^{\circ}36'10''$ the chord of which bears South $08^{\circ}41'34''$ west a distance of 108.83 feet to a point on the South line of said Government Lot 1 which lies 25.00 feet westerly from the centerline of said Northern Pacific Railway as measured at right angles; thence North $89^{\circ}03'58''$ West along said South line a distance of 25.40 feet to the Southeast corner of said South 243 feet of Government Lot 1 lying West of said Northern Pacific Railway; thence Northerly 109.08 feet along a non-tangent curve to the left having a radius of 1302.69 feet and a central angle of $04^{\circ}47'52''$ the chord of which bears North $08^{\circ}47'25''$ East a distance of 109.05 feet; thence North $06^{\circ}23'29''$ East tangent to said curve a distance of 139.55 feet to the POINT OF BEGINNING.

ALSO, EXCEPTING THEREFROM, that portion of the hereinabove described 100.0 foot wide Branch Line right of way, situated in said Government Lot 3 of Section 6, Township 24 North, Range 6 East, sold to Patrick and Vicki Burns by Quitclaim Deed filed for record September 18, 1996, as King County Recording No. 9701221277 described as follows:

Commencing at an iron stake at the intersection of the centerline of a private road with the shoreline of Lake Sammamish as shown on blueprint filed with deed recorded under King County Recording No. 1748265, said iron stake marking the Northwest corner of a track of land conveyed to W.C. Dahl by deed recorded under King County Recording No. 2808278; thence South $61^{\circ}02'$ East to the Northwesterly line of the hereinabove described 100.0 foot wide Branch Line right of way; thence Southwesterly along said Northwesterly line on a curve concave to the Southeast having a radius of 766.78 feet a distance of 51.27 feet to the True Point of Beginning; thence continuing Southwesterly along said Northwesterly line 50.59 feet; thence South $61^{\circ}02'$ East 25 feet, more or less, to a point being 25.0 feet Northwesterly, as measured radially from said Main Track centerline; thence Northeasterly along a curve concave to the Southeast having a radius of 741.78 feet and concentric with said Main Track centerline to a point which bears South $61^{\circ}02'$ East from the True Point of Beginning; thence North $61^{\circ}02'$ West 25 feet, more or less, to the True Point of Beginning.

ALSO EXCEPTING THEREFROM, that portion of Government Lot 1, in Section 6, Township 24 North, Range 6 East, W.M., adjoining the Easterly line of the below-described Parcel "A" and described as follows: Beginning at the Northeasterly corner of the below-described Parcel "A"; Thence S $69^{\circ}49'12''$ E along a radial line to a curve in

the railroad right-of-way for a distance of 25.00 feet to a point on a curve with radius of 5,754.65 feet and center point lying Southeasterly at S 69°49'12" E; Thence Southerly and Westerly along said curve, parallel to the Westerly line of said railroad right-of-way and 25.00 feet Southeasterly as measured at right angles to said Westerly line, for an arc length distance of 250.79 feet through a central angle of 2°29'49" to a point of tangency with a line bearing S 17°40'59" W; Thence S 17°40'59" W along said line for a distance of 59.90 feet; Thence N 72°19'01" W for a distance of 25.00 feet to the Southeasterly corner of said Parcel "A"; Thence along the Easterly line of said Parcel "A" through the following courses; Thence N 17°40'59" E for a distance of 59.90 feet to a point of tangency with a curve to the right having a radius of 5,779.65 feet; Thence Northerly and Easterly along said curve for an arc length distance of 251.88 feet through a central angle of 2°29'49" to the Point of Beginning.

Parcel "A" Description

A portion of tracts 15 to 19 in the replat of Mason's Lakeside, according to the plat thereof recorded in Volume 37 of plats on page 55, records of King County, Washington, lying Easterly and Southeasterly of a line described as follows:

Beginning at the Northwest corner of said Tract 19; Running thence Easterly along the North line of said tract for 42.10 feet to the True Point of Beginning; Thence S 16°14'00" W for 152.70 feet; Thence S 51°34'00" W for 108.90 feet to an iron pipe on the shoreline of Lake Sammamish and on the line between Tracts 14 and 15 in said replat.

ALSO,

All that portion of said Railway Company's 200.0 foot wide Branch Line right of way, being 100.0 feet wide on each side of said Main Track centerline upon, over and across Government Lot 4 of said Section 6, Township 24 North, Range 6 East, bounded on the North and South by the North and South lines of said Government Lot 4; also,

All that portion of said Railway Company's 50.0 foot wide Branch Line right of way, being 25.0 feet wide on each side of said Main Track centerline upon, over and across Government Lot 1 of Section 7, Township 24 North, Range 6 East, bounded on the North and South by the North and South lines of said Government Lot 1; also,

All that portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet wide on each side of said Main Track centerline upon, over and across Government Lot 2 of said Section 7, Township 24 North, Range 6 East, bounded on the North by the North line of said Government Lot 2, and bounded on the Southeast by the hereinafter described "Line A", EXCEPTING THEREFROM, the Westerly 30.0 feet of said 100.0 foot wide Branch Line right of way across Tract 6, Lake Sammamish Waterfront Tracts to Monohan, according to the plat thereof, lying between two lines drawn concentric with and distant, respectively, 20.0 feet and 50.0 feet Westerly, as measured radially from said Main Track centerline, ALSO, EXCEPTING

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THEREFROM, the Westerly 30.0 feet of said 100.0 foot wide Branch Line right of way across Tracts 9 and 10, Lake Sammamish Waterfront Tracks to Monohan, according to the plat thereof, lying between two lines drawn parallel with and distant, respectively, 20.0 feet and 50.0 feet Westerly, as measured at right angles from said Main Track centerline, ALSO, EXCEPTING THEREFROM, the Southwesterly 25.0 feet and the Northeasterly 25.0 feet of said 100.0 foot wide Branch Line right of way, lying between lines drawn parallel and concentric with and distant, respectively, 25.0 feet and 50.0 feet from and on each side of said Main Track centerline, lying within the following described tract of land;

Commencing at the East quarter corner of said Section 7; thence South 00°10' East along the East line of said Section 7 a distance of 74.4 feet to the present meander post on the shore of Lake Sammamish; thence North 79°51' West 490.0 feet; thence North 68°30' West 177.4 feet; thence North 54°45' West 298.6 feet; thence North 52°23' West 208.4 feet to a post set on the shore of Lake Sammamish; thence North 43°33' West 187.68 feet; thence North 48°00' East 40.60 feet to a point on the Southwesterly line of the hereinabove described 100.0 foot wide Branch Line right of way and the True Point of Beginning; thence continuing North 48°00' East 102.10 feet to a point on the Northeasterly line of the hereinabove described 100.0 foot wide Branch Line right of way; thence Northwesterly along said Northeasterly right of way line on a curve concave to the Northeast having a radius of 744.27 feet, central angle of 02°45'57" a distance of 35.93 feet; thence North 26°48'39" West, tangent to said curve, 100.07 feet; thence South 48°00" West 103.62 feet to said Southwesterly right of way line; thence South 26°48'39" East along said Southwesterly right of way line 72.92 feet to a point of curve; thence Southeasterly along a tangential curve concave to the Northeast having a radius of 844.27 feet a distance of 62.72 feet to the True Point of Beginning.

"Line A" Description

Commencing at the East quarter corner of said Section 7; thence South 00°10' East along the East line of said Section 7 a distance of 74.4 feet to the present meander post on the shore of Lake Sammamish; thence North 79°51' West 490.0 feet; thence North 68°30' West 177.4 feet; thence North 54°45' West 147.7 feet to the True Point of Beginning; thence North 10°35' East to the intersection with the Southerly line of the "Issaquah to Redmond" County Road and there terminating.

ALSO,

All of said Railway Company's Branch Line right of way, varying in width on each side of said Main Track centerline upon, over and across said Government Lot 2 of Section 7, Township 24 North, Range 6 East, described as follows:

Beginning at the intersection with a line drawn concentric with and distant 50.0 feet Northeasterly, as measured radially from said Main Track centerline with the hereinabove described "Line A"; thence Southeasterly along the last described concentric line 72 feet, more or less, to the intersection with a line drawn parallel with and distant

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70.0 feet Easterly, as measured at right angles from said "Line A"; thence South $10^{\circ}35'$ West along the last described parallel line to a point being 25.0 feet Northeasterly, as measured radially from said Main Track centerline; thence Southeasterly along a line drawn concentric with and 25.0 feet Northeasterly, as measured radially from said Main Track centerline 145 feet, more or less, to the intersection with the hereinafter described "Line B"; thence North $10^{\circ}35'$ East along said hereinafter described "Line B" to a point being 50.0 feet Northeasterly, as measured radially from said Main Track centerline; thence Southeasterly along a line drawn concentric with and 50.0 feet Northeasterly, as measured radially from said Main Track centerline 19 feet, more or less, to the intersection with a line drawn parallel with and distant 54.79 feet Westerly, as measured at right angles from the hereinafter described "Line C"; thence South $12^{\circ}35'40''$ West along the last described parallel line 18 feet, more or less, to a point being 36.0 feet Northeasterly, as measured radially from said Main Track centerline; thence Southeasterly along a line drawn concentric with and 36.0 feet Northeasterly, as measured radially from said Main track centerline 52 feet, more or less, to the intersection with the hereinafter described "Line C"; thence North $12^{\circ}35'40''$ East along said "Line C" to a point being 50.0 feet Northeasterly, as measured radially from said Main Track centerline; thence Southeasterly along a line drawn concentric and parallel with and 50.0 feet Northeasterly, as measured radially and at right angles from said Main Track centerline 490 feet, more or less, to the East line of said Section 7; thence South $00^{\circ}10'$ East along said East line 68 feet, more or less, to a point being 15.0 feet Southerly, as measured radially from said Main Track centerline; thence Westerly along a line drawn concentric and parallel with and 15.0 feet Southerly, as measured radially and at right angles from said Main Track centerline 221 feet, more or less, to the intersection with the hereinafter described "Line D"; thence South $10^{\circ}35'$ West along the hereinafter described "Line D" to a point being 50.0 feet Southerly, as measured at right angles from said Main Track centerline; thence Westerly along a line drawn parallel and concentric with and distant 50.0 feet Southerly, as measured at right angles and radially from said Main Track centerline 280 feet, more or less, to the intersection with the hereinafter described "Line C"; thence North $12^{\circ}35'40''$ East along said hereinafter described "Line C" to a point being 18.0 feet Southerly, as measured radially from said Main Track centerline; thence Westerly along a line drawn concentric with said Main Track centerline 54 feet, more or less, to the intersection with a line drawn parallel with and distant 54.79 feet Westerly, as measured at right angles from the hereinafter described "Line C"; thence South $12^{\circ}35'40''$ West along the last described parallel line to a point being 50.0 feet Southwesterly, as measured radially from said Main Track centerline; thence Westerly along a line drawn concentric with said Main Track centerline 18 feet, more or less, to the intersection with the hereinafter described "Line B"; thence North $10^{\circ}35'$ East along the hereinafter described "Line B" to the intersection with a line drawn concentric with and distant 15.0 feet Southwesterly, as measured radially from said Main Track centerline; thence Northwesterly along the last described concentric line 220 feet, more or less, to the intersection with the hereinabove described "Line A"; thence North $10^{\circ}35'$ East along said "Line A" 68 feet, more or less, to the Point of Beginning.

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"Line B" Description

Commencing at the East quarter corner of said Section 7; thence South 00°10' East along the East line of said Section 7 a distance of 74.4 feet to the present meander post on the shore of Lake Sammamish; thence North 79°51' West 490.0 feet; thence North 68°30' West 97.1 feet to the True Point of Beginning; thence North 10°35' East to the intersection with the Southerly line of the "Issaquah to Redmond" County Road and there terminating.

"Line C" Description

Commencing at the East quarter corner of said Section 7; thence South 00°10' East along the East line of said Section 7 a distance of 74.4 feet to the present meander post on the shore of Lake Sammamish; thence North 79°51' West 490.0 feet; thence North 68°30' West 30.81 feet to the True Point of Beginning; thence North 12°35'40" East 189.7 feet to the intersection with the Southerly line of the "Issaquah to Redmond" County Road and there terminating.

"Line D" Description

Commencing at the East quarter corner of said Section 7; thence South 00°10' East along the East line of said Section 7 a distance of 74.4 feet to the present meander post on the shore of Lake Sammamish; thence North 79°51' West 237.1 feet to the True Point of Beginning; thence North 10°35' East 100 feet, more or less, to the intersection with the Southerly line of the "Issaquah to Redmond" County Road and there terminating.

ALSO,

All that portion of said Railway Company's 200.0 foot wide Branch line right of way, being 100.0 feet wide on each side of said Main Track centerline upon, over and across Government Lot 1 and the SW¼SW¼NW¼ of Section 8, Township 24 North, Range 6 East, bounded on the Northwest by the West lines of said Government Lot 1 and the SW¼SW¼NW¼, and bounded on the Southeast by the East line of said Government Lot 1; also,

All that portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet wide on each side of said Main Track centerline upon, over and across Government Lot 2 of said Section 8, Government Lots 1, 2 and 3 of Section 17, Government Lots 1 and 2 and the E½SW¼ of Section 16, the E½NE¼NW¼ and the E½ of Section 21, and that portion of the E½ NE¼ of Section 28 lying Northerly of the Southerly right of way margin of Northwest Gilman Boulevard (State Road No. 2, Renton-Issaquah Road), all in Township 24 North, Range 6 East.

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 24

Waverly Beach - 2009



King County, Pictometry, King County

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Date: 1/21/2025

Notes:



WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 25

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

THOMAS E. HORNISH AND SUZANNE J.
HORNISH JOINT LIVING TRUST, TRACY AND
BARBARA NEIGHBORS, ARUL MENEZES AND
LUCRETIA VANDERWENDE, LAKE
SAMMAMISH 4257 LLC, HEBERT MOORE AND
ELYNNE MOORE, AND EUGENE MOREL AND
ELIZABETH MOREL,

Plaintiffs,

vs.

KING COUNTY, a home rule charter county,

Defendants.

Case No.: 2:15-cv-00284-MJP

AMENDED COMPLAINT FOR
DECLARATORY RELIEF

COME NOW Plaintiffs Thomas E. Hornish and Suzanne J. Hornish Joint Living Trust, Tracy and Barbara Neighbors, Arul Menezes and Lucretia Vanderwende, Lake Sammamish 4257 LLC (owners Arul Menezes and Lucretia Vanderwende), Herbert and Elynne Moore, and Eugene and Elizabeth Morel, pursuant to this Court's Order dated August 7, 2015 (D.E. 30), and for their cause of action against King County, pursuant to the Revised Code of Washington § 7.24.010, *et. seq.*, allege as follows:

AMENDED COMPLAINT FOR DECLARATORY RELIEF
PAGE 1
Case No.: 2:15-cv-00284-MJP

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NATURE OF ACTION

1
2 1. Plaintiffs are landowners who own fee title in land adjoining a 12.45 mile length of
3 abandoned railroad right-of-way in King County, Washington between milepost 7.3, near
4 Redmond, and milepost 19.75, at Issaquah, in King County, Washington along Lake Sammamish.

5 2. The railroad, both at the time of the acquisition of the right-of-way in the late 1800s
6 and the abandonment of the right-of-way in 1998, acquired a surface easement for railroad
7 purposes over and through the adjacent landowners' land.

8
9 3. The railroad line in question was originally constructed by the Seattle, Lake Shore
10 & Eastern Railway Company (SLS&E) from May 1887 through March 1888. The SLS&E
11 acquired rights-of-way across public lands under the 1875 Act (codified at 43 U.S.C. § 937),
12 easement deeds, and prescriptive easements. The original easement deed to the railroad applicable
13 to Plaintiff Hornish's property is included in their chain of title and the railroad acquired a
14 prescriptive easement only over the remaining Plaintiffs' properties.

15
16 4. On July 5, 1887, the SLS&E secured approval from the Department of the Interior
17 of their map identifying the location for proposed construction of a railroad running generally
18 along the eastern shoreline of Lake Sammamish, Washington. Construction of the railroad was
19 completed in 1888. On April 15, 1891, the SLS&E filed a Map of Location showing the final
20 location of the constructed railroad, with the United States Land Office in Seattle, Washington.

21 5. On May 13, 1998, the Surface Transportation Board ("STB") granted Burlington
22 Northern Santa Fe ("BNSF") an exemption to abandon a 12.45 mile length of railroad between
23 milepost 7.3, near Redmond, and milepost 19.75, at Issaquah, in King County, Washington.
24
25

1 6. On September 16, 1998, the STB authorized The Land Conservancy of Seattle
2 and King County (TLC) to assume financial responsibility for the rights-of-way pursuant to the
3 National Trails System Act Amendments of 1983, Pub. L. No. 98-11, § 208, 97 Stat. 42, codified
4 at 16 U.S.C. § 1247(d) (2006) (“Trails Act”). *See* Burlington N. & Santa Fe Ry. Co. -
5 Abandonment Exemption - in King Cnty., WA, STB Docket No. AB-6 (Sub. No. 380X), 1998
6 STB LEXIS 519, 1998 WL 638432.

7 7. The STB also authorized the issuance of a Notice of Interim Trail Use (“NITU”)
8 for the BNSF right-of-way, permitting King County and the TLC to establish a public
9 recreational trail over the railroad right-of-way. The STB’s ruling authorized conversion of the
10 railroad rights-of-way into a recreational trail, pursuant to the Trails Act. The NITU was issued
11 on September 18, 1998.

12 8. King County subsequently reached an agreement with BNSF for use of the right-
13 of-way for trail purposes. On September 29, 1998, counsel for the TLC informed the STB that
14 the parties had reached an agreement railbanking the railroad corridor pursuant to the NITU.
15 Since the STB approved conversion of the railway to a trail no railway carriers have used the
16 railroad and the tracks have been removed from the right-of-way.

17 9. King County, by and through the Trails Act, acquired a surface easement for a
18 recreational trail with the potential reactivation of a railroad over Plaintiffs’ land.

19 10. The Plaintiffs own the underlying fee in the former railroad right-of-way.

20 11. Plaintiffs obtained chains of title for each Plaintiff and the chains establish their
21 fee ownership in their adjacent property as well as their fee ownership underlying the railroad
22 corridor. The chains of title demonstrate that Plaintiffs’ ancestors in title owned the land within
23
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25

1 the railroad right-of-way and, as successors in interest, these Plaintiffs likewise obtained such
2 fee ownership interest underlying the railroad right-of-way.

3 12. Plaintiffs seek a declaratory judgment ordering that the railroad only held an
4 easement for railroad purposes and King County only acquired an easement for recreational trail
5 purposes by and through the Trails Act with preservation of the right-of-way only for future
6 railroad purposes and uses through railbanking.

7 THE PARTIES

8 13. Plaintiff The Thomas E. Hornish and Suzanne J. Hornish Joint Living Trust,
9 Thomas and Suzanne Hornish, trustees, are residents of King County, Washington who own land
10 adjacent to the former railroad easement acquired by King County in 1998. The Thomas E.
11 Hornish and Suzanne J. Hornish Joint Living Trust's parcel, number 062406-9042, was acquired
12 on November 7, 2013, and includes the fee title to all that property of the abandoned right-of-
13 way that is now subject to an easement for an interim trail and possible future railroad
14 reactivation pursuant to the Trails Act. The Hornishes own fee title to the railroad right-of-way
15 under Washington law because the chain of title proves that (1) no grantor in the chain of title
16 expressly reserved the former railroad right-of-way unto themselves despite describing the land
17 conveyed in metes and bounds; (2) no grantor in the entire chain of title has ever claimed
18 ownership in the former railroad right-of-way because each grantor conveyed their interest in
19 the former railroad right-of-way; and (3) based on the opinion of plaintiffs' title expert, each and
20 every grantor in the chain of title intended to convey all the interest they owned to each grantee.
21 The chain of title documentation has been reviewed by Plaintiffs' title expert, John Rall, and he
22 has concluded that the Hornishes own the fee title in the right-of-way under Washington law.
23
24
25

1 John Rall's Declaration/Report is attached as Exhibit A and a copy of the current deed and chain
2 of title evidencing ownership of the above-described property is attached as Exhibit B.

3 14. Plaintiffs Tracy and Barbara Neighbors are residents of King County,
4 Washington who own land adjacent to the former railroad easement acquired by the King County
5 in 1998. Tracy and Barbara Neighbors' parcel, number 072406-9006, was acquired on June 22,
6 2011, and includes the fee title to all that property of the abandoned right-of-way that is now
7 subject to an easement for an interim trail and possible future railroad reactivation pursuant to
8 the Trails Act. The Neighbors own fee title to the railroad right-of-way under Washington law
9 because the chain of title proves that (1) no grantor in the chain of title expressly reserved the
10 former railroad right-of-way unto themselves despite describing the land conveyed in metes and
11 bounds; (2) no grantor in the entire chain of title has ever claimed ownership in the former
12 railroad right-of-way because each grantor conveyed their interest in the former railroad right-
13 of-way; and (3) based on the opinion of Plaintiffs' title expert, each and every grantor in the
14 chain of title intended to convey all the interest they owned to each grantee. The chain of title
15 documentation has been reviewed by Plaintiffs' title expert, John Rall, and he has concluded that
16 the Neighbors own the fee title in the right-of-way under Washington law. John Rall's
17 Report/Declaration is attached as Exhibit A and a copy of the current deed and chain of title
18 evidencing ownership of the above-described property is attached as Exhibit C.

21 15. Plaintiffs Arul Menezes and Lucretia Vanderwende are residents of King County,
22 Washington who own land adjacent to the former railroad easement acquired by the King County
23 in 1998. Arul Menezes and Lucretia Vanderwende's parcel, number 072406-9024, was acquired
24 on July 22, 1997 and includes the fee title to all that property of the abandoned right-of-way that
25

1 is now subject to an easement for an interim trail and possible future railroad reactivation
2 pursuant to the Trails Act. Menezes and Vanderwende own fee title to the railroad right-of-way
3 under Washington law because the chain of title proves that (1) no grantor in the chain of title
4 expressly reserved the former railroad right-of-way unto themselves despite describing the land
5 conveyed in metes and bounds; (2) no grantor in the entire chain of title has ever claimed
6 ownership in the former railroad right-of-way because each grantor conveyed their interest in
7 the former railroad right-of-way; and (3) based on the opinion of Plaintiffs' title expert, each and
8 every grantor in the chain of title intended to convey all the interest they owned to each grantee.
9 The chain of title documentation has been reviewed by Plaintiffs' title expert, John Rall, and he
10 has concluded that Menezes and Vanderwende own the fee title in the right-of-way under
11 Washington law. John Rall's Declaration/Report is attached as Exhibit A and a copy of the
12 current deed and chain of title evidencing ownership of the above-described property is attached
13 as Exhibit D.
14

15
16 16. Plaintiff Lake Sammamish 4257 LLC (owners Arul Menezes and Lucretia
17 Vanderwende) is a resident of King County, Washington who owns land adjacent to the former
18 railroad easement acquired by the King County in 1998. Lake Sammamish 4257 LLC's parcel,
19 number 172406-9079, was acquired on March 20, 2015 and includes the fee title to all that
20 property of the abandoned right-of-way that is now subject to an easement for an interim trail
21 and possible future railroad reactivation pursuant to the Trails Act. Lake Sammamish 4257 LLC
22 owns fee title to the railroad right-of-way under Washington law because the chain of title proves
23 that (1) no grantor in the chain of title expressly reserved the former railroad right-of-way unto
24 themselves despite describing the land conveyed in metes and bounds; (2) no grantor in the entire
25

1 chain of title has ever claimed ownership in the former railroad right-of-way because each
2 grantor conveyed their interest in the former railroad right-of-way; and (3) based on the opinion
3 of Plaintiffs' title expert, each and every grantor in the chain of title intended to convey all the
4 interest they owned to each grantee. The chain of title documentation has been reviewed by
5 Plaintiffs' title expert, John Rall, and he has concluded that Lake Sammamish 4257 LLC owns
6 the fee title in the right-of-way under Washington law. John Rall's Declaration/Report is
7 attached as Exhibit A and a copy of the current deed and chain of title evidencing ownership of
8 the above-described property is attached as Exhibit E.
9

10 17. Plaintiffs Hebert Moore and Elynne Moore are residents of King County,
11 Washington who own land adjacent to the former railroad easement acquired by the King County
12 in 1998. Hebert Moore and Elynne Moore's parcel, number 172406-9077, was acquired on
13 September 12, 2002 and includes the fee title to all that property of the abandoned right-of-way
14 that is now subject to an easement for an interim trail and possible future railroad reactivation
15 pursuant to the Trails Act. The Moores own fee title to the railroad right-of-way under
16 Washington law because the chain of title proves that (1) no grantor in the chain of title expressly
17 reserved the former railroad right-of-way unto themselves despite describing the land conveyed
18 in metes and bounds; (2) no grantor in the entire chain of title has ever claimed ownership in the
19 former railroad right-of-way because each grantor conveyed their interest in the former railroad
20 right-of-way; and (3) based on the opinion of Plaintiffs' title expert, each and every grantor in
21 the chain of title intended to convey all the interest they owned to each grantee. The chain of
22 title documentation has been reviewed by Plaintiffs' title expert, John Rall, and he has concluded
23 that the Moores own the fee title in the right-of-way under Washington law. John Rall's
24
25

1 Declaration/Report is attached as Exhibit A and a copy of the current deed and chain of title
2 evidencing ownership of the above-described property is attached as Exhibit F.

3 18. Plaintiffs Eugene and Elizabeth Morel are residents of King County, Washington
4 who own land adjacent to the former railroad easement acquired by the King County in 1998.
5 Eugene and Elizabeth Morel's parcel, numbers 072406-9008 and 072406-9090, were acquired
6 on May 27, 1998 and include the fee title to all that property of the abandoned right-of-way that
7 is now subject to an easement for an interim trail and possible future railroad reactivation
8 pursuant to the Trails Act. The Morels own fee title to the railroad right-of-way under
9 Washington law because the chain of title proves that (1) no grantor in the chain of title expressly
10 reserved the former railroad right-of-way unto themselves despite describing the land conveyed
11 in metes and bounds; (2) no grantor in the entire chain of title has ever claimed ownership in the
12 former railroad right-of-way because each grantor conveyed their interest in the former railroad
13 right-of-way; and (3) based on the opinion of Plaintiffs' title expert, each and every grantor in
14 the chain of title intended to convey all the interest they owned to each grantee. The chain of
15 title documentation has been reviewed by Plaintiffs' title expert, John Rall, and he has concluded
16 that the Morels own the fee title in the right-of-way under Washington law. John Rall's
17 Declaration/Report is attached as Exhibit A and a copy of the current deed and chain of title
18 evidencing ownership of the above-described property is attached as Exhibit G.

19 19. King County is a home rule charter county and a political subdivision of the State
20 of Washington.

JURISDICTION AND VENUE

20. This Court has jurisdiction pursuant to the Revised Code of Washington § 7.24.010 *et seq.* because the Defendants have clouded the title to Plaintiffs' property. The Defendants only obtained an easement for trail use over the surface of Plaintiffs' property by and through implementation of the Trails Act. This action presents a claim arising under the laws of the United States as well as the laws of Washington.

21. Pursuant to the Revised Code of Washington § 4.12.10, venue is proper because (1) Defendants reside in King County; (2) a substantial part of the events or omissions giving rise to the claims occurred in King County; and (3) all of the property that is the subject of this action is situated in King County.

FACTS PERTINENT TO ALL CAUSES FOR RELIEF

22. In the late 1800s, SLS&E acquired land to construct their railroad right-of-way along Lake Sammamish by way of the 1875 Act, easement deeds and prescriptive easements.

23. The original conveyances to the railroad have already been analyzed and determined to convey mere easements for railroad purposes by Judge Marian Blank Horn of the United States Court of Federal Claims in *Beres v. United States*, 104 Fed. Cl. 408 (Fed. Cl. 2012). Judge Horn's Opinion and Order, rendered on April 5, 2012, concluded that the conveyances at issue in this case were conveyances of easements to the railroad for their railroad purposes only and that the easement currently on Plaintiffs' land is a surface easement for recreational trail use with the potential reactivation of a railroad.

24. The Seattle, Lake Shore & Eastern Railway Company changed names and ownership on several occasions over many decades. After many changes in ownership and

1 acquisition of the line from previous railroads, BNSF became the rail operator. BNSF operated
2 the railroad line over the railroad corridor for a time and ultimately stopped using the right-of-
3 way for the operation of a railroad.

4 25. The Trails Act authorizes the STB, the governmental entity responsible for
5 regulating railroads and their common carrier obligations, to “preserve for possible future
6 railroad use rights-of-way not currently in service and to allow interim use of the land as
7 recreational trails.”
8

9 26. Congress enacted the Trails Act to address the national problem of railroad
10 abandonments and the loss of the national network of rights-of-way. The Trails Act authorizes
11 the STB to preserve railroad corridors or rights-of-way not currently in use for train service for
12 possible future rail use by converting those rights-of-way into recreational trails. In essence, the
13 Trails Act allows a railroad to relinquish responsibility for a rail line by transferring the corridor
14 to an entity that will use it as a recreational trail. Although the corridor is not used as a railroad
15 during the period of interim trail use, it remains intact for potential future use for rail service.
16 This process is called “railbanking.”
17

18 27. Pursuant to the Trails Act, before a railroad corridor may be converted into a
19 recreational trail, the railroad must either initiate abandonment proceedings with the STB under
20 49 U.S.C. § 10903 or seek an exemption from the ordinary abandonment procedures under 49
21 U.S.C. § 10502. Under either procedure, abandonment of the rail line and right-of-way will not
22 be approved by the STB if a qualified trail provider submits to the STB a request to use the right-
23 of-way as a recreational trail.
24
25

1 28. If the trail provider submits a statement of willingness to assume financial and
2 legal responsibility to the STB and the railroad, the STB will issue a NITU, which preserves the
3 STB's jurisdiction over the rail corridor while the parties negotiate an Interim Trail Use
4 Agreement. 49 C.F.R. § 1152.29(c).

5 29. The NITU preserves the STB's jurisdiction over the rail corridor, allows the
6 railroad to discontinue operations and remove track and equipment, and affords the railroad and
7 the trail provider 180 days to negotiate a railbanking and Trails Use Agreement. During this
8 period, the railroad will negotiate an agreement for the transfer of the corridor to the trail
9 operator.

10 30. If an agreement is ultimately reached, the NITU automatically authorizes the
11 interim trail use. If the STB takes no further action, the trail sponsor then may assume
12 management of the right-of-way, subject only to the right of the railroad to reassert control of
13 the property for restoration of rail service. If an agreement is not reached, the railroad will be
14 allowed to abandon the line, at which time the STB's jurisdiction over the right-of-way
15 terminates and the fee ownership in the rail corridor returns to the adjacent landowners.

16 31. In 1998, BNSF filed a Petition for Exemption to abandon the line with the STB.
17 On September 16, 1998, the STB authorized the Land Conservancy of Seattle and King County
18 to assume financial responsibility for the corridor and the conversion of the corridor into a
19 recreational trail. The NITU from the STB was filed pursuant to the Trails Act and is attached
20 as Exhibit H.

21 32. Pursuant to the Trails Act and its implementing regulations, King County entered
22 into an interim Trail Use Agreement with BNSF on September 29, 1998 to railbank the railroad
23
24
25

1 corridor from milepost 7.3 near Redmond and milepost 19.75 at Issaquah, in King County.
2 Washington, subject to reactivation for the resumption of interstate freight service. The interim
3 Trail Use Agreement designated King County as the interim trail user for railbanking purposes.
4 The Trail Use Agreement is attached as Exhibit I.

5 33. King County, through the Quit Claim Deed from BNSF, acquired an easement
6 over the surface of the right-of-way which, pursuant to the Trails Act, is now an easement for a
7 hiking and biking trail with the possible reactivation of a railroad.
8

9 **COUNT I - DECLARATORY JUDGMENT**

10 For Count I against King County, Plaintiffs allege as follows:

11 34. Plaintiffs hereby incorporate by reference paragraphs 1-33 as though fully set
12 forth herein.

13 35. Plaintiffs own the underlying fee in the railroad right-of-way adjacent to their
14 property, including subsurface and aerial rights.
15

16 36. BNSF, prior to implementation of the Trails Act and the granting of a Quit Claim
17 Deed to King County, possessed an easement for railroad purposes on the surface of Plaintiffs'
18 fee ownership in the railroad's right-of-way.

19 37. By and through the Trails Act, the railroad purposes easement has been preserved
20 for future use and King County only acquired an easement for a hiking and biking trail with the
21 potential reactivation of a railroad on the surface of Plaintiffs' fee ownership.
22

23 38. Under the Uniform Declaratory Judgments Act, Chapter 7.24 of the Revised Code
24 of Washington, the Court has jurisdiction to declare the rights of the parties with respect to the
25 railroad right-of-way at issue. Specifically, under Section 7.24.020 of the Revised Code of

1 Washington, any person claiming an interest under a deed, written contract, or statute is entitled
2 to a determination of rights arising under the deed, written contract, or statute.

3 39. Plaintiffs are entitled to a declaration of rights that the original source conveyance
4 to the railroad was an easement and other interests acquired by the railroad were prescriptive
5 easements, that the easements were for railroad purposes only, and that Plaintiffs are the fee
6 owners of the railroad right-of-way at issue, and King County only acquired a surface easement
7 for a hiking and biking trail with the possible reactivation of a railroad pursuant to the Trails Act.
8

9 WHEREFORE, Plaintiffs respectfully request that judgment be entered for Plaintiff and
10 against King County for a declaratory judgment declaring that the railroad only acquired an
11 easement for railroad purposes over and through Plaintiffs' land and King County, by the Quit
12 Claim Deed from BNSF, only acquired a surface easement for a hiking and biking trail with the
13 possible reactivation of a railroad by and through the Trails Act, and for such further monetary
14 and equitable relief and for allowable costs and attorneys' fees as the Court may deem just and
15 proper.
16

17 Dated: August 14, 2015

18 **STEWART, WALD & McCULLEY, L.L.C.**

19
20 By /s/ Thomas S. Stewart

21 Thomas S. Stewart

22 Elizabeth McCulley

23 Michael J. Smith

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AND

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August 2015, the foregoing was filed electronically with the Clerk of the Court to be served by the operation of the Court's electronic filing system upon all parties of record.

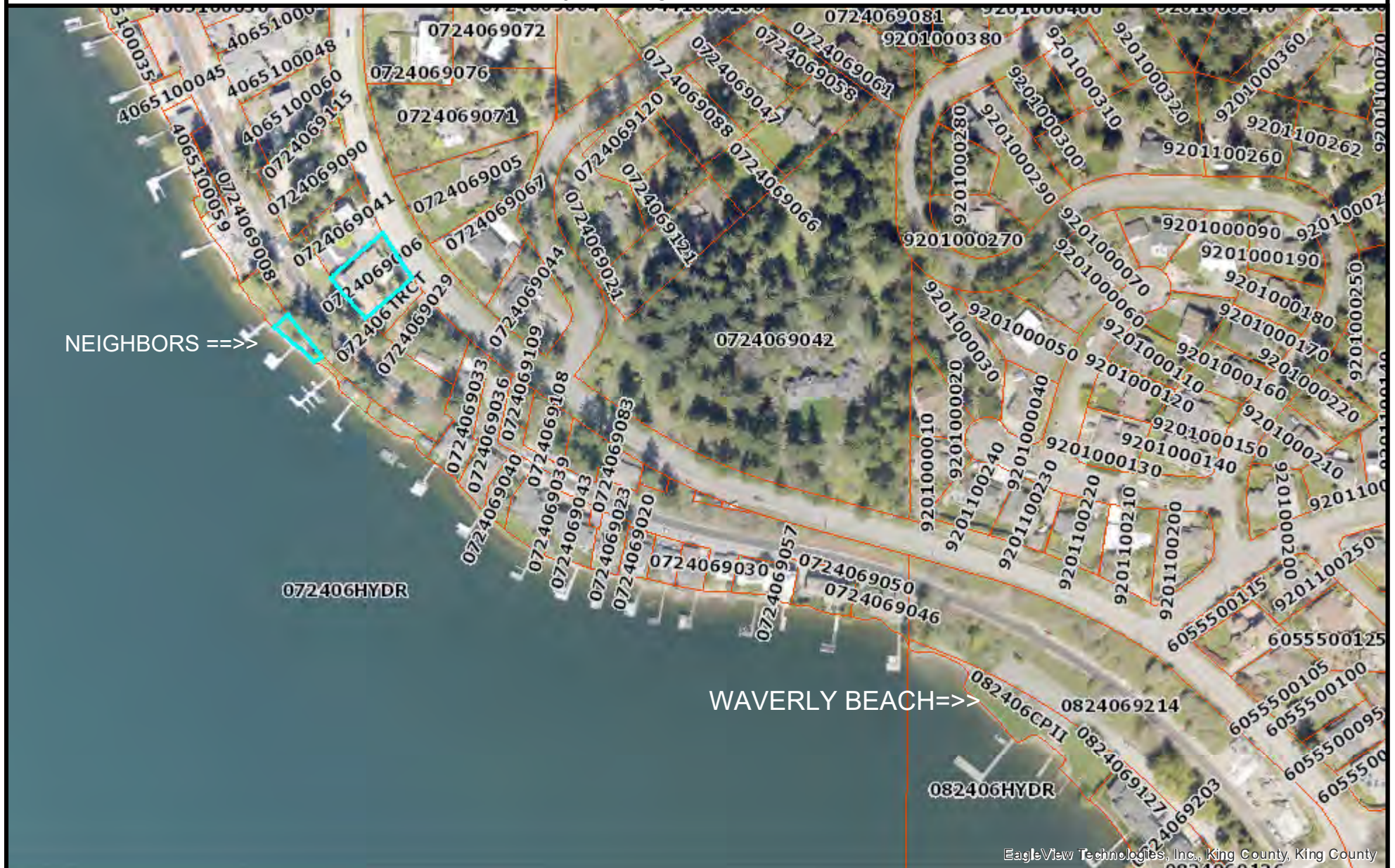
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/s/ Thomas S. Stewart

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 26

Waverly - Adjacent Properties



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Date: 1/21/2025

Notes:



King County

EagleView Technologies, Inc., King County, King County

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 27

Waverly - Adjacent Properties



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Date: 1/21/2025

Notes:



WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 28

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THOMAS E. HORNISH AND SUZANNE J.
HORNISH JOINT LIVING TRUST, TRACY
AND BARBARA NEIGHBORS, ARUL
MENEZES AND LUCRETIA
VANDERWENDE, LAKE SAMMAMISH 4257
LLC, HERBERT MOORE AND ELYNNE
MOORE, AND EUGENE MOREL AND
ELIZABETH MOREL,

Plaintiffs,

v.

KING COUNTY, a home rule charter county,

Defendant.

No. 2:15-cv-00284-MJP

**KING COUNTY'S MOTION FOR
SUMMARY JUDGMENT**

**NOTE ON MOTION CALENDAR:
FEBRUARY 19, 2016**

ORAL ARGUMENT REQUESTED

KING COUNTY'S MOTION FOR SUMMARY
JUDGMENT

No. 2:15-cv-00284

Daniel T. Satterberg, Prosecuting Attorney
CIVIL DIVISION, Litigation Section
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EXCERPT ONLY PROVIDED

THE FOLLOWING PAGES CONTAIN ONLY
ARGUMENT SECTION IV.C.4

4. *A One Hundred Foot Corridor Is Consistent With A Railroad's Operational Needs.*

When assembling the Corridor, the SLS&E acquired the property that was necessary for its operations. Under long-established Washington law, the width of a rail or roadway acquired by adverse possession or prescription is not confined to the width of the rails or the tracks, but is determined by what is actually needed to support the Corridor.¹⁴ *See In re Extension of West Marginal Way*, 186 P. 644, 646 (Wash. 1919) (“The right acquired by prescription and use carries with it such width as is reasonably necessary for the public easement of travel, and the width must be determined from a consideration of the facts and circumstances peculiar to the case.”).

Consistent with the operational needs of railroads, Washington law recognizes that corridors acquired by adverse possession extend beyond the portion in daily use. *See, e.g., Dennis v. N. Pac. Ry. Co.*, 20 Wash. 320, 334 (1898) (“It is a matter of common knowledge that the right of way of

¹⁴ Washington law generally treats road and railroad corridors similarly. *E.g. Roeder Co. v. Burlington N., Inc.*, 105 Wash.2d 567, 576 (1986) (applying highway presumption to railroad corridors).

1 railroad companies is not limited to the amount of land actually occupied by their tracks.”). A railroad
 2 requires more than the width of its tracks and ballast because:

3 The uses for the right of way in connection with the operation of the
 4 railroad may be many. It may require a use for additional stations or
 5 side tracks. The company must so use its right of way as to reasonably
 6 prevent the communication of fires in the operation of its engines.
 Many of these uses, it will be observed, need not necessarily be made
 by the company when its line is first constructed.

7 *N. Ctys. Inv. Trust v. Enyard*, 24 Wash. 366, 370-71 (1901).

8 The width of the road as laid out and mapped is strong evidence of the width that is necessary
 9 for its purpose. *In re Extension of West Marginal Way*, 186 P. at 646 (“The county actually laid out
 10 and surveyed a road sixty feet in width . . . and acquired by prescriptive right the whole of the sixty-
 11 foot road, notwithstanding the fact that but a portion of thereof was actually used.”). The width of
 12 the corridor is also shown by the conduct of the adjoining landowners. *Id.* (noting a prior landowner’s
 13 petition to change the location of the road recognized the county claimed more width than was
 14 actually used). The width of the corridor is also determined by examining the width of the corridor
 15 connecting to the sections without a deed. *810 Properties v. Jump*, 170 P.3d 1209, 1217 (Wash. Ct.
 16 App. 2007) (holding that a prescriptive easement was forty feet wide, despite testimony only ten to
 17 fifteen feet was used, because “40 feet is the amount reasonably necessary to connect to the easement
 18 in the south half,” which was also forty feet wide); *accord Illig*, 58 Fed. Cl. at 629-30 (rejecting
 19 argument that railroad “corridor runs at an even 100 feet in width for most of the length of the
 20 Carondelet Branch but then abruptly narrows to thirty feet for the length of certain parcels for which
 21 no specific deed can be found,” because the law “disfavors bottlenecking”).

22 Railroad corridors, by necessity, must be wider than the narrow area where the tracks are laid:

23 Many railroad lines have a wider ROW than might appear to be used,
 24 but that does not mean that all of the property is not needed for rail
 25 operations . . . [E]xtra width on the sides of the track allows room to
 maintain or upgrade the track, to provide access to the line, to serve as
 a safety buffer, and to ensure that sufficient space is left available for

more tracks and other rail facilities to be added, as needed, as rail traffic changes and grows, among other uses. Thus, it cannot be said that property at the edge of a railroad's ROW is 'not needed for railroad transportation' just because tracks or facilities are not physically located there now.

City of Creede, CO—Petition for Declaratory Order, No. 34376, 2005 WL 1024483, at *6 (STB, May 3, 2005) (citing *Midland Valley R.R. v. Jarvis*, 29 F.2d 539, 541 (8th Cir. 1928)); *see also Brown v. Alabama Great South. R.R. Co.*, 544 So. 2d 926, 928 (Ala. 1989) (summarizing testimony of railroad employees indicating that fifty foot railroad corridor was used for “drainage purposes, as work area by the timber and surfacing crews when repairing track, for installing and removing crossties, for laying rail, and for ditching and storing debris removed from the roadbed so that it would not wash back on the tracks”).

Indeed, in previous litigation, BNSF explained that the one-hundred foot width of the Corridor serves as a necessary “safety buffer to ensure minimum setbacks between freight trains and residential development, to prevent nearby construction and development activities that could undermine the stability of the steep slopes above and below the tracks, and to provide access for maintenance activities, such as tie replacement, that require significant clearance on one or both sides of the track.” Declaration of Mike Nuorala ¶ 8, Hackett Decl. Ex. J. Further, based on railroad track standards and engineering specifications for Class I railroads such as BNSF, “to reactivate the East Lake Sammamish Trail corridor for interstate freight service would require a corridor from 59 feet 8.5 inches wide, to 96 feet 8.5 inches wide.” Sullivan Decl. ¶ 4, Hackett Decl. Ex. D. This width is necessary because railroad operations require space between each of the rails of the track, side clearance, drainage of the slope, a drainage ditch, and access for maintenance and emergencies. *Id.* ¶¶ 5-8. Sufficient width for corridor drainage is the most important factor for maintenance of the railroad tracks. *Id.* ¶ 8. Adequate access for emergency responses, including derailments, is also critical. *Id.* ¶ 9. As such, based on the requirements of railroad operations, a one hundred foot width is necessary to serve the purpose of the Corridor.

END OF ARGUMENT SECTION IV.C.4.

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 29

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”) is entered into by and between King County (“County”) and Shorelines Hearings Board Petitioners James T. Stenson, Greg & Karma Chapman, and Sammamish Homeowners (collectively “Petitioners”). The County and Petitioners are collectively referred to herein as the “Parties.” The Parties enter into this Agreement to resolve (1) an appeal filed with the Shorelines Hearings Board on January 17, 2014, namely *Stenson, et al. v. King County, et al.*, SHB No. 14-001, and (2) other disputes associated with the construction of the North Sammamish segment of the East Lake Sammamish Trail, among other issues.

RECITALS

1. James T. Stenson (“Stenson”) owns residential real property commonly known as 2029 E. Lk. Sammamish Pkwy. NE, Sammamish, WA 98074, also known as King County Parcel No. 7525900080.
2. Greg & Karma Chapman (“Chapman”) own residential real property commonly known as 2831 E. Lk. Sammamish Pkwy. NE, Sammamish, WA 98074, also known as King County Parcel No. 2025069119.
3. Sammamish Homeowners is a Washington non-profit corporation that advocates regarding property issues affecting individuals who own residential real property within the City of Sammamish (“City”), including owners on Lake Sammamish in the vicinity of the East Lake Sammamish Trail (“ELST”).
4. On July 31, 2012, King County Parks applied for a Shoreline Substantial Development Permit to widen and make other improvements to the northern portion of the ELST within the City, also known as the North Sammamish segment. This application was assigned permit no. SSDP 2013-00145 (“Application”). On September 3, 2013, the City conditionally approved the Application. In addition to the North Sammamish segment, the County is currently in the planning process for the South Sammamish segment.
5. On September 26, 2013, Stenson and Chapman filed a timely appeal of the Application to the City’s Hearing Examiner (“Appeal”). Thereafter, King County filed a Motion to Dismiss Appeal of Shoreline Substantial Development Permit (SSDP), seeking dismissal of the Appeal on various grounds. On December 12, 2013, the Hearing Examiner issued a Dispositive Order on Motions, dismissing the Appeal in its entirety. On January 17, 2014, Stenson, Chapman, and Sammamish Homeowners filed a Petition for Review (“Petition”) with the Shorelines Hearings Board.
6. The Parties now desire to fully and finally dismiss the pending appeal of the SSDP and resolve other disputes associated with the construction of the North Sammamish segment of the ELST, among other issues.

AGREEMENT

In consideration for the mutual covenants set forth below, the sufficiency of which is acknowledged, the Parties hereby agree as follows:

1. Landscaping Improvements and Vegetation: 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's right of way in accordance with the criteria set forth in **Exhibit 1**.
2. Special Use Permits: The Parties agree that those property owners who have already obtained a Special Use Permit ("SUP") for their landscaping improvements and/or vegetation, will not be required to obtain a new one for new landscaping improvements or vegetation necessitated or desired as a result of the County's forthcoming construction of the ELST. Those property owners with an SUP who seek to establish new landscaping improvements or vegetation must amend their SUP. No fee will be charged for such amendments.

The County further agrees to establish a pre-approval/screening process whereby property owners can present planting/landscaping plans to the County and obtain guidance and pre-approval from the County without risking the loss of the fee for a SUP, if applicable. If the SUP application is consistent with the criteria in Exhibit 1, the County shall approve the SUP.

The County acknowledges that it has performed a survey of the right of way for the ELST, and the County agrees that property owners will not be required to submit a survey or perform additional survey work as a condition of applying for a SUP to utilize the right of way for the ELST.

3. Notification re Commencement of Construction: Following dismissal of the Appeal to the SHB as set forth in Paragraph 11 below, the County agrees to mail a letter to all owners of real property burdened by, or adjacent to, the County right of way for the North Sammamish segment of the ELST, informing them of the anticipated schedule for construction and offering a new deadline to remove any improvements that will interfere with construction. To the extent any of these property owners seek individualized direction from the County regarding which improvements or vegetation will need to be removed as a result of construction, the County will provide this consultation by means of the pre-screening/consultation process referred to in Paragraph 2 above. The County shall also mail a similar notification prior to construction of the South Sammamish segment.
4. Liability/Indemnity: In addition to the letters to property owners required by Paragraph 3 above, the County shall also mail those property owners a letter

acknowledging that the ELST is a County facility, designed, developed and maintained by the County.

5. Signage: In addition to the signage included in the ELST design and construction plans, the County agrees to install the following additional signage on the north segment of the ELST:
 - (i) Sign pairs stating “narrow bridge” to warn trail users that the ELST narrows to eight feet in the vicinity of Stenson’s residence.
 - (ii) Sign pairs stating “congested area/reduced speed” in the vicinity of Stenson’s residence.
 - (iii) A total of four additional sign pairs of the existing “multiple driveway” signs currently on the design and development plans will be modified to say “congested area” and “reduce speed” instead of “multiple driveway.” In addition, sign pairs stating “congested area/reduce speed” will be placed at the following locations, Audett property, 2813 E. Lk. Sammamish Pkwy. NE; Woodin property, 2927 E. Lk. Sammamish Pkwy. NE.
6. Chapman Wall: The County agrees to construct the proposed County wall in front of the Chapman residence (Wall 13A on plan sheet AL 10) on the same alignment as the wall in the existing construction plans for the adjoining property to the immediate south (Wall 13 on plan sheet AL 10). The County agrees to temporarily remove the driveway retaining wall constructed by Chapman. Chapman shall obtain three competitive bids from licensed and bonded contractors for rebuilding the wall. Chapman shall either accept the lowest bid, or if a higher bid is accepted, Chapman must agree to pay out-of-pocket the different between the higher bid and the lowest bid. The County agrees to pay Chapman a sum equal to the lowest bid, with the County’s obligation capped at a maximum of \$7,500, to compensate Chapman for the costs of rebuilding the wall following construction of the North Sammamish segment of the ELST. Payment shall be received by counsel for Chapman within 45 days of the County’s receipt of the competitive bids. With respect to construction of the County’s proposed retaining wall adjacent to the Chapman residence, the County shall give Chapman the option of choosing one of the styles/designs attached as **Exhibit 2**.
7. Mirrors: Stenson has requested a mirror in the vicinity of the driveway serving Stenson’s residence to increase the safety of crossing the ELST. The County agrees to install a mirror at this location to assist with this purpose. The County will not be obligated to maintain the mirror. The County also agrees to consider requests to retain existing mirrors, and/or install new mirrors, by other property owners concerned about the safety of crossings. Approval for the retention or installation of mirrors will be performed on a case-by-case basis, and such approval will not be unreasonably withheld.

8. Pet stations: The County agrees to install up to four additional pet stations along the north segment of the ELST at locations agreed upon the Petitioners and counsel for Petitioners. These pet stations shall include signage setting forth the rules for the ELST. These pet stations shall be in addition to those included in the ELST design and construction plans at pre-determined locations.
9. Copying Costs: Stenson and Chapman received an invoice from the County, dated November 26, 2013, in the amount of \$1,014.85 for copying costs and legal messenger fees allegedly incurred in response to a requested by counsel for Stenson and Chapman. The County agrees to pay these costs and fees.
10. Process: Petitioners have expressed a concern that the County's engineering plans are simply too difficult for laypersons to interpret in order to determine what effect the County's anticipated construction of the ELST will have on their existing improvements. Accordingly, the County agrees to provide additional information to property owners to assist in the interpretation of the plans. Such additional information shall include a "how to" guides explaining how to determine the location of sight lines and grub lines for the anticipated construction. In addition, the County will offer property owners group and individual meetings for those individuals who have questions about the County's plans and their effect on their existing improvements. 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. The County further agrees to provide Sammamish Homeowners with the notifications, letters, and guides set forth in Paragraphs 3 and 10 herein at the same time they are provided to the public.
11. Dismissal and Waiver: Petitioners agree to file a Motion to Dismiss with prejudice the Petition for Review in *Stenson, et al. v. King County, et al.*, SHB No. 14-001. The Motion to Dismiss shall be filed no later than Friday, February 7, 2014. Stenson, Chapman and Sammamish Homeowners agree not to file any additional legal or administrative appeals of SSDP 2013-00145, and shall not otherwise interfere with any permits for construction of the North Sammamish segment of the ELST.
12. Entire Agreement: This Agreement and the exhibits attached hereto contain the entire agreement between the Parties with respect to the subject matter hereof and shall not be modified or amended in any way except in a writing signed by duly authorized representatives of the respective Parties or their successors in interest or assigns.
13. Enforcement: This Agreement may be enforced by filing an action in King County Superior Court. The Parties agree that damages are not an adequate remedy for any breach of this Agreement, and that a party alleging breach may seek specific performance and/or injunctive relief. The prevailing Party in such an action shall be entitled to recover its reasonable costs and attorney's fees, including those

reasonable costs and attorneys' fees incurred in any appeal from the judgment of a lower court.

14. Notice: Any notice or other communication of any sort required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if personally delivered or three days after being mailed by certified mail as follows:

For Petitioners:

Samuel A. Rodabough, Esq.
Law Office of Samuel A. Rodabough PLLC
10900 N.E. 4th St., Ste. 2300
Bellevue, WA 98004

For the County:

Barbara A. Flemming, Esq.
Senior Deputy Prosecuting Attorney
Civil Division
King County Prosecuting Attorney
516 3rd Ave., Rm. W400
Seattle, WA 98104-2388

15. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
16. Headings/Interpretation: The headings and subheadings contained in this instrument are solely for the convenience of the Parties and are not to be used in construing this Agreement. Nothing in this Agreement shall be construed as a waiver or otherwise have any affect upon, the ongoing dispute between the Parties regarding the nature of the property interests owned by the Parties, respectively.
17. Authority: The persons executing this Agreement on behalf of the respective Parties hereby represent and warrant that they are authorized to enter into this Agreement on the terms and conditions herein stated.
18. Effective Date: The "Effective Date" of this Agreement shall be that latest date identified below when any party has executed this Agreement.
19. Counterparts: This Settlement Agreement may be executed in counterparts, all of which shall be deemed an original as if signed by all Parties.
20. Binding Effect: This Settlement Agreement shall be binding upon the respective successors and assigns of the Parties hereto, shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

For King County:

Monica Leers

Monica Leers, Program Manager
King County Parks

2/7/2014

Dated

For James T. Stenson:

James T. Stenson

James T. Stenson

2/6/2014

Dated

For Greg & Karma Chapman:

Greg Chapman

Greg Chapman

2/6/2014

Dated

Karma Chapman

Karma Chapman

2/6/2014

Dated

For Sammamish Homeowners:

Dwight Martin

Dwight Martin, President

2/6/2014

Dated

EXHIBIT 1

LANDSCAPING/PLANTINGS ON COUNTY RIGHT OF WAY EAST LAKE SAMMAMISH TRAIL

- 1) Plantings/landscaping in the County's right of way must not impact sight lines along the trail. Plantings/landscaping less than 3 feet in height do not impact sight lines, unless steep topography requires otherwise (slopes may dictate less than 3 feet). Plantings/landscaping outside of the sight lines may exceed 3 feet in height if the other criteria set forth below are met.
- 2) Plantings/landscaping in the County's right of way must not cause damage to the trail or trail infrastructure (including drainage facilities, infiltration, retaining walls, pavement etc).
- 3) Plantings/landscaping in the County's right of way must not result in additional maintenance costs for the County.
- 4) Plantings/landscaping in the County's right of way must not encroach onto the trail footprint.
- 5) Plantings/landscaping in the County's right of way must not adversely impact the health of other plantings on the trail or irrigation/mitigation projects on the trail.
- 6) Plantings/landscaping in the County's right of way must not be placed in critical areas, unless part of an approved restoration project.
- 7) Plantings/landscaping in the County's right of way must be consistent with City code requirements
- 8) Any proposed irrigation systems must be approved in advance to ensure compliance with the landscaping guidelines.
- 9) Plantings/landscaping in the County's right of way may be native or non-native, if consistent with the above criteria.
- 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.
- 11) All references to "plantings" in these criteria mean the mature height and width of the plants, shrubs and trees.
- 12) All references to "landscaping" in these criteria mean other manmade features, including, but not limited to, planting beds, fences, retaining walls, etc.
- 13) All references to "trail" in these criteria means the paved portion of the trail and trail infrastructure, including its 2-foot shoulder.

EXHIBIT 2 EXCLUDED

WAVERLY HILLS CLUB PETITION
DOCKET NO. AB-6 (SUB-NO. 380X)

EXHIBIT 30



Surface Transportation Board
Washington, D.C. 20423-0001

Office of the General Counsel

202-245-0260
FAX 202-245-0460

June 29, 2020

Lisa L. Russell
Chief, Natural Resources Section
Environment and Natural Resources Division
United States Department of Justice
150 M St. NE
Washington, DC 20002

Re: Surface Transportation Board authority over railbanked rail lines

Dear Ms. Russell,

This letter describes the general authority of the Surface Transportation Board (the “STB” or “Board”) over rail lines that have been railbanked under the National Trails System Act (the “Trails Act”), and in particular, the Board’s authority to address the impact of railbanking on structures or other improvements that may have been placed in the rail corridor by third parties before the line was railbanked. The STB is sometimes required to decide disputes concerning such structures or improvements. Please note that this letter does not provide the Board’s views concerning any specific matter, including the appropriate disposition of any particular structure or improvement.

Under the Trails Act, railroads may agree to allow qualified trail sponsors to utilize underused rail lines as interim trails. 16 U.S.C. § 1247(d). When the railroad and trail sponsor reach an agreement that meets the statutory requirements, the rail line is considered to be “railbanked,” which means that it may be used as an interim trail while being held in reserve (banked) in case future rail service is required. *Id.* Because the statute prohibits the Board from considering railbanked lines to be abandoned, they remain under the STB’s jurisdiction as part of the interstate rail system and subject to potential reactivation for rail service. *Id.* The Trails Act does not expand the STB’s jurisdiction over rail lines, which is contained in the Interstate Commerce Act, as amended, at 49 U.S.C. § 10501; rather, it provides that the Board’s jurisdiction remains in place over railbanked lines for the duration of the interim trail use. Therefore, pre-existing rights of a third party to use part of the rail corridor are not impacted by railbanking and interim trail use under the Trails Act. In other words, trail use under the Trails Act should not prevent a third party from continuing to use a portion of the rail right-of-way in the same manner it was used before the interim trail use on the line, so long as it does not interfere with the potential reactivation of rail service.

Sometimes questions arise about the way in which particular third parties use the rail right-of-way within a Trails Act trail. The STB, which is primarily an adjudicatory body, does not, on its own initiative, actively investigate the status of any structures or

improvements within a railbanked corridor. It does, however, on occasion address disputes between third parties, trail sponsors, and/or railroads that are brought to it concerning whether rights and activities within a particular railbanked corridor interfere with or are preempted by the Board's jurisdiction over rail transportation under federal law. When the Board addresses such disputes, its primary focus is on ensuring that the potential reactivation of rail service on the rail corridor remains possible. As the Board has stated, "[o]ur 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." Idaho N. & Pac. R.R.—Aban. & Discontinuance Exemption—in Wash. & Adams Ctys., Idaho, AB 433 (Sub-No. 2X) et al., slip op. at 9 (STB served Apr. 1, 1998); see also Jie Ao & Xin Zhou—Pet. for Declaratory Order, FD 35539 (STB served June 6, 2012) (determining whether certain state law property claims are preempted as unreasonably interfering with potential reactivation of rail service on a railbanked corridor). If a dispute concerning rights or activities within a railbanked corridor, including the presence of structures or improvements, is formally brought to it in the future, the Board could, as it has done in the past, hold a proceeding to examine the facts and circumstances in the context of its existing precedent. At the conclusion of such a proceeding, the Board could issue a decision resolving the dispute. As discussed above, STB does not, on its own initiative, institute such proceedings.

Please let us know if we can provide you with any additional information or further assistance.

Sincerely,

A handwritten signature in black ink that reads "Craig M. Keats". The signature is written in a cursive, slightly slanted style.

Craig M. Keats
General Counsel

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

***THE BURLINGTON NORTHERN AND SANTA FE RY. CO.—
ABANDONMENT EXEMPTION—IN KING COUNTY, WA***

STB DOCKET NO. AB-6 (Sub-No. 380X)

WAVERLY HILLS CLUB, INCORPORATED

VERIFICATION OF PETITION BY WAVERLY HILLS CLUB

STEPHENS & KLINGE LLP

Charles A. Klinge, WSBA #26093

Richard M. Stephens, WSBA #21776

10900 NE 4th Street, Suite 2300

Bellevue, WA 98004

(425) 453-6206

Email: klinge@sklegal.pro

Email: stephens@sklegal.pro

Attorneys for Petitioner

Waverly Hills Club, Incorporated

a Washington nonprofit corporation

VERIFICATION OF PETITION BY WAVERLY HILLS CLUB

I, Amy Byron, verify under penalty of perjury that the facts stated in the “Waverly Hills Club, Incorporated --- Petition To Reopen NITU Decision or, in the Alternative, Petition For Declaratory Orders” are true and correct. I further verify that I am qualified and authorized by the Waverly Hills Club, Incorporated, to execute and cause to be filed this Verification of Petition.

Executed on this 27th day of January, 2025, at Sammamish, Washington.

/s/ Amy Byron

Amy Byron

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

***THE BURLINGTON NORTHERN AND SANTA FE RY. CO.—
ABANDONMENT EXEMPTION—IN KING COUNTY, WA***

STB DOCKET NO. AB-6 (Sub-No. 380X)

WAVERLY HILLS CLUB, INCORPORATED

DECLARATION OF SERVICE OF PETITION ON KING COUNTY, WA

STEPHENS & KLINGE LLP

Charles A. Klinge, WSBA #26093

Richard M. Stephens, WSBA #21776

10900 NE 4th Street, Suite 2300

Bellevue, WA 98004

(425) 453-6206

Email: klinge@sklegal.pro

Email: stephens@sklegal.pro

Attorneys for Petitioner

Waverly Hills Club, Incorporated

a Washington nonprofit corporation

DECLARATION OF SERVICE OF PETITION ON KING COUNTY, WA

I, Charles A. Klinge, declare:

I prepared the following documents for service:

- WAVERLY HILLS CLUB, INCORPORATED --- PETITION TO REOPEN NITU DECISION OR, IN THE ALTERNATIVE, PETITION FOR DECLARATORY ORDERS
- VERIFICATION OF PETITION BY WAVERLY HILLS CLUB
- WAVERLY HILLS CLUB, INCORPORATED – EXHIBITS 1-30
- DECLARATION OF SERVICE OF PETITION ON SERVICE LIST
- DECLARATION OF SERVICE OF PETITION ON KING COUNTY, WA

On January 28, 2025, I caused the referenced documents to be served on King County, Washington, pursuant to King County Code 2.04.010.B.1, by emailing the documents to kcserviceofsummons@kingcounty.gov and also as follows:

King County, Washington	☐ Hand Delivery /Legal Messenger
Attn: Elisa J. Wood	☐ First Class U.S. Mail
Senior Deputy Prosecuting Attorney	☐ Federal Express Overnight
King County Pros. Attorney's Office	☒ E-Mail: elwood@kingcounty.gov
Civil Division, Natural Resources & Parks	☐ Other

In addition, as counsel for petitioner I managed service on the 22 person/entity service list retrieved from the STB database for STB Docket No. AB-6 (Sub-No. 380X) which was completed by my assistant Charlene Stephens via first class mail. However, recognizing that the service list is 20+ years old and that there will be many returns which is highly wasteful, I instructed her not to include the 136 pages of exhibits in the mailing. Instead, she included my cover letter, form of letter attached, in which I promised to immediately provide the exhibits upon request of any interested person.

I declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to prepare this DECLARATION OF SERVICE OF PETITION ON KING COUNTY, WA.

Executed this 28th day of January, 2025, at Bellevue, Washington.

/s/ Charles A. Klinge

Charles A. Klinge, WSBA # 26093



STEPHENS & KLINGE LLP
ATTORNEYS AT LAW

10900 NE 4TH STREET, SUITE 2300
BELLEVUE, WA 98004

RICHARD M. STEPHENS
CHARLES A. KLINGE

TELEPHONE (425) 453-6206

January 28, 2025

Name from Service List

**RE: Surface Transportation Board-STB Dkt. No. AB-6 (Sub-No. 380X)
THE BURLINGTON NORTHERN AND SANTA FE RY. CO.—
ABANDONMENT EXEMPTION—IN KING COUNTY, WA
WAVERLY HILLS CLUB, INCORPORATED --
PETITION TO REOPEN NITU DECISION OR, IN THE
ALTERNATIVE, PETITION FOR DECLARATORY ORDERS**

To the above named:

The above name and address are on the service list for the above docket number at the Surface Transportation Board. The purpose of this letter and the enclosed documents is to effect service of a new Petition we filed on behalf of Petitioner Waverly Hills Club, Incorporated. However, recognizing that the service list is 20+ years old and that there will be many returns which is highly wasteful, I did not include the 136 pages of exhibits in this package. If you would like a copy of the exhibits, then please contact me and I will immediately provide the exhibits to you presumably via email or cloud transfer.

Please contact me if you have any questions about this matter.

Sincerely,

STEPHENS & KLINGE LLP

Charles A. Klinge

Charles A. Klinge
klinge@sklegal.pro

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

***THE BURLINGTON NORTHERN AND SANTA FE RY. CO.—
ABANDONMENT EXEMPTION—IN KING COUNTY, WA***

STB DOCKET NO. AB-6 (Sub-No. 380X)

WAVERLY HILLS CLUB, INCORPORATED

DECLARATION OF SERVICE OF PETITION ON SERVICE LIST

STEPHENS & KLINGE LLP

Charles A. Klinge, WSBA #26093

Richard M. Stephens, WSBA #21776

10900 NE 4th Street, Suite 2300

Bellevue, WA 98004

(425) 453-6206

Email: klinge@sklegal.pro

Email: stephens@sklegal.pro

Attorneys for Petitioner

Waverly Hills Club, Incorporated

a Washington nonprofit corporation

DECLARATION OF SERVICE OF PETITION ON SERVICE LIST

I, Charlene Stephens, declare:

I prepared the following documents for service:

- WAVERLY HILLS CLUB, INCORPORATED --- PETITION TO REOPEN NITU DECISION OR, IN THE ALTERNATIVE, PETITION FOR DECLARATORY ORDERS
- VERIFICATION OF PETITION BY WAVERLY HILLS CLUB
- WAVERLY HILLS CLUB EXHIBITS 1-30 [COVER PAGES]
- DECLARATION OF SERVICE OF PETITION ON SERVICE LIST
- DECLARATION OF SERVICE OF PETITION ON KING COUNTY, WA

On January 28, 2025, I caused the referenced documents to be served on the following persons or entities identified in the service list for the above referenced matter and said service was by first class mail (except no service was attempted on deceased former Senator Slade Gorton):

Washington Department of
Transportation
310 Maple Park Avenue SE
P.O. Box 47300
Olympia, WA 98504-7300

Natural Resources
Conservation Service
316 West Boone Avenue
Spokane, WA 99201-2348

Washington Utilities and
Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Craig Larsen
Department of Parks and
Recreation for King County
2040 84th Avenue SE
Mercer Island, WA 98040

Eugene Duvernoy
P.O. Box 1307
Issaquah, WA 98027

Office of the Governor
State Capitol Building
Olympia, WA 98504

Calvin & Beverly Bugbee
3503 E Lk Samm Sh Ln SE
Issaquah, WA 98029

Sarah Whitley Bailiff
Burlington Northern and Santa Fe
Railway
2500 Lou Menk Drive 3rd Floor
P.O. Box 961039
Fort Worth, TX 76131-2828

U.S. Fish and Wildlife Service
215 Melody Lane, #119
Wenatchee, WA 98801-5933

U.S. Fish and Wildlife Service
14852 Northeast 95th Street
Redmond, WA 98052

U.S. Fish and Wildlife Service
600 Capitol Way North
Olympia, WA 98501

U.S. Army Corps of Engineers
201 N. Third Avenue
Walla Walla, WA 99362-1876

Charles H. Montange
Land Conservancy of Seattle
and King County
426 NW 162nd Street
Seattle, WA 98177

Mayor Rosemarie Ives
City of Redmond
15670 NE 85th Street
P.O. Box 97010
Redmond, WA 98073-9710

James Aiken
2025 First Avenue
Suite 700
Seattle, WA 98121

Washington Office of Archeology and
Historic Preservation
P.O. Box 48343
Olympia, WA 98504-8343

Thomas H. Grimm
777-108th Ave NE
Suite 1900
Bellevue, WA 98004

Douglas Marshall
Darigold, Inc.
P.O. Box 79007
Seattle, WA 98119

Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504

Ken Berg
510 Desmond Drive SE
Lacey, WA 98503

Mayor Ava Frisinger
City of Issaquah
P.O. Box 1307
Issaquah, WA 98027

David G. Burwell
Rails to Trails Conservancy
1100 17th Street N.W., Suite 10th Floor
Washington D.C., 20036

I declare under penalty of perjury that the foregoing is true and correct and that I am
qualified and authorized to prepare this DECLARATION SERVICE OF PETITION ON
SERVICE LIST.

Executed this 28th day of January, 2025, at Woodinville, Washington.

/s/ Charlene Stephens

Charlene Stephens